20 - 2223

UNITED STATES COURTS OF APPEALS
FOR THE SECOND CIRCUIT

MICHAEL D. MARKHAM,

Plaintiff - Appellant,

v.

MATHEW A. ROSENBAUM, RICHARD A. DOLLINGER, ADAM J. BELLO, TIMOTHY E. INGERSOLL, MAUREEN A. PINEAU, GREGORY J. MOTT, SHARON KELLY SAYERS, CYNTHIA L. SNODGRASS, DAVID CORON, JENNIFER SPELLER, DIANE R. DELONG,

Defendants - Appellees

On Appeal from the United States District Court
for the Western District of New York

Reply Brief of Michael D. Markham

Michael D. Markham, Pro Se
1010 Front Street, B101
Lahaina, Hawaii 96761
808 264 - 0568

TABLE OF CONTENTS

PAGE

AUTHORITIES / CASES / STATUTES / RULES

PRELIMINARY REPLY STATEMENT - BACKGROUND

Appellant, Michael D. Markham submits this Reply Brief in opposition to the Decision and Order of the United States Circuit Court - Western District of New York entered by Hon. Frank P. Geraci, Jr., dated June 18, 2020 and in opposition to the briefs submitted on behalf of Appellees, Rosenbaum, Dollinger, Snodgrass, Sayers, Speller, Coron, Bello, Pineau and DeLong. The District Court's dismissal of this Appellant's amended complaints of constitutional injury was in error and is in conspicuous violation of 42 U.S.C. Section 1983 and the United States Constitution. This Appellant respectfully requests it be immediately overturned by this Court.

Briefly, by way of Background, the Appellant Markham and Appellee DeLong were involved in Divorce proceedings before the New York State Supreme Court, Judge Kenneth Fisher beginning in September of 2015. During the pendency of those proceedings, Judge Fisher, Lisa Morris, Esq., (the Attorney for the Children), Mark Bezinque, Esq., Jennifer Speller, Esq., (Attorneys for Appellee DeLong), and Appellee DeLong herself, conspired to fake a trial (complete with false testimony), fabricate Lincoln hearings (again with fabricated testimony from the children) and then with the assistance of then Supervising Chief Justice for Seventh Judicial District, Matthew Rosenbaum, made all of the records, including the County Courthouse records, Judge Fisher's Chamber file and the New York State eRecords disappear in an attempt to cover up those highly illegal and unconstitutional acts.

According to Judge Fisher's Absolute Judgement of Divoce signed December 20th, 2016, (App. pg. 1) and Lisa Morris' Esq., (Attorney for the Children), Closing Argument from the Attorney for the Children (App. pg. 5), both fraudulently state explicitly that a trial was held in November of 2016 and testimony was taken by the mother (Appellee DeLong) at the trial. In his Absolute Judgement of Divorce Fisher says the father (the Appellant) did not appear and thus a default judgement was entered against him. Further, both fraudulently refer explicitly to Lincoln hearings that were also fraudulently reported to be taken the day before and false testimony from the children was presented that was willfully and with malice detrimental to the interests of this Appellent and his children. We now know with absolute certainty that neither the trial, nor the Lincoln hearings ever happened and there is an enormous amount of irrefutable evidence in support of that alarming reality. Fisher, Morris, DeLong and Bezinque conspired and completely fabricated both the existence of and the testimony purported to be given during the trial and hearings and according to the confession of fellow appellee Mark Bezinque, 'they never happened.' (App.pg.10).

At a Special Session Hearing on September 14th of 2017, the late Judge, Hon. Elma Bellini vacated the Absolute Judgement of Divorce when no one including the County Courthouse Clerk, Mr Bezinque, or Mr Ingersoll (Appellee DeLong's attorney #3) could or would produce any of the Court records she demanded, most notably a NOTICE TO APPEAR with service to this Appellant....that, in spite of a well documented written dialogue between Judge Fisher and this Appellant, (App.pg.13), suggesting Judge Fisher's actions meant to deprive this Appellant of his right to appear and right to procedural due process in his Court were calculated, deliberate and willful. His letter sent just two weeks prior to the trial date makes no mention of a trial.

Next, in a truly bizarre and unusual twist of events, before the then still healthy Judge Bellini (she continued hearing cases for another six months), could sign the ORDER TO VACATE, Judge Rosenbaum, transferred the case (over the immediate objection of this Appellent) to the highly conflicted Acting Supreme Court Judge Richard A. Dollinger, all before Judge Bellini's Order to Vacate was even signed. Judge Dollinger then wrote up a very diluted, nonsensical and fraudulent version of Judge Bellini's verbal order falsely stating among other things that he and not Judge Bellini was presiding that day over the Motion to Vacate in the Courtroom.(App.Pg.14). Judge Dollinger clearly was not. See minutes of Bellini Motion to Vacate Hearing on September 14, 2017 (App.pg17), and Judge Dollinger's Order to Vacate indicating he was presiding at the hearing on the very same time, date and place that Judge Bellini's hearing happened. Judge Dollinger was NOT present and his false representation that he was is fraudulent. Neither in *Dollinger's* ORDER TO VACATE (noted falsely in the record to be the product of a hearing presided over by him on the same date, time and place as the Special Session Hearing held by Judge Bellini), does Judge Dollinger state anywhere that these are the orders of Judge Bellini and not his own belying an almost bewildering degree of deceit and fraud before the New York State Supreme Court and any future courts that might review these court records without the benefit of Judge Bellini's courtroom minutes recorded on that 14th day of September in 2017. (App.pg17).

This Appellant repeatedly reported these unconstitutional and unlawful acts of Judge Fisher, and Judge Dollinger to, among other authorities, the New York State Commission on Judicial Conduct and the New York State Office of Court Administration. (App.pg.29), After numerous attempts to get the heavily corrupted Judge Fisher off the bench he was finally forced to step down and take an 'early retirement' with years left on his elected term to avoid further investigation by the Commission on Judicial Conduct into his nefarious and unscrupulous dealings while on the New York State Supreme Court bench including his willful and deliberate denial of this Appellant's constitutional rights in his New York State Supreme Courtroom.

Following Judge Dollinger's assignment to the case by Supervising Chief Justice Rosenbaum, Dollinger and attorneys Ingersoll, Mott, Pineau, Sayers, and AFC Riley continued to conspire to defraud this Appellant with their ongoing false narratives that he was wrong and the faked trial and all important Lincoln hearings really did happen. They all maintained that the testimony as reported was real and referenced it repeatedly and unapologetically in the litigation that followed, full in the knowledge that a serious measure of fraud was before the court. Rather than conceding the obvious and vitiating the fraudulent Fisher and Morris testimony before the court, Judge Dollinger and his conspirators doubled down and refused to acknowledge any fault with the Fisher court rulings in spite of Judge Bellini vacating them and all of the evidence before the court showing the fraud and corruption present. The remaining conspirators repeatedly insisted on record to the great satisfaction of the Dollinger Court that all of the missing records remained secure in the County Courthouse, in spite of a mountain of irrefutable evidence saying otherwise. Appellee Pineau gave sworn testimony that she had herself been to the County Courthouse and seen the missing records however, unsurprisingly she never presented one record to this Appellant

or the court to support her false representations. The named Appellee's conspired false affirmations and affidavits about testimony taken at the trial and at the hearings in the Fisher Court formed the basis for all of the future motions and litigation going forward, further depriving this pro se Appellant of his right to procedural due process and putting him at an unjust and insurmountable disadvantage in the heavily corrupted Dollinger Court. Evidence of their conspiring is plentiful in the written court record and given any opportunity to present evidence and question the appellees under oath by interrogatory, deposition or examination, their participation in the conspiracy against this Appellant would be obvious and undeniable. Likewise, a huge amount of evidence indisputably shows that the Fisher trial and Fisher Lincoln hearings were faked and all of the records pertaining to the Fisher docket are now either permanently missing or never existed.

Exhausted from four years of corrupted litigation 6000 miles from this Appellant's home, flying back and forth to New York from Hawaii for hearings many times a year, just prior to a trial on December 8th, 2018, this Appellant and Appellee DeLong, along with AFC Riley reached a settlement agreement in open court resolving the financial and custody marital issues between us. On April 3rd, 2019, Judge Dollinger issued an Judgement of Absolute Divorce based on the aforementioned settlement agreement which outlined the terms of the stipulated agreement made on that day.
(App.pg 37)

In the ongoing post-settlement litigation that followed (in the very same Dollinger Court) as recently as October 13, 2020, initiated by Appellee DeLong and her attorney, Appellee Pineau, Esq., this Appellant continued to attempt to make court requests for discovery for the missing files, including the Lincoln hearings, to further assess the degree of fraud and bad faith on the part of the Court and Appellees Dollinger, DeLong, Pineau, and Riley and was yet again denied by Judge Dollinger in his formal request asking the court to discover and produce those documents. (App.pg48), Of note, with Judge Dollinger's refusal to conduct new Lincoln hearings, the fabricated Lincoln hearings from the Fisher Court were still referenced and very relevant to the ongoing custody hearings. Dollinger denied those cross motions for discovery and unsurprisingly yet again refused to produce the Fisher Lincoln hearings, undoubtedly to cover up his part in the conspiracy and fraud that he was very much complicit in from the time of his assignment and refusal of recusal.

Beaten down by years of ongoing court sponsored unconstitutional bad faith, corruption and fraud, this Appellant filed this action along with a companion filing (19-cv-6930), pursuant to 42 U.S.C., Section 1983, and the US Constitution to the United States Circuit Court - Western District of New York on January 17th, 2020 and his Amended complaint on March 9th, 2020 outlining his complaints as asserted above requesting the Court examine the federal questions and procedural due process issues involved in the violation of his constitutional rights, specifically as they pertain to his right to procedural due process in the New York State Supreme Court. Of special note, nowhere in his amended complaint pleadings did this Appellant request this Court to reopen, review or reject any state court judgement in the Dollinger stipulated agreement or anywhere else. Instead, by evidence of record, this Appellant only requested that the circuit court

consider the constitutional deprivation of procedural due process issues contained therein as is their role in considering such federal and constitutional matters.

It should be noted that within 24 hours after filing the companion complaint to this case (19-cv-6930), in the U.S. District Court - Western New York, the just newly re-elected Supervising Chief Justice Matthew Rosenbaum was abruptly forced from Bench and barred from all but the public areas of the Hall of Justice just days before his swearing in for allegedly ordering state and county courthouse employees to destroy this Appellant's court records under threat of firing as reported by those employees to the New York Office of Court Administration and The New York State Commission on Judicial Conduct. By public record, unsurprisingly, on notice of his very serious pending legal troubles, Supervising Chief Justice Rosenbaum fled the country to the Middle East before being coaxed back for a secret settlement agreement with the Office of Court Administration and Commission on Judicial Conduct; a secret settlement agreement that may have served the immediate interests of the State of New York but due to its very nature of secrecy, only led to further procedural due process deprivation of Rosenbaum's victims, including this Appellant.

In his Decision and Order, entered on June 18th, 2020, Judge Geraci granted all of the Defendant-Appellee's motions to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, 'to the extent the amended complaint (1) bears on an ongoing state proceeding and (2) requires the Court to review and reject a state judgement and was DENIED in all other respects. Defendant-Appellee motions to dismiss pursuant to Rule 12(b)(6) for failure to state a claim were also all granted. Finally Judge Geraci, declined to provide the Plaintiff (Appellant) with another opportunity to amend his complaint and directed the Clerk of Court to enter a judgment and close this Appellant's case.

Of note, the Judgement to deny this Appellant's amended complaint was decided by Judge Geraci alone, without any trial by Judge or trial by jury. Further, in direct violation of the procedures that due process requires as outlined by the late Judge Henry Friendly of the Court of Appeals for the Second Circuit. Judge Geraci failed to offer this Appellant any opportunity to formally collect or present evidence; he failed to hold or order a scheduling conference, he failed to set or order a discovery clock, he failed to afford this Appellant any opportunity to file interrogatories, to depose witnesses, to subpoena records, to examine witnesses or formally present any evidence other than what the Appellant was able to file in his very brief (by court instruction) amended complaint. It should be noted that this Appellant demanded a jury trial, (not guaranteed in civil cases) as did several of the defendants and was denied the opportunity to prove his case in open court without any reason or explanation provided by Judge Geraci. Perhaps most troubling (of all of the conspicuous violations of procedures that due process requires) was the denial by Judge Geraci of this Appellant's right to receive an unbiased hearing or tribunal. When it was discovered that Judge Geraci was heavily conflicted through his close and decades long relationships with several of the judicial defendant-appellee's appearing before him (they were by report and record close friends and colleagues), Judge Geraci refused to disclose those relationships to this Appellant, he refused to recuse himself and he refused this Appellant's Motion for Change of Venue to his home U.S. Circuit Court District due to what are very reasonable questions of

impartiality thus further derpriving this Appellant of his constitutional right to procedural due process, this time in the United States Circuit Court - Western District of New York.

REPLY TO ARGUMENTS AND POINTS PRESENTED:

POINT 1

IS THERE REAL EVIDENCE ON RECORD TO SUPPORT APPELLANT MARKHAM'S ALLEGATIONS THAT DURING THE PENDENCY OF HIS DIVORCE PROCEEDINGS IN NEW YORK STATE SUPREME COURT, A TRIAL WAS FAKED AND LINCOLN HEARINGS WERE FABRICATED? **Yes.**

There is an enormous amount of irrefutable evidence that the Fisher Trial in November, 2016 was faked and the Lincoln hearing testimony purported to be taken the day before was completely fabricated. False testimony regarding the faked trial and hearings was given by:

1) Judge Fisher in his **Decision and Order of Divorce** signed on December 20, 2016.
2) Lisa Morris, Esq., AFC, in her **Closing Argument of Attorney for the Children**.

(Fisher D&O, Appendix page 1), (Morris Argument for the Children, (App.pg.5).

Judge Fisher offers on Page 1 of his Decision and Order, "The motion to conform the pleadings to the proof, especially to accommodate the wife's request for sole custody, made in her testimony **at trial,** is granted. The request made at the **outset of trial**, to effectuate the preclusion order issued last September is denied as academic. Defendant/husband defaulted in his required appearance **at the trial**, and otherwise offered no proof except via inadmissible unsigned and unsworn letters (with attachments) submitted to the court. On page 3, Judge Fisher goes on to say, "To protect their peace of mind, the children stopped seeing him in March, 2016 for reasons clearly and cogently explained in the **Lincoln hearing**." Further he states, "In short, mother asked in her **testimony** for a complete restriction of visitation and no other contact with father, and the court agrees."

In her sworn testimony Lisa Morris, Esq., AFC, in her Closing Argument of Attorney for the Children offers on Page 2, (App.pg.6), "The case was **set for trial** on November 14, 2016. The father did not appear for the trial and the matter proceeded by default. **At the trial**, Mother **testified** and requested sole custody of the children." Ms. Morris goes on to say on Page 3, "The children specifically requested to meet with the Court so that they could share their opinions with the Court. On November 15, 2016, the Court conducted a **Lincoln Hearing** wherein each child appeared individually on camera with the Court."

We now know beyond any doubt that neither the Trial, nor Lincoln Hearings referred to by both Fisher and Morris ever happened and all the 'testimony' referred to by Judge Fisher and Lisa Morris, Esq., AFC was completely fabricated. Evidence the Fisher Trial and Lincoln Hearings were faked and the testimony was fabricated already on court record:

1) There is no docket entry for a Trial on November 16th, 2016 or for any other date while this case was before Judge Kenneth Fisher. (Appendix pg. 53).

2) There is no docket entry for a Lincoln Hearing on November 15th, 2016 or for any other date while this case was before Judge Kenneth Fisher. (Appendix pg. 53).

3) The youngest child referred to (12 years of age at the time), has denied ever meeting with Judge Fisher, ever, for any purpose including answering questions about her parents.

4) There are no minutes, transcripts or pleadings of any kind for either a Trial or Lincoln Hearing in the Monroe County Courthouse Record, Judge Fisher's chamber file, or the New York eRecord.

5) No one including any of the Appellees have been able to produce one shred of evidence to show that either the Fisher Trial or the Lincoln Hearings ever took place during the years of corrupted litigation that followed in the New York State Supreme Court, nor have they provided one scintilla of proof that they exist during the pendency of litigation in the U.S. Circuit Court.

6) Appellee, Gregory J. Mott, Esq., then attorney for the Appellant, wrote to this Appellant and Sharon Kelly Sayers, Esq., (Appellant's 2nd counsel) on his firm (Davison and Fink) letterhead reporting that Appellee Mark Bezinque, Esq., confessed to him that there was no hearing. Mr Mott writes, "Fisher says he held a Lincoln Hearing. He refers to 'Mother's testimony', but there is no transcript in existence and no reference to a default hearing or notice of default hearing. In talking to Bezinque he admitted that there was no hearing." (App. pg. 9). Based on the evidence, it is overwhelmingly clear that the purported testimony from the Fisher Trial was faked and the testimony from the nonexistent Lincoln Hearings was fabricated.

POINT 2

IS THERE EVIDENCE ON RECORD THAT UNDER THE DIRECTION OF SUPERVISING CHIEF JUSTICE MATTHEW ROSENBAUM, ALL OF APPELLANT MARKHAM'S PERTINENT COURT RECORDS WENT MISSING FOR THE TIME HIS DIVORCE CASE WAS DOCKETED TO JUDGE KENNETH FISHER? **Yes.**

Perhaps equally alarming as the faked Trials and Hearings is the reality that all of the relevant records for the Appellant's case while on the Fisher docket are missing and have been since before the late Judge Elma Bellini vacated Kenneth Fisher's Decision and Order for Divorce. Evidence on record that the files from the Fisher Docket were purged under the direction of then Supervising Chief Justice for the Seventh Judicial District Matthew Rosenbaum:

1) There are no significant records remaining in the Monroe County Courthouse for Markham v Markham (DeLong) Index #: 2015/9826 while on the Docket of Judge Kenneth Fisher. (Appendix pgs.56-75).

2) There are and were no relevant records in the Chamber File of Kenneth Fisher. (App.pg.76).

3) The Markham v Markham case, Index #: 2015/9826 was completely deleted from the New York State eRecord while on the Judge Kenneth Fisher Docket.

4) The named attorney Appellees have refused to share any of the relevant documents in their case files with the Appellant or the court during the pendency of the State Court proceedings. (Appendix, page 64).

The record will show that once the Order to Show Cause to Vacate Default Judgement was filed on January 19th, 2017, the late Judge Bellini was assigned the case and she requested the following documents (1) Summons with Notice or Summons and Complaint; (2) Notice of Appearance; (3) Findings of Fact; and (4) Judgement of Divorce. As the Court is now aware, this Appellant was never served any of these documents so they were requested from Appellee DeLong and her attorney, Appellee Bezinque, Esq., who by record refused to provide the documents to the Court even under threat of Motion. (App.pgs.66,67). On April 18th, 2017 Appellee Mott (then counsel for this Appellant), filed an Order to Show Cause Directing the Monroe County Clerk to provide Defendant's (Appellant) attorney, Gregory J. Mott, Esq., with the following pleadings: 1) Copy of Summons with Notice/Summons and Complaint and 2) Notice of Appearance. Mr Mott also requested the court impose sanctions on Plaintiff (Appellee DeLong) personally, Diane R. Markham (DeLong), for her failure to allow her attorney to release copies of said documents requested in the application. At a Special Term Session of the Supreme Court of the State of New York held on May 17th, 2017, the late Judge Elma Bellini Ordered that the Monroe County Clerk (Appellee Adam Bello), shall provide Defendants attorney with copies of the following pleadings: 1) Copy of Summons with Notice / Summons and Complaint, 2) Consent to Change Attorney, 3) Findings of Fact 4) Judgement of Divorce. & 5) Notice of Appearance. See Appendix. After a request to the Clerk of Court for the entire case file, and after considerable time and hassle, even with a Court order this Appellant received just 9 pages from Appellee Adam Bello, the former Monroe County Clerk: 1) A partial original Judgment of Divorce, 2) Application for Index Number sheet, 3) Page 3 of the Summons & 4) Complaint. 9 pages was the total of this Appellant's case file in the Monroe County Clerk's Office after two years of active litigation. Of note, there were no complete summons with notice, no finding of fact, no Notice of Trial, no Notice of Appearance, and no Amended Judgements of Divorce. See Appendix page .

Walter Capell, Esq., Mr. Mott's law partner at Davison & Fink confirmed that these were the only documents that Appellee Adam Bello, the former Monroe County Clerk, provided this Appellant in his Affirmation to the late Judge Bellini's Court dated June 23, 2017. Mr Capell goes on to say in that annexed affirmation that, "Your Affiant was given the opportunity and did, in fact, review Justice Fisher's file in this case for the purpose of attempting to locate the missing documents listed in the Order, dated May 24th, 2017. Your Affiant found none of those documents in Justice Fisher's file. (Appendix pgs.76,77).

Still not convinced the case files had been completely purged, this Appellant hired Attorney Diane Ho, Esq., of Wailuku, Hawaii, very experienced in court record systems and legal forensics to search the New York State eRecord to find evidence of these documents and she was shocked to discover that the entire case eRecord for Markham v Markham, Index #: 2015/9826 had been completely deleted from the New York State eRecord system. Ms Ho followed up via telephone

with the court technical support in New York and confirmed again that all of the case files docketed under Judge Fisher had in fact been deleted from the New York State eRecord system.

It is now crystal clear, beyond any possible doubt that under the direction of the then Supervising Chief Justice Matthew Rosenbaum, all of the important documents in this Appellant's multiple case files had been willfully purged. An inconvenient fact that all of the named Appellee defendants have willfully conspired to repeatedly deny in court, and on record.

POINT 3

DOES THE U.S. CIRCUIT COURT HAVE JURISDICTION OVER THIS CASE UNDER **BOTH** FEDERAL QUESTION **AND** DIVERSITY OF CITIZENSHIP MAKING THE FEDERAL QUESTION PURELY ACADEMIC? **Yes.**

The Federal Courts have jurisdiction to hear two types of cases: cases involving a federal or constitutional question and cases involving a diversity of citizenship of the parties.

Title 28 U.S.C. Section 1331, states that cases arising under the United States Constitution and/or federal laws or treaties are federal question cases and United States District Courts DO have subject matter jurisdiction over cases addressing this subject matter.

Title 28 U.S.C. Section 1332, states that cases in which a citizen of one State sues a citizen(s) of another State and the amount at stake is more than $75,000 are 'diversity of citizenship' cases. Likewise the United States District Courts have jurisdiction over diversity of citizenship cases.

In this Appellant's amended complaints, he cites BOTH federal / constitutional question AND diversity of citizenship for federal jurisdiction.

In his Decision and Order Judge Geraci errs in his failure to address both of this Appellant's qualifications for federal court jurisdiction. On page 7, footnote 7, Judge Geraci states, "At the outset, the Court notes that despite Plaintiff's assertion that the Court has jurisdiction over his case under both federal question and diversity jurisdiction, only federal question applies because Plaintiff's claims appear to arise exclusively out of alleged federal constitutional violations under 42 U.S.C., Section 1983." Judge Geraci's error is that he fails to consider that federal question and diversity are not mutually exclusive and that this Appellant's amended complaint also qualifies, (as he acknowledges) for federal jurisdiction under diversity of citizenship.

To defeat the Appellant's amended complaints with a Rule 12(b)(1) challenge, the defendant's must defeat BOTH the federal question claims AND the diversity of citizenship claims. This Appellant is undisputedly a long standing resident of the State of Hawaii and all of the Appellees are residents of the State of New York. Accordingly, the United States Circuit Court has jurisdiction over this Appellant's amended complaint on the basis of diversity of citizenship alone based on Title 28 U.S.C., Section 1332, making his defense of the Appellee's Rule 12(b)(1) federal question challenges unnecessary and purely academic.

POINT 4

ARE APPELLANT MARKHAM'S CHARGES AS PRESENTED IN HIS AMENDED COMPLAINT TO THE CIRCUIT COURT SUBJECT TO A ROOKER-FELDMAN DOCTRINE CHALLENGE

GIVEN THE CONSPICUOUS PROCEDURAL DUE PROCESS VIOLATIONS THAT GAVE RISE TO HIS REPORTED CONSTITUTIONAL INJURY? **No.**

Appellant Markham's charges as presented are very serious constitutional rights infractions. The 14th Amendment of the United States Constitution states, "No State shall enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property without due process of law."

Further, 42 U.S.C., Section 1983 works as an enforcement mechanism of the Fourteenth Amendment, "ensuring that individuals whose federal, constitutional, or statutory rights are abridged may recover damages or secure injunctive relief." Freeman v. Rideout, 808 F.2d 949, 950 (2d Cir. 1986).

Assuming the Appellees were acting within bounds of the United States Constitution, the actions of the State Actors would be fair game for a Rooker-Feldman Doctrine argument, however; the State Actors in this Appellant's case were so afoul of any Constitutional bounds, there is no accommodation to subordinate the United States Constitution by a Rooker-Feldman challenge to overlook constitutional violations and misdeeds of the State, simply because they happened during the course of matrimonial litigation in a State Court action. The Constitution is the supreme Law of the Land and all of the rights and privileges provided U.S. citizens therein are absolute.

For this Court of Appeals to suggest otherwise would create a conspicuous constitutional blindspot, setting a new precedent in the Second Circuit that would allow unlawful elements of the bar and bench to operate openly with immunity and impunity in State Court matrimonial proceedings, leaving litigants without any of the intended constitutional protections or oversight. Presented with purely constitutional due process injuries, Rooker-Feldmen challenges cannot and do not apply, no matter the nature of the litigation, according to the United States Constitution.

POINT 5

IF THE ROOKER-FELDMAN DOCTRINE TEST IS APPLIED, ARE ALL OF THE FOUR REQUIREMENTS PRESENT FOR ITS APPLICATION? **No.**

This Court of Appeals for the Second Circuit has delineated the following four requirements for the application of the Rooker-Feldman Doctrine: (1) **the federal court plaintiff must have lost in state court;** (2) **the plaintiff must complain of injuries caused by a state court judgement;** (3) **the plaintiff must invite district court review and rejection of that judgment;** and (4) **all of the state court judgements must have been rendered before the district court proceedings commenced.** All four requirements must be present for the Rooker-Feldman Doctrine to apply. In this Appellant's case, none of requirements are met.

"The Rooker-Feldman Doctrine bars cases brought by losing parties in state court actions complaining of injuries caused by state court judgments." Wik v. City of Rochester, 632 F. App' x 661, 662 (2d Cir. 2015). The Rooker-Feldman Doctrine precludes a district court from adjudicating "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, (2005).

The first requirement for a Rooker-Feldman challenge is that. **'the federal court plaintiff must have lost in state court.'** This appellant did not lose in state court. This Appellant's Absolute Judgement of Divorce is the acknowledged product of a settlement agreement that was agreed to in open court by all parties. Settlement agreements by very definition do not have winners or losers.

In his Decision and Order Judge Geraci writes (page 8), "Plaintiff lost in state court when Justice Dollinger issued a Judgment of Divorce against him, even though it was the product of a stipulation." Justice Dollinger did not issue a Judgment of Divorce 'against' anyone. The Judgment of Divorce (App.pg37), was requested and agreed to by both parties and welcomed by this Appellant on the court record. Judge Geraci erred by suggesting this Appellant 'lost' in state court simply because Judge Dollinger granted the divorce both he and his ex-wife had wanted and requested. Given the circumstances, Judge Dollinger's granting of his divorce was a clear win and this Appellant was truly grateful for the Judgment, making Judge Geraci's suggestion otherwise puzzling and on its face, just wrong.

Requirement #1 IS NOT MET.

Requirement number two for a Rooker-Feldman challenge is **'the plaintiff must complain of injuries caused by a state court judgment.'** This Appellant does NOT complain of any injuries caused by a state court judgment in his amended complaint. He rather complains that his injuries were caused by an intentional and willful deprivation of constitutionally protected procedural due process rights....an important and significant distinction. In his Decision and Order (page 8) , Judge Geraci admits, "It is unclear, however, that Plaintiff's injuries were *caused* by the state court judgment." In his amended complaint, this Appellant made no such complaints against any state court decisions or judgments. Judge Geraci goes on to acknowledge, "He (*this Appellant)* avers that his claims are not matrimonial in nature; they are based solely on 'a deprivation of his Constitutional rights alone." Judge Geraci then further concedes, "holding that Second Circuit precedent "suggests that a plaintiff's claims seeking only monetary damages or prospective-only relief against court procedures rather than modification of a family court's temporary custody or other orders would not run afoul of the Rooker-Feldman doctrine." Dowlah v. Dowlah, No. 09 Civ. 2020. 2010 WL 889292, at *2. In his amended complaint, this Appellant DOES NOT complain of injuries caused by any state court judgments and in his D&O Judge Geraci acknowledges exactly that.

Requirement #2 IS NOT MET.

Requirement number three is, **'the plaintiff must invite district court review and rejection of that judgment.'** Nowhere in his amended complaint does this Appellant ask the district court to amend, review or reject any state court judgment. He rather ONLY asks the district court to consider the procedural due process violations leading to this Appellants claims of constitutional injury. Again, a very important distinction. In his Decision and Order, Judge Geraci concedes, (page 9), "it is not clear that the Court here would necessarily be required to review and reject the state court judgment itself." Judge Geraci goes on to provide, "The (*Rooker-Feldman)* doctrine only applies where the requested federal court remedy of an alleged injury caused by a state court judgment would require overturning or modifying that state court judgment." McKnight

v. Middleton, 699 F. Supp. 2d 507, 515, (E.D.N.Y. 2010). This issue is very clear, this Appellant in his amended complaint DOES NOT invite district court review and rejection of any state court judgement and further, the requested federal court remedy to this Appellant's constitutional injury, WOULD NOT require overturning or modifying any state court judgment. Again it appears that Judge Geraci strongly agrees when on page 9 of his Decision and Order he states, **"Therefore, it does not appear the Rooker-Feldman doctrine bars all of Plaintiff's claims."**
Requirement #3 IS NOT MET.

Requirement number four is, **"all of the state court judgments must have been rendered before the district court proceedings commenced."** In his Decision and Order (page 9), Judge Geraci notes, "With respect to the fourth element, the state court judgment was entered months before Plaintiff filed this lawsuit." While it is true that Judge Dollinger's Judgment of Divorce was signed in April, 2019 and the district court proceedings commenced in January, 2020, there have been post-divorce judgment litigation and judgments regarding this unlying case handed down by Judge Dollinger in the New York State Supreme Court, as recently as Oct 13, 2020. (App pg.48).
Requirement #4 IS NOT MET.

In his Decision and Order, Judge Geraci writes, "it does not appear that the Rooker-Feldman doctrine bars all of the Plaintiff's claims." Then, in an illogical and unexplainable about face Judge Geraci writes, "To the extent Plaintiff asks the Court to review and reject any previous state court judgment, the Rooker-Feldman doctrine would indeed divest the Court of subject matter jurisdiction." Nowhere in this Appellant's amended complaint or pleadings has or does this Appellant ask the Court to review or reject any state court judgement so it is unclear as to why Judge Geraci would pose such an unsupported hypothetical as "to the extent". There is no extent and this Appellant by record did not ask or invite the circuit court to review or reject any state court judgments. In the Appellant's amended complaint, he only asks the circuit court to consider the procedural due process violations and constitutional deprivations this Appellant alleges occurred.

To the extent that not one of the four requirements for a Rooker-Feldman challenge were met, Judge Geraci erred in even suggesting hypothetically that a Rooker-Feldman argument could possibly support a Rule 12(b)(1) argument to dismiss for lack of subject matter jurisdiction. None of the four requirements are present and therefore Rooker-Feldman inarguably does not apply.

POINT 6

DOES THE DOMESTIC RELATIONS EXEMPTION DIVEST STATE ACTORS AND THEIR CONSPIRATORS ACTING UNDER COLOR OF LAW OF ACCOUNTABILITY FOR VIOLATIONS OF CONSTITUTIONALLY PROTECTED PROCEDURAL DUE PROCESS RIGHTS? **No.**

In his Decision and Order, Judge Geraci notes, "Several Defendant-Appellees have attempted to argue that the domestic relations exception divests the Court of subject matter jurisdiction simply because this case involves divorce and child custody disputes that were the subject of state court litigation." He goes on to say, "The Court disagrees. The Second Circuit has

held that domestic relations exception only applies to cases whose basis for jurisdiction is diversity, not federal question." Deem v DiMella-Deem, 941 F. 3d. 618, 623 (2d Cir. 2019). Lastly, Judge Geraci offers, "Because this case is premised on a federal question arising out of 42 U.S.C., Section 1983, the domestic relations exception does not divest the Court of subject matter jurisdiction." This Appellant agrees. If this Court was to suggest otherwise, it would again create a conspicuous constitutional blindspot, setting a new precedent in the Second Circuit that would allow unlawful elements of the bar and bench to operate openly with immunity and impunity in State Court matrimonial and domestic relations proceedings, leaving litigants facing constitutional injury without any of the intended constitutional protections that are secured only via the right of due process in federal circuit and appellate courts.

POINT 7

DOES THE YOUNGER ABSTENTION DOCTRINE PRECLUDE FEDERAL COURTS FROM HEARING CASES STEMMING FROM LITIGATION THAT HAPPENED OR IS HAPPENING IN STATE COURTS? **No.**

In his Decision and Order, Judge Geraci notes, "some Defendants argue that the Court should abstain under Younger v. Harris, 410 U.S. 37 (1971) which "generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings." Diamond "D" Constr. V. McGowan, 282 F.3d 191, 198 (2d Cir. 2002). He goes on, "the Court is not persuaded based on the pleadings that exercising jurisdiction over this case would necessarily call into question ongoing state proceedings. However, to the extent any of Plaintiff's claims do bear on an ongoing state proceeding, the Court will abstain from hearing them."

This Appellant appreciates Judge Geraci's concern, and there are no ongoing State Court proceedings, however, I would respectfully point out that Judge Geraci's presentation of Younger Abstention doctrine is not current, obsolete and due to the nature of the doctrine's evolution, in its current interpretation, it is not applicable and legally irrelevant to this Appellant's case.

Judge Geraci's most current Younger Abstention doctrine case reference is from 2002. On December 10th, 2013, the United States Supreme Court handed down a unanimous decision that very narrowly redefined the future of the Younger Abstention doctrine. Sprint Communications v. Jacobs, 571 U.S. (2013), No. 12-815. In that unanimous strongly worded opinion of the United States Supreme Court delivered by the late Justice Ruth Bader Ginsberg in December 2013, the Court decided the following: Federal Courts have a 'virtually unflagging' obligation to hear case within their jurisdiction; and Federal Courts should abstain from hearing and deciding a case only in "exceptional circumstances" as narrowly defined in the ruling. This case as defined in that decision is not exceptional. Lastly, the Supreme Court decided that abstention pursuant to Younger v. Harris, 1971, (cited) is not appropropriate merely because a state court is considering a case involving the same subject matter.

Inarguably Younger Abstention doctrine could not and does not apply in this Appellant's federal circuit case.

POINT 8

IS THE APPELLANT'S CLAIM VALID UNDER 42 U.S.C., SECTION 1983? **Yes.**

"Every person, under color of any statute, ordinance or regulation, custom, or usage, of any State subjects, or caused to be subjected to, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity." 42 U.S.C., Section 1983.

Valid claims under 42 U.S.C., Section 1983 usually have the following six (6) components:

1) Has there been a violation of a Constitutionally protected right? **Yes.**

2) Are the actors all persons that are subject to Section 1983? **Yes.**

All of the Appellee's are either state actors acting under color of law or they were actively engaged in a conspiracy with state actors acting under color of law. "A private person is generally not considered a state actor unless; the state provides significant encouragement to the entity or the entity is a **willful participant in joint activity with the state.**" Justice v. King, No. 08-cv-6417-FPG, 2015 WL 1433303, at *15 (W.D.N.Y. Mar.27, 2015). "To demonstrate that a private party was a state actor encaged in a conspiracy with other state actors under 1983, a plaintiff must allege (1) an **agreement between the private party and state actors**, (2) **concerted acts to inflict an unconstitutional injury**, (3) **an overt act in furtherance of that goal.**" Young v. Suffolk Cty., 705 F. Supp. 2d 183, 197 (E.D.N.Y. 2010). "A plaintiff is not required to list the place and date of the defendant's meetings and summary of their conversions when he pleads conspiracy...but pleadings must present facts tending to show agreement and concerted action." Fisk v. Letterman, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005).

3) Did this person act under color of law? **Yes.**

4) Are the actions explained complained of connected to the deprivation of rights in a reasonably proximate manner? **Yes.**

5) Are there defenses to liability such as immunity, lack of standing, or lack of ripeness? **No.** The acts complained of were taken in the complete absence of all jurisdiction. The Supreme Court has held that 1983 does allow immunity defenses with some caveats. "Actions that are taken with 'deliberate indifference' may impose liability. This is a very high standard beyond negligence (recklessness) and involves a 'conscious disregard." Farmer v. Brennan, 1994. The actions taken by the actors involved were taken with both deliberate indifference to the rights of this Appellant and with a conscious disregard for the integrity of the court and the Constitution of the United States.

6) Is a monetary judgment collectable from a governmental entity or, in the case of an individual defendant, personal assets or personal insurance policies? **Yes.**

The Appellant's claim has ALL of the necessary components for a valid claim under 42 U.S.C., Section 1983.

POINT 9

DOES THE SUCCESSFUL ORDER TO VACATE AND SUBSEQUENT SUCCESSFUL SETTLEMENT AGREEMENT ABSOLVE THE STATE COURT ACTORS AND

CONSPIRATORS OF CONSTITUTIONAL ACCOUNTABILITY FOR PROCEDURAL DUE PROCESS VIOLATIONS THAT OCCURRED PRIOR TO AND DURING THE PENDENCY OF THOSE PROCEEDINGS? **No.**

Considering the federal nature of the allegation and the severity of the constitutional injury, it is an absurd suggestion that a successful motion to vacate and a subsequent successful settlement agreement would be offered as a mitigating circumstance and as redemptive evidence of a 'better late than never' due process argument in defense of the actors who willfully conspired to unlawfully deprive a U.S. citizen and honorably discharged U.S. Army veteran of their constitutional rights....but amazingly that is exactly what several of the Appellees have attempted to argue in their briefs.

Again, this Appellant is not and has not asked this or the circuit court to amend, review or reject any state court decision or judgment and offers this more by way of legal hypothetical than any pleading for any kind of action in this Appellant's former matrimonial case. The financial and custody issues surrounding this Appellant's matrimonial case were eventually settled to everyone's satisfaction by way of a stipulated settlement agreement, but the constitutional infractions and procedural due process issues underlying the litigation during the pendency of those proceedings were never addressed or resolved nor is there any appropriate avenue or legal remedy available in State courts for this Appellant to seek relief for his very serious constitutional injuries that occurred there. The most appropriate place for a citizen, including this Appellant to seek relief for a complaint of constitutional injury is in the federal court system which has with few exceptions exclusive jurisdiction over such 'federal question' matters.

POINT 10

DO JUDICIAL DEFENDANT'S ROSENBAUM AND DOLLINGER HAVE JUDICIAL IMMUNITY AGAINST ATTACKS FOR WILLFUL AND DELIBERATE DEPRIVATIONS OF APPELLANT MARKHAM'S CONSTITUTIONAL RIGHTS? **No.**

"Judges are granted absolute immunity from liability for acts taken pursuant to their judicial power and authority." Oliva v. Heller, 839 F. 2d 37, 39 (2d Cir. 1988).
"Even allegations of bad faith or malice cannot overcome judicial immunity", "a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather he will only be subject to liability when he has acted in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). "When faced with a pro se complaint, the Court must construe the complaint liberally and interpret it to raise the strongest arguments that it suggests." Chavis v. Chappius, 618 F. 3d 162, 170 (2d Cir. 2010).

This Appellant would point out that the crimes committed by these state actors leading to this Appellant's constitutional injury were not acts taken pursuant to any judicial power or authority and therefore were acts taken in the clear absence of any and all jurisdiction. The acts of faking a trial, fabricating hearings, destroying court records and conspiring to hide those crimes could never be taken pursuant to any form of judicial power or authority, they are patently criminal and

unlawful; therefore, as patently illegal and unlawful acts, they are and were inarguably acts that were taken in the complete absence of any and all judicial jurisdiction.

Likewise it is not within any jurisdictional authority to deliberately conspire to cover up such crimes with a conscious disregard for this Appellant's rights guaranteed under the United States Constitution, a Constitution both former Supervising Chief Justice Matthew Rosenbaum, and Acting Justice of the Supreme Court, Richard Dollinger took a solemn oath to uphold. Given these actions, the 'absence of jurisdiction' burden is not only met, it is exceeded by an almost embarrassing measure.

The Supreme Court has held that U.S.C., Section 1983 does allow some immunity defenses with caveats. "Actions that are taken with 'deliberate indifference' may impose liability. This is a very high standard beyond negligence (recklessness) and involves a 'conscious disregard." Farmer v. Brennan, 1994.

The actions taken by the actors involved were taken with both deliberate indifference to the rights of this Appellant and with a conscious disregard for the integrity of the court and the Constitution of the United States. Because these Appellee Judges were acting and conspiring in the complete absence of any and all jurisdiction in the realm of the criminal and unconstitutional, with deliberate indifference and with a conscious disregard to the constitutional rights of this Appellant, by statute and by law, neither Judge Rosenbaum, nor Judge Dollinger deserve or is legally entitled to any measure of judicial immunity.

POINT 11

DO ANY OF THE NON-JUDICIAL DEFENDANT-APPELLEES HAVE IMMUNITY AGAINST A 42 U.S.C., 1983 ACTION AS PRIVATE CITIZENS IF THEY WERE WILLFUL PARTICIPANTS IN JOINT ACTIVITIES OR THEY DEMONSTRABLY CONSPIRED WITH STATE ACTORS IN ACTS INTENDED TO DEPRIVE APPELLANT MARKHAM OF HIS RIGHT TO PROCEDURAL DUE PROCESS IN A UNITED STATES COURT OF LAW? **No.**

"A private person is generally not considered a state actor unless; the state provides significant encouragement to the entity or **the entity is a willful participant in joint activity with the state**." Justice v. King, No. 08-cv-6417-FPG, 2015 WL 1433303, at *15 (W.D.N.Y. Mar.27, 2015). "To demonstrate that a private party was a state actor encaged in a conspiracy with other state actors under 1983, a plaintiff must allege (1) an agreement between the private party and state actors, (2) concerted acts to inflict an unconstitutional injury, (3) an overt act in furtherance of that goal." Young v. Suffolk Cty., 705 F. Supp. 2d 183, 197 (E.D.N.Y. 2010).

"Although a plaintiff is not required to list the place and date of defendants meetings and summary of his conversations, when he pleads conspiracy, the pleadings must present facts tending to show agreement and concerted action." Conception v. City of NewYork, 2008 U.S. Dist. LEXIS 91554, 2008 WL 2020363, (S.D.N.Y. May 7, 2008)..Fisk v. Letterman, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005).

All of the named non-judicial Appellees have liability for their actions under 42 U.S.C., 1983. They were all willful participants in 'joint activities' with state actors and they all met, (supported by facts and evidence) all of the criteria to demonstrate that they engaged in a conspiracy (to deny this Appellant his right to due process) with state actors who were acting, or more accurately, pretending to act, under color of law. See Point 15 for the specific claims made against each of the named Appellees.

POINT 12

DID APPELLANT MARKHAM RECEIVE THE PROCEDURAL DUE PROCESS HE IS ENTITLED TO UNDER HON. FRANK P. GERACI, JR., IN THE UNITED STATES CIRCUIT COURT - WESTERN NEW YORK? **No.**

The late Judge Henry Friendly, who served on the Court of Appeals for the 2nd Circuit for over 25 years (1959-1986), created a highly respected and influential list of required elements that due process requires. While the list is not exhaustive, it remains a standard measure for the minimum requirements of procedural due process, both in this, the Second Circuit and in virtually every court at every level in the United States. Through an examination of that list this Appellant makes an overwhelming argument that he was deprived of procedural due process not just in the New York State Supreme Court, but also in the United States Circuit Court - Western District of New York. This Appellant will focus on that experience in the circuit court for the brief analysis of Judge Friendly's requirements that follow: *Requirements are in general order of importance.* Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267 (1975).

1) **An unbiased tribunal. NOT MET.**

This Appellant did not receive an unbiased tribunal under the presiding Judge Geraci in the United States Circuit Court - Western New York. By record and by report, Judge Geraci had decades long personal and professional relationships with several of the named defendants that were never disclosed to this Appellant at the outset of this litigation. When those relationships were uncovered and Judge Geraci was formally asked to recuse himself for reasonable questions of impartiality and/or to allow for a change of venue to give this Appellant a fair and unbiased hearing, Judge Geraci denied those Appellant motions. 6:20-cv-0639-FPG, Dkt, 44,45,47. "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. He shall also disqualify himself in the following circumstance: (1) where he has a personal bias or prejudice concerning a party." 28 U.S.C., Section 455 (a), (b)(1). Reasonable questions of impartiality were asked, yet Judge Geraci refused to afford this Appellant any relief, relief that he is entitled to under 28, United States Code, 455.

2) **The notice of proposed action and the grounds asserted for it. NOT MET.**

This Appellant was never given notice as required of a scheduling conference or the setting of a discovery clock, nor was he given notice that his complaints were going to be decided by the conflicted Judge Geraci alone, in the absence of an opportunity to present evidence, without a trial by Judge, or a trial by jury. Both the Appellant and several of the Appellees demanded a trial by jury and that request was apparently denied without any notice or explanation. The first notice that this Appellant received indicating that he would not be able to produce or request any discovery or

formally present any evidence to the circuit court, was when he received Judge Geraci's final Decision and Order and to the shock and dismay of this Appellant, a directive to the Clerk of Court to close this Appellant's case. 6:20-cv-0639-FPG, Dkt, 51,52.

3) **Opportunity to present reasons why the proposed action should not be taken. NOT MET.** See 2). This Appellant was never given any opportunity to present any reasons to oppose the circuit court's actions. This Appellant requested a hearing and again that request was denied, without reason, notice or explanation, excepting perhaps Judge Geraci's understandable allegiance to his friends and colleagues...to the conspicuous detriment of this Appellant.

4) **The right to present evidence, including the right to call witnesses. NOT MET.** Aside from his complaint, that by court instruction is required to be brief and his responses to the defendant's motions to dismiss, this Appellee was given no opportunity to present evidence and certainly was never given the opportunity to call witnesses, conduct depositions or request interrogatories in spite of specifically asking for and fully expecting that opportunity.

5) **The right to know opposing evidence. NOT MET.**
Because this Appellant was deprived of procedural due process in the U.S. circuit court, and there was no scheduled opportunity for discovery, other than denials mostly due to inapplicable case law and statutes (see above), there was no opposing evidence ever presented; no dockets, no minutes, no transcripts, no findings of facts, no video taped Lincoln Hearings, not one shred of opposing evidence was presented in circuit court to defend against this Appellant's claim and his considerable volume of facts and evidence presented in support of them.

6) **The right to cross-examine adverse witnesses. NOT MET.**
Again, this Appellant was never afforded any opportunity by the circuit court to examine, depose, or question by interrogatory or any other means, any of many witnesses both supporting and adversarial to this Appellant's claims.

7) **A decision based exclusively on the evidence presented. NOT MET.**
See above. This Appellant was never formally able to produce or request any evidence as a scheduling Order was never filed, a discovery clock was never set and, there was never any opportunity for discovery to be exchanged between the opposing parties.

8) **Opportunity to be represented by counsel. NOT MET.**
This Appellant filed motions for leave to proceed in forma pauperis, and for the Court to appoint counsel. Not surprisingly, both of these reasonable requests were denied. 6:20-cv-0639-FPG, Dkt, 2, 3, 6.

9) **Requirement that the tribunal prepare a record of the evidence presented. NOT MET.** Because there was never any hearing or tribunal, nor was there any formal way to submit or exchange discovery and evidence, there is no record for a tribunal in the circuit court docket. Further, recall that unlying the litigation in circuit court are claims of faked trials and hearings in state court that have neither docket entries, transcripts, minutes, pleadings, recordings or any court records at all, evidence those fictional *tribunals* in State court likewise never occurred.

10) **Requirement that the tribunal prepare written findings of fact and reasons for its decision. NOT MET.**

While it is true that Judge Geraci did prepare a final Decision and Order, it would be difficult to frame his Decision as a 'tribunal' given it was so bereft of any of the requirements that a tribunal requires, with almost none of the necessary elements of procedural due process as laid out by the late Hon. Henry Friendly while serving on the Court of Appeals for the Second Circuit.

It's clear that this Appellant never received anything close to the required measure of procedural due process in the United States Circuit Court - Western District of New York and on that basis alone, this Court of Appeals for the Second Circuit should overturn the Decision and Order of Hon. Frank P. Geraci, Jr. and grant this Appellant the relief he has requested.

POINT 13

DOES PRO SE APPELLANT MARKHAM'S COMPLAINT HAVE SUFFICIENT 'FACIAL PLAUSIBILITY' AND STATE ENOUGH FACTS TO DEFEND AND OVERCOME RULE 12(b)(6) CHALLENGES FOR FAILURE TO STATE A CLAIM? **Yes.**

"The Court should not dismiss the complaint if the Plaintiff (Appellant) has stated enough facts to state a claim for relief that is plausible on its face, and must accept as true all of the factual allegations contained in the complaint." Bell Atl. Corp v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed. 2d 929 (2007).

"A court must draw all reasonable inferences in Plaintiff's favor." Faber v. Metro. Life Ins. Co., 648 F. 3d 98, 104 (2d Cir. 2011).

"A claim has facial plausibility when the plaintiff (Appellant) pleads factual content that allows the court to draw the reasonable inference the defendants (Appellees) are liable for the misconduct alleged." Ashcroft v iqbal, 556 U.S. 662, 678, 129 S. Ct 1937, 173, L.Ed 868 (2009).

"The court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff." Council v. Johnson, 461, F.3d 164, 171 (2d Cir. 2006).

"When faced with a pro se complaint, the Court must construe the complaint liberally and interpret it to raise the strongest arguments that it suggests." Chavis v. Chappius, 618 F. 3d 162, 170 (2d Cir. 2010).

Legally, 'facial plausibility' of the facts presented is the legal standard that this Appellant must meet and overcome in order to defeat a Rule 12(b)(6) challenge for failure to state a claim. Both in his amended complaint and in his cited pleadings before the United States Circuit Court, this Appellant has both met and exceeded that standard by a significant measure. The facts this Appellant presents in support of his claims are neither vague nor conclusory and conversely the claims are very specific and are supported by an impressive volume evidence on record...evidence even more impressive considering the fact that this Appellant was deprived of any real opportunity to formally enter evidence into record, exchange discovery or present witnesses during the pendency of these proceedings in the United States Circuit Court.

This Appellant will briefly review his claims against each of the Appellees in turn separately because while the overarching conspiracy that led to a deprivation of this Appellant's constitutional right of due process in a United States court of law is the same, the details about each of the named Appellees specific acts and roles in the conspiracy differ.

Former Supervising Chief Justice for the Seventh Judicial District, Matthew A. Rosenbaum:

The evidence presented in this Appellants' pleadings against the actions of former Judge Rosenbaum are as disturbing as they are convincing. It is not only plausible, it's a near certainty that while acting under color of law, then Supervising Chief Judge Rosenbaum, took specific unlawful acts himself described in the pleadings to to deprive this Appellant of his right to due process. He also conspired with both former Judge Kenneth Fisher and A.S.C.J. Richard Dollinger in deliberate and willful unlawful acts (including directing the destruction of this Appellant's records) done with conscious malice, to deprive this Appellant of his constitutionally protected right to due process in a U.S. Court of Law.

In his pleadings, this Appellant very clearly alleges that Matthew Rosenbaum :

1) Knew about this Appellant's complaints regarding the fraud of Judge Kenneth Fisher in the Seventh Judicial District under his supervision and shows evidence of that communication in his pleadings. Complaint 6:20-cv-0639-FPG, Dkt.30, Exbt.A. (Appendix pgs.78,89).

2) Judge Rosenbaum told this Appellant in that written communication (an act) that he would not act on his behalf in spite of being the Supervising Chief Justice for the Judicial District. *Evidence of his conspiring.* Complaint 6:20-cv-0639-FPG, Dkt.30, Exbt.A.

3) The court record shows that when the late Hon. Elma Bellini wouldn't go along with the fraud being brought before her from the Kenneth Fisher Court, the then Supervising Chief Justice, Matthew Rosenbaum removed Judge Bellini and before she could write up her own Order to Vacate, Matthew Rosenbaum installed the heavily conflicted A.S.C.J., Richard A. Dollinger to this Appellant's case over this Appellant's immediate objection and then Matthew Rosenbaum directed Judge Doliinger to write the highly fraudulent Dollinger Order to Vacate (App.pg.13), as if he were the Presiding Judge over the Special Session Motion to Vacate held on September 17th, 2017. He was not. *Hon. Bellini presided over that Special Session Motion to Vacate.*

4) Perhaps most disturbing of all is this Appellant's allegation that Judge Rosenbaum participated in, and is responsible for, "the destruction of all of the Plaintiff's (Appellant's) court records that has deprived the Plaintiff (Appellant) of his rights under Title 42 U.S.C., Section 1983 for illegal acts that were not part of said Officer's official brief and/or official capacity." Amended Complaint 6:20-cv-0639-FPG, Dkt.30.

Former Superving Chief Justice Matthew Rosenbaum was the only person with both the opportunity (authority) and the motive to purge both the Monroe County Courthouse records and the New York State eRecords of this Appellants court records. His involvement in this case, coupled with his precipitous fall from grace (he was removed from the bench just 24 hours after the filing the first of this Appellant's pair of Federal complaints) is very strong circumstantial evidence that Matthew Rosenbaum was the primary conspirator behind these unspeakably terrible acts. Given the opportunity to request discovery this Appellant has very little doubt that he could with an overwhelming preponderance of the evidence show that Matthew Rosenbaum, (with the full and conspiring knowledge of Former Judge Kenneth Fisher and Acting Supreme Court Justice Richard Dollinger) directed and ordered the destruction of this Appellant's court records in an

attempt to cover up the reprehensible crimes of his friends and colleagues on the Seventh Judicial District bar and bench. The same Judicial District that Matthew Rosenbaum was supposed to be supervising.

In his Decision and Order, Judge Geraci offers, "concluding that monetary and injunctive relief was not available against state court judge overseeing divorce proceedings because judge's acts were 'all quintessential judicial functions that, even where performed incompetently or for improper purpose, cannot form the basis for a suit against the judicial officer." Anthony Pappas for Cong. v. Lorintz, No. CV184199JSAKT, 2019 WL 4396589, at *13 (E.D.N.Y. Aug. 2, 2019).

No one could possibly argue that the unlawful acts as alleged by this Appellant are 'quintessential judicial functions,' nor could anyone argue that what Matthew Rosenbaum did was done based on incompetence or for an improper purpose. By public record the former Supervising Chief Justice was thrown off the bench for directing Courthouse employees to do unethical and unlawful things under threat of termination. Mattew Rosenbaum among other nefarious acts, directed the destruction of this Appellant's Court records on behalf of his friends and colleagues, including former Judge Fisher. He then installed Richard Dollinger to cover it up when the late Judge Elma Bellini would not go along with the conspiracy....all discoverable facts, supported by the evidence and plausible on their face. The court must accept as true all of the factual allegations contained in the complaint and must construe this pro se Appellant's complaint liberally and interpret it to raise the strongest arguments that it suggests.

"The Court should not dismiss the complaint if the Plaintiff (Appellant) has stated enough facts to state a claim for relief that is plausible on its face, and must accept as true all of the factual allegations contained in the complaint." Bell Atl. Corp v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed. 2d 929 (2007). "A court must draw all reasonable inferences in Plaintiff's favor." Faber v. Metro. Life Ins. Co., 648 F. 3d 98, 104 (2d Cir. 2011).

"The court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff." Council v. Johnson, 461, F.3d 164, 171 (2d Cir. 2006).

"When faced with a pro se complaint, the Court must construe the complaint liberally and interpret it to raise the strongest arguments that it suggests." Chavis v. Chappius, 618 F, 3d 162, 170 (2d Cir. 2010).

Because Judge Rosenbaum was both acting and conspiring in the complete absence of any and all jurisdiction in the realm of the criminal and unconstitutional, with deliberate indifference to the constitution and with a conscious disregard for the rights of this Appellant, by statute and by law, Judge Rosenbaum, neither deserves or is legally entitled to any measure of judicial immunity as suggested by Judge Geraci in his Decision and Order.

The circuit court erred in Granting Judge Rosenbaum's Motion to Dismiss based on Rule 12(b)(6),and 12(b)(1), and this Appellant respectfully requests that it be overturned and this Appellant be given the full measure of relief requested and any other relief as seems just and proper to the Court.

Acting Supreme Court Justice Richard A. Dollinger:

In support of Granting the Rule 12(b)(6) motion to to dismiss, Judge Geraci in his Decision and Order writes, "Plaintiff does not allege that Justice Dollinger took any 'nonjudicial actions' or any judicial actions "in the complete absence of all jurisdiction." Rener, 2013 WL 1898389, at *3.

The problem is, in his complaint this Appellant does allege that Judge Dollinger took judicial actions in the absence of all jurisdiction. In his complaint, this Appellant alleges that Judge Dollinger committed all manner of unethical and highly questionable acts while conspiring with Judges Fisher and Rosenbaum that while clearly unethical, and deprived this Appellant of his constitutional rights, they were admittedly at the very least judicial in nature. However, this Appellant also argues in his amended complaint that Richard Dollinger attempted to pass Order's off as his own at time when he was not presiding over this Appellant's case. In his amended complaint this Appellant says, "In October, 2017 Richard A. Dollinger was assigned to the Plaintiff's matrimonial case in a bizarre set of circumstances in which he was installed by Matthew A. Rosenbaum and actually signed Judge Bellini's Orders, when she refused to sign it (presumably because she was being asked by Rosenbaum and/or Dollinger to do something unethical?). Amended Complaint 6:20-cv-0639-FPG, Dkt.30. (Appendix pgs 14-28).

This Appellant complains that there were many acts committed by Judge Dollinger illustrative of his conspiring with the other state actors however Judge Dollinger's most egregious act committed that was this one. It was both nonjudicial and was committed in the complete absence of all jurisdiction, when Judge Dollinger created a set of Orders (Orders to Vacate), noted to be the product of a Special Session Hearing on September 14th, 2017 and he attempted to fraudulently pass them off as his own even though he was not presiding over this Appellant's case at the time the hearing took place. Judge Dollinger's actions were by definition nonjudicial and done with a complete absence of judicial jurisdiction (he wasn't presiding over the case). On the very first page (Appendix pg 14), Judge Dollinger falsely indicates that he was presiding (and not Judge Bellini) and says that he, Judge Dollinger was the one present and presiding at the Special Session Hearing Judge Bellini conducted that day. He was not. Nor anywhere in the order set he fraudulently created does Judge Dollinger indicate that the Order's were the product of a hearing held by Judge Bellini and not himself. A quick look at the Special Session Minutes (Appendix pg. 17), will show that it was Judge Bellini who Vacated this Appellant's Judgment of Divorce (ordered by Judge Fisher) and not Judge Dollinger as he deceitfully attempted to present to anyone looking later, including this Appellant (who was in Hawaii), or future courts reviewing the case without the benefit of Judge Bellini's minutes taken at Special Session on that day, Sept. 14, 2017.

While on its face, this may at appear to be a somewhat trivial quasi-judicial act, on closer legal examination it was an act committed with a complete absence of jurisdiction (he was not presiding), and it rather only appears to be a judicial act. Rather, it's evidence of a highly fraudulent, unethical and nonjudicial act only masquerading as a judicial act. An unethical and unlawful act taken with 'deliberate indifference' and a 'conscious disregard' for the due process rights of this Appellant. Based on irrefutable fact and evidence, this Appellant's claim is well supported and plausible on its face.

Like Rosenbaum before him, Justice Dollinger is afforded no such immunity for acts taken in the absence of all jurisdiction, no matter how convincing he tried to be, pretending they were valid judicial acts at the time. Given his conspicuous attempt to deceive, coupled with the reality that he was not presiding at the hearing, his Order's represent a concrete example of an egregious act meant to inflict constitutional harm on this Appellant, in the complete absence of all jurisdiction.

This Appellant pleads with this Appellate Court that the Circuit Court erred in Granting Justice Dollinger's motion to dismiss based on Rule 12(b)(6),and 12(b)(1), and he respectfully asks this Court to overturn the ruling in the circuit court and award the full measure of relief requested to this Appellant.

Cynthia L Snodgrass - Court Appointed Referee:

In this Appellant's amended Complaint he alleged that while working for the Family and Supreme Courts in the Seventh Judicial district Ms Snodgrass conspired with the other defendant's to deprive this Appellant of his constitutional right to due process in a United States Court. As part of her assignment in working for the Courts, Ms Snodgrass was tasked with assigning attorneys for the children (AFCs) as they are requested by the Courts. Family Court Act sections 241, 242, 245, 249, and 249-a, *inter alia.*, set forth the findings and purpose underlying the legislation authorizing attorney child appointments. Further, the Appellate Division, Fourth Department 22 NYCCR 1032 et seq., set forth the rules for the operation for the 'Attorneys for the Children' Program. According to these statutes, "Attorneys for the Children by law, are supposed to be assigned on either a random or a rotating basis," as described in this Appellant's pleadings.

In his pleadings this Appellant states. "Of over 800 potential AFCs in her Judicial District, Cynthia L. Snodgrass (along with Dollinger and Rosenbaum) under very suspicious circumstances selected the heavily conflicted *(and well known to this Appellant)* Edward W. Riley of Brockport, NY *(this Appellant's childhood hometown)*, to represent the children of the Plaintiff after Lisa Morris (with her fabricated trial and Lincoln hearing) asked to be withdrawn." Appellant goes on to say, "Edward Riley happens to be a lifelong personal and childhood friend of the Plaintiff's estranged father, and the grandfather of Edward W. Riley's new wards." By evidence of fact and record, Ms. Snodgrass was clearly outside the allowed parameters of the aforementioned rules and regulations that provide for a fair and just selection of Attorneys for Children. This Appellant argues in his amended complaint that this is evidence of Ms Snodgrass conspiring with the other state actors and by doing so she violates several laws and statues including those mentioned above as well as 42 U.S.C., section 1983.

Even if this Appellant were to concede that Ms Snodgrass should be afforded some measure of qualified immunity in her employment with the courts, based on her willful violation of the laws and regulatory statutes pertaining to the selection of attorneys for children, and because she was acting outside the scope of the law, and outside of her well regulated and well defined *by law and statue* role, Ms Snodgrass would enjoy none of those qualified immunity protections. "State officials are shielded by suit by qualified immunity if either (a) the defendant's action did not violate a clearly established law, (b) it was objectively reasonable for the defendant to believe that her action did not violate this law." Johnson v. Newburgh Enlarged Sch. Dist., 239 F. 3d 246, 250

(2d Cir.2001). Neither of those conditions were present; In her selection of Mr Riley, Ms Snodgrass clearly violated those laws and statutes and further, as an attorney with years of experience working in that capacity there is no doubt that Ms Snodgrass knew that she was breaking the law. That is clearly why Ms Snodgrass refused to reply or even acknowledge this Appellant's many requests for an explanation as to the circumstances surrounding the ridiculously conflicted Ed Riley's assignment to attempt to represent the interests of this Appellant's children in the state court proceedings.

The charges as alleged in the amended complaint are specific and contain more than enough facial plausibility to defeat a Rule 12 (b)(6), failure to state a claim challenge.

The circuit court erred in Granting Cynthia Snodgrass' Motion to Dismiss based on Rule 12(b)(6), and 12(b)(1), and this Appellant respectfully requests that it be overturned and this Appellant be given the full measure of requested relief and any other relief as seems just and proper to the Court.

Adam - Coron - Mott - Sayers - Ingersoll - Pineau - Speller - DeLong

"A private person is generally not considered a state actor unless; the state provides significant encouragement to the entity **or the entity is a willful participant in joint activity with the state.**" Justice v. King, No. 08-cv-6417-FPG, 2015 WL 1433303, at *15 (W.D.N.Y. Mar.27, 2015).

"To demonstrate that a private party was a state actor encaged in a conspiracy with other state actors under 1983, a plaintiff must allege (1) an agreement between the private party and state actors, (2) concerted acts to inflict an unconstitutional injury, (3) an overt act in furtherance of that goal." Young v. Suffolk Cty., 705 F. Supp. 2d 183, 197 (E.D.N.Y. 2010).

"Although a plaintiff is not required to list the place and date of defendants meetings and summary of his conversations, when he pleads conspiracy, **the pleadings must present facts tending to show agreement and concerted action.**" Conception v. City of NewYork, 2008 U.S. Dist. LEXIS 91554, 2008 WL 2020363, (S.D.N.Y. May 7, 2008).,Fisk v. Letterman, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005).

David Coron - Court Appointed Psychologist:

In brief, in his pleadings in his amended complaint this Appellant alleges with specificity that in his capacity as a Court Appointed Psychologist David Coron acted in a conspiracy and with deliberate joint activity with the state, when he submitted a fallacious psychological report in a transparent attempt to deprive this Appellant of his right to due process in court in agreement with and at the pleasure of the presiding Judge Richard A. Dollinger. This Appellant's amended complaint describes the fallacious content of David Coron's evaluation in great detail describing the tone of the document as well as giving multiple examples of Dr Coron's conspicuous deceit contained therein, untrue and unfair characterizations without any basis or merit with the clear motive to intentionally harm this Appellant for the pleasure of the Court.

- This Appellant complaints are supported with facts and they have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- David Coron was a willful participant in joint activity with the state, Judge Dollinger.
- There is agreement of purpose and action between David Coron and Judge Dollinger.

- David Coron submitted a false psychological evaluation in a concerted act to inflict an unconstitutional injury on this Appellant.
- To inflict a constitutional injury, David Coron willfully and with malice, submitted a false psychological evaluation of this Appellant, a 'overt act' intended to deprive this Appellant of rights and with the deliberate intention to harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute David Coron shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities secured by the constitution.

Adam J. Bello - Former Monroe County Court Clerk:

In brief, in his pleadings in his amended complaint this Appellant describes with specificity how Adam J. Bello, when acting as the elected Monroe County Court Clerk, acted in coordinated participation with the state, (Fisher, Rosenbaum & Dollinger) and allowed for the deliberate destruction of almost all of this Appellant's court records housed in the Monroe County Courthouse and Clerk's Office. Further, this Appellant pleads, "Adam J. Bello, then refused to act when notified (*the appellant's records were missing)*, and then he conspired in the cover up that followed." "Adam Bello failed in his duty to secure the integrity of the County Court Records and then again failed to act accordingly when they were discovered missing."

In his Decision and Order, Judge Geraci does acknowledge, "Bello is named in the amended complaint, and the amended complaint does indicate that Bello refused to remedy the loss of missing documents and helped to cover it up."

- This Appellant complaints are supported with facts and they have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- Adam Bello was a willful participant in joint activity with the state when he allowed for the destruction of this Appellant's courthouse records at the pleasure of Judge Rosenbaum.
- There is agreement of purpose and action between Adam Bello and Judge Rosenbaum.
- By privilege of his role as the Monroe County Clerk, Adam Bello conspired in the destruction of court records in a concerted act to deprive this Appellant of due process in court through a denial of his court records in a conscious and deliberate attempt to inflict an unconstitutional injury on this Appellant.
- Adam Bello caused constitutional injury when he willfully and with malice, allowed for and/or participated in the destruction of this Appellant's court records, 'an overt act'. He then participated in the cover up, 'an overt act'. Both acts intended to deprive this Appellant of rights and were done with the deliberate intention to harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute Adam Bello shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities secured by the constitution.

Maureen A. Pineau, Esq., - Fourth Attorney for Diane R. DeLong:

In his amended complaint and pleading this Appellant alleges with specificity that Maureen A. Pineau, consciously and with malice, "conspired to hide the crimes of the Fisher Court including the fabricated trial, the falsified hearings and the destroyed records and thereby willfully and effectively deprived the Plaintiff of his Constitutional right to due process." This Appellant further complains, "Pineau repeatedly attempted to defraud both the Plaintiff and the Court with her numerous false affirmations and submissions to the Richard A. Dollinger Court. Richard A. Dollinger did absolutely nothing to reign in Maureen A. Pinuea's unethical behaviour." This Appellant cites very specific examples of the fraud she conspired with the Court in attempting to pass off, "Maureen A Pineau's first Judgement Roll was such a deceitful and conspicuous fraud on the Court that it is alarming that she is allowed to practice law in New York State at all." "Her third version of the Judgment Roll was still such a work of fiction, it still so deviated from the original stipulations, that on the Plaintiff's continuous objection and insistence, Dollinger was forced to add, cross out and initial every page, striking over 20 lines of her fraudulent text." (App.pg 37).

In his Decision and Order, Judge Geraci writes, "Plaintiff's allegations are vague and conclusory and fails to set forth any agreement or any overt, concerted acts to deprive him of his constitutional rights. Therefore, Pineau's motion to dismiss is GRANTED."

This Appellant disagrees and by evidence of the record this Appellant's complaints are very specific and supported with detailed examples rather than being 'vague and conclusory'. In his amended complaint, this Appellant charges that Ms Pineau 'repeatedly submitted false affirmations and submissions', an 'overt act', intended to deprive this Appellant of his constitutional rights. Further as evidence of Ms Pineau conspiring with the state, this Appellant lays out how no matter how unlawful or unethical her submissions, "Judge Dollinger did absolutely nothing to rein her in."

- This Appellant complaints are supported with facts that have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- Maureen Pineau was a willful participant in a joint activity with the state when she at both the direction and the pleasure of the state willfully submitted false testimony in her affirmations and submissions, and it's clear that 'the state' invited that behavior rather than "reining her in."
- There is agreement of purpose and action between Maureen Pineau and Judge Dollinger.
- Maureen Pineau's submissions of false affirmations and affidavits, at the encouragement of the Court, were 'concerted acts' intended to deprive this Appellant of due process in court in ongoing attempts to deprive this Appellant of due process and repeatedly attempt to inflict unlawful constitutional injury on this Appellant.
- Ms Pineau's fraudulent affirmations and submissions are clear and defined 'overt acts' meant to deprive this Appellant of his due process rights and harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute Maureen A. Pineau shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities secured by the constitution.

Timothy E. Ingersoll, Esq., - Third Attorney for Diane R. DeLong:

In his amended complaint and his pleadings in the form of a sworn Affidavit, this Appellant alleges with specificity that Timothy E. Ingersoll, consciously and with malice, "conspired to hide the crimes of the Fisher Court including the fabricated trial, the falsified hearings and the destroyed records and thereby with purpose and intention, he willfully sought to deprive the Plaintiff of his Constitutional right to due process in a court of law."

In his submissions to the United States Circuit Court, this Appellant pleads, "The record will show the named Defendants could not produce any of the requested records." "This success was largely due to Timothy Ingersoll's inability to produce a 'Notice of Trial', he repeatedly insisted *(in open court)* that he could and would produce." He did not. This Appellant goes on, "We now have irrefutable evidence that there was no 'Notice of Trial', because there was never an actual trial." 6:20-cv-0639-FPG, Dkt, 20, pg. 3, #15.

In his Decision and Order, Judge Geraci charges, "Plaintiff's allegations are vague and conclusory." "Plaintiff merely alleges that Ingersoll 'conspired to keep quiet' that a trial and facts had been fabricated. That is not enough to survive a motion to dismiss." He adds, "Nor has Plaintiff established any overt act on the part of Ingersoll to give rise to section 1983 liability."

This Appellant disagrees and by evidence of the circuit court record this Appellant's complaints are very specific and supported with detailed examples rather than being 'vague and conclusory'. In his amended complaint and affidavit, this Appellant charges that Timothy Ingersoll repeatedly insisted in his pleadings in open court, that he could and would produce a 'Notice of Trial', an 'overt act', an act intended to deprive this Appellant of his due process and constitutional rights. The record shows that at three separate hearings, Timothy Ingersoll gave testimony and instructed the court that he could produce the missing documents that this Appellant desperately needed....he never did. Mr Ingersoll deliberately and with a conscious purpose went on to submit false affirmations, much to the pleasure of the Court, that fully supported the false narrative that this Appellant's court documents were not missing and he, if just given the time and opportunity could and would produce all of the missing records for the court. He did not.

- This Appellant complaints are supported with facts that have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- Timothy Ingersoll was a willful participant in a joint activity with the state. He deliberately gave false testimony in court about the existence of this Appellant's court documents. By report and by record it's clear that 'the state' invited and encouraged that behavior to support it's false narrative rather than hold Mr Ingersoll accountable for his deceitful actions.
- There is agreement of purpose and action between Timothy Ingersoll and 'the state'.

- Timothy Ingersoll repeatedly, deliberately and willfully gave false testimony at this Appellant's court hearings. These repeated deceits were 'concerted acts' intended to harm and deprive this Appellant of due process in court and inflict unlawful constitutional injury on this Appellant.
- Timothy Ingersoll's false testimonies in court and his fraudulent affirmations and submissions are clear and defined 'overt acts' meant to deprive this Appellant of his due process rights and harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute Timothy Ingersoll shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities secured by the constitution.

Gregory J. Mott & Sharon Kelly Sayers - Second and Third Attorney for Appellant:

In his amended complaint, this Appellant alleges with particularity and specificity that Gregory J. Mott and Sharon Kelly Sayers, both consciously and with malice, conspired with 'the court' to support a false narrative and hide the crimes of the Fisher Court including the fabricated trial, the falsified hearings and the destroyed records and thereby with purpose and intention, they willfully sought to deprive the Plaintiff of his Constitutional right to due process in a court of law.

In his amended complaint, this Appellant offered, "Gregory J. Mott in his letter to Sharon Kelly Sayers dated July 27, 2018 a) states, In talking to Mark Bezinque, Esq., he admitted that there was no hearing. Fisher says he held a Lincoln Hearing, He refers to 'Mother's Testimony', but there is no transcript in existence and no reference to a default hearing or notice of a default hearing." (App.pg9). This Appellant goes on in his amended complaint, "Clearly Gregory J. Mott and Sharon Kelly Sayers were aware the trial was fabricated, the hearings falsified, and the records destroyed yet Mr Mott *(and Sayers)* refused to take any action in spite of his clients desperate pleas for help."

From the record and Mr Mott's signed letter (on Davidson & Fink letterhead), it's very clear that both Mr Mott and Mrs Sayers knew beyond any doubt (from Bezinque's confession) that the unlawful and reprehensible acts of the Fisher Court happened exactly as this Appellent alleges.

Rather than defend his client (in conspiracy with 'the state'), Mr Mott without explanation or warning fired his client (this Appellant) rather than defend him against these egregious and reprehensible crimes of the state. The complaint goes on, "he *(Mr Mott)* knowingly refused to act and follow a lawful order of his client and instead chose to use his position as an officer of the court to cover up the crimes of his colleagues for his own selfish interests." By report and record, when this Appellant made clear he intended to expose these crimes, Mr Mott demanded to be discharged as this Appellant's counsel.

In his amended complaint, this Appellant states, "Sharon Kelly Sayers became openly irate and hostile when it became clear that against her wishes, *and the wishes of Mr Mott,* the Plaintiff intended to move forward to expose the crimes of her friend and colleague Lisa Morris, Esq., AFC." He goes on, "Rather than follow the Plaintiff's lawful orders and act accordingly, Sharon Kelly Sayers demanded to be immediately discharged as Plaintiff's attorney and threatened that if

not immediately discharged, she would maliciously attempt to disparage the Plaintiff before the Court." In his amended complaints this Appellant goes on. "In her written correspondence with the Plaintiff, demanding to be discharged Sharon Kelly Sayers threatens, *If you do not sign a voluntary discharge*, I will put forth a rationale which I can assure you, will not necessarily put you in a sympathetic light." (Appendix page 80).

In his Decision and Order, Judge Geraci charges, "Plaintiff fails to allege that Mott was a state actor or that his actions alone or in concert with others convert him into a state actor for the purposes of 42 U.S.C., 1983." Judge Geraci goes on to say, "Plaintiff's claim that Sayers participated in a conspiracy to deprive him of his constitutional rights is vague and conclusory."

This Appellant disagrees. His claims are plausible and anything but vague and conclusory and meet all of the criteria for liability under 42 U.S.C., 1983. This Appellant alleges in his complaint that both Mott and Sayers were acting in the joint interest of the state rather than their client, when they each in turn demanded, without his request or approval, demanded to be discharged as his counsel, both hostile acts that with the blessing of the state, caused significant constitutional injury to this Appellant. These acts demonstrate irrefutable collusion and conspiracy with the state in a furtherance of the state's interest in keeping this Appellant's charges off the court record and in the dark.

- All of his Appellant complaints are supported with facts that have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- By record, both Gregory Mott and Sharon Sayers were willful participants in joint activity with the state. They both deliberately and with malice discharged this Appellant, in the interest of themselves, their named colleagues and the state rather the legal rights and interests of their client. By report and by record it's clear that 'the state' invited and encouraged their hostile discharges leaving this Appellant unrepresented and without counsel to this very day.
- There is a conspicuous agreement of purpose and action between Mott & Sayers and 'the state' in them asking for and receiving the discharges for the sole purpose of protecting the interests of 'the state', namely those members of the bench who conspired.
- Hostile applications for discharge, without the consent of this Appellant were 'concerted acts' intended to cause harm and inflict unlawful constitutional injury on this Appellant.
- The hostile filing of 'Motions for Discharge' by Mott and Sayers without the request or approval of this Appellant are clear and defined 'overt acts' meant to deprive this Appellant of his due process rights and harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute Gregory J. Mott and Sharon Kelly Sayers shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities secured by the constitution.

Diane R. DeLong (aka. Diane R. Markham):

In his amended complaint, this Appellant alleges with particularity that Diane R. DeLong consciously and with malice, conspired with 'the court' to support a false narrative and hide the

crimes of the Fisher Court including the fabricated trial, the falsified hearings and the destroyed records and thereby willfully sought to deprive the Plaintiff of his Constitutional right to due process in a court of law.

In his amended complaint, this Appellant argues with a multitude of examples of testimony given by Ms DeLong in her deposition. In that deposition Ms DeLong openly admits to a wide variety of crimes including giving false testimony in collusion with her attorneys and with full knowledge of 'the state'. In his amended complaint this Appellant states,, "Neither Diane R. DeLong, nor her attorneys Mark Bezinue and Jennifer Speller have ever been held accountable for these felonious crimes Diane R. DeLong confessed to, on record." Many of the 'crimes' in the Appellant's amended complaint referred to, were acts of giving false testimony and submitting false affidavits in a deliberate attempt to prevent this Appellant from getting due process in a court of law. The Appellant then offers, "These crimes have been repeatedly reported to both Justices Fisher and Dollinger as well as District Attorney Sandra Doorley who all elected to do nothing." It's clear, as this Appellant points out, Ms DeLong is a willful participant in joint activity with the state."Lastly, this Appellant offers, "through her continuous deceit and illegal acts, in collusion with her attorneys, Diane R. DeLong has unlawfully and with malice deprived this Plaintiff of his Constitutional right to due process." In his amended complaint and pleadings in circuit court including those given under the heading of Ms. Pineau, (Ms. Delong's attorney), this Appellant complains repeatedly about the false narrative they both present in joint participation with and at the absolute pleasure of the Court. This Appellant's claims are plausible and with his list of facts with examples his claims against Ms DeLong are anything but vague and conclusory. His claims meet all of the criteria for liability under 42 U.S.C., 1983

- All of his Appellant complaints are supported with facts that have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- By record, Diane R. DeLong was a willful participant with the state when she repeatedly gave false testimony to the court via affidavits submitted by her attorneys. By record and by report, it's clear that both her attorneys and 'the state' knew Ms Delong's affidavits were fraudulent; however, they both invited and encouraged her false testimony to the extent it supplied them with a desired narrative, however false, as long as it would protect the interests of the current and former bar and bench.
- There is a conspicuous agreement of purpose and action between Diane R, DeLong and 'the state' as evidenced by their approval of her fraudulent affidavits and their refusal to take action in the face of acknowledged illegal acts and shameless conspicuous fraud.
- Giving false testimony and filing false affidavits at the pleasure of the court, are both 'concerted acts' intended to cause harm and inflict unlawful constitutional injury on this Appellant.
- The fraudulent court submissions and exposed crimes at deposition are both clear and defined 'overt acts' meant to deprive this Appellant of his due process rights and harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute, Diane R. DeLong shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities secured by the constitution.

CONCLUSION

"The guarantee of due process of law, as embodied in the Fifth and Fourteenth Amendments to the Constitution, and as interpreted by the courts, provides for fair treatment for all who are affected by government action. It implies that a person will receive fairness of treatment, a procedure designed to achieve a just and equitable result. The guarantee of due process serves to check or control the misuses of abuse of power, and ensure that other rights and privileges protected by the Constitution and laws are given full force and effect. By confining the agents of government to their properly delegated authority under the Constitution and laws, due process of law provides a fundamental cornerstone for a free and lawful society." Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267 (1975)

The circuit court erred in granting the named Appellees Motions to Dismiss based on Rule 12(b)(6), and 12(b)(1), and this Appellant respectfully requests that they all be overturned and this Appellant be given the full measure of requested relief and any other relief as seems just and proper to the Court.

I Michael D. Markham, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 1st, 2021

Michael D. Markham, Pro se
1010 Front Street, B101
Lahaina, Hawaii 96761

E-mail: MichaelMarkhamMD@gmail.com
Telephone: 808 264 0568