

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL
CIRCUIT McHENRY COUNTY, ILLINOIS**

AIB

PAUL R. DULBERG, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
vs.	)	CASE NO. 25LA360
THOMAS W. GOOCH, <i>et al.</i> ,	)	
	)	
Defendants,	)	

**PLAINTIFF’S RESPONSE TO DEFENDANT GEORGE K. FLYNN’S COMBINED
MOTION TO DISMISS PLAINTIFF’S COMPLAINT AND MOTION TO ADOPT**

Plaintiff Paul R. Dulberg, appearing pro se, respectfully submits this response to Defendant George K. Flynn’s Combined Motion to Dismiss Plaintiff’s Complaint and Motion to Adopt. For the reasons below, Flynn’s request for dismissal should be denied. To the extent Flynn’s motion to adopt parts of Popovich and Mast’s motion has already been granted, those adopted arguments still do not justify dismissal of Count VI as to Flynn. Alternatively, if the Court finds any pleading deficiency, Plaintiff requests leave to amend rather than dismissal with prejudice.

I. INTRODUCTION

Flynn’s motion rests on one premise: that Plaintiff sued Flynn merely because Flynn successfully represented Popovich and Mast in 17LA377. That is not Plaintiff’s narrowed theory.

Plaintiff does not ask this Court to impose liability on Flynn merely because Flynn filed pleadings, served discovery, defended depositions, communicated as counsel, or argued summary judgment for Popovich and Mast. Plaintiff recognizes that ordinary litigation advocacy and ordinary litigation communications receive substantial protection.

But Flynn’s motion goes too far. It asks the Court to treat every allegation involving Flynn as ordinary advocacy and to dismiss Count VI with prejudice before Plaintiff has any opportunity to clarify the distinction between protected advocacy and alleged nonprivileged participation in a broader scheme of concealment, suppression, distorted record use, and fraud on Plaintiff and the Court. At the pleading stage, Flynn’s factual characterization is not controlling.

Count VI alleges civil conspiracy to commit fraud against Plaintiff and fraud on the court to obtain dismissal of 17LA377 and conceal fraudulent acts occurring in 12LA178 and BK 14-

83578. The Complaint alleges that Flynn, Popovich, and Mast worked for the same common purpose and that Flynn's conduct in 17LA377 was more than ordinary zealous representation. See **Complaint paragraphs 221-226**. The Complaint also identifies concrete events and exhibits, including the October 22, 2013 settlement-offer evidence, the November 20, 2013 Tilschner v. Spangler / Restatement section 318 evidence, the Mast deposition Exhibit 12 problem, the November 4, 2022 hearing, Flynn's November 30, 2022 response concerning Tilschner and Exhibit 12, the November 9, 2022 document-suppression evidence, and the limitations/accrual theory used to obtain dismissal of 17LA377. See **Complaint paragraphs 19-21, 135-145, 188-189, 221-226; Exhibits 65** (Docket No. 0096), **107** (Docket No. 0117), **DG** (Docket No. 0266), **K18** (Docket No. 0138), **K21** (Docket No. 0137), **K22** (Docket No. 0136), **K23** (Docket No. 0135), **K24** (Docket No. 0134), **K25** (Docket No. 0130), **C20** (Docket No. 0261), **C21** (Docket No. 0260), **DW** (Docket No. 0168), **ED-2** (Docket No. 0155), **ED-3** (Docket No. 0154), **DP** (Docket No. 0275), **DQ-1** (Docket No. 0274), **DQ-2** (Docket No. 0273).

The point is not that every communication in 17LA377 is separately actionable. Flynn's filings and litigation communications are relied on as evidence of how Plaintiff alleges the distorted record was used to defeat Plaintiff's claims, not as independently actionable conduct merely because Flynn advocated for his clients. If the Court concludes that Count VI is too broad as to Flynn, Plaintiff requests leave to amend Count VI to separate any protected litigation communications from alleged nonprivileged overt acts and concealment facts.

II. APPLICABLE STANDARDS

Flynn brings a combined motion under 735 ILCS 5/2-619.1. A combined motion must be divided into separate parts and each part must identify whether it is brought under section 2-615, 2-619, or 2-1005.

A section 2-615 motion attacks the legal sufficiency of the pleading. The Court accepts well-pleaded facts as true and construes the pleading in the light most favorable to Plaintiff. A 2-615 motion is not a vehicle for deciding disputed factual issues or accepting the movant's characterization of the facts.

A section 2-619 motion raises an affirmative matter defeating the claim. If the grounds do not appear on the face of the pleading, the motion must be supported by affidavit. Where a defense depends on disputed facts concerning knowledge, discovery, concealment, the nature of the conduct, or whether alleged acts were ordinary advocacy or nonprivileged conduct, dismissal at the pleading stage is improper.

To the extent Flynn contends the copy served on him did not include exhibits, that service issue does not establish a basis for dismissal with prejudice. Plaintiff has identified the relevant exhibits by label. If the Court finds any service or attachment defect, Plaintiff requests leave to cure that defect rather than dismissal.

III. FLYNN'S ADOPTION OF POPOVICH AND MAST'S ARGUMENTS DOES NOT REQUIRE DISMISSAL

The Court granted Flynn's motion to adopt parts of Popovich and Mast's motion. Plaintiff understands the adopted arguments to be the Popovich/Mast statute-of-limitations argument and their Count VI pleading-sufficiency argument. Plaintiff incorporates his response to Popovich and Mast as to those adopted arguments.

Adoption does not transform Popovich and Mast's separate defenses into Flynn-specific defenses. Flynn must still show why dismissal is proper as to Flynn's own role, Flynn's own limitations theory, and Flynn's privilege defenses. Popovich and Mast were Plaintiff's former attorneys in 12LA178 and defendants in 17LA377. Flynn was opposing counsel in 17LA377. Those roles are different, and the limitations, privilege, and causation issues are different.

Flynn's adopted limitations argument also assumes that all allegations concerning the alleged conspiracy ended with the February 1, 2023 judgment in 17LA377 and that the present claim is merely a malpractice claim arising from professional services. Plaintiff disputes both assumptions. The Complaint alleges later-discovered facts, concealment, suppression, and a conspiracy/fraud theory that cannot be resolved by importing Popovich and Mast's professional-negligence framing wholesale.

IV. THE LIMITATIONS ARGUMENT DOES NOT JUSTIFY DISMISSAL WITH PREJUDICE

Flynn argues that Count VI is barred by the two-year statute of limitations because all relevant conduct occurred in the 17LA377 trial court before February 1, 2023. This argument fails at the pleading stage.

First, Flynn assumes the attorney-malpractice limitations statute controls. Count VI is not a legal-malpractice count against Flynn. Plaintiff was never Flynn's client. The claim against Flynn is civil conspiracy to commit fraud and fraud on the court. To the extent Count VI is treated as a fraud or civil-conspiracy claim not otherwise governed by a shorter statute, Plaintiff contends that the five-year limitations period under 735 ILCS 5/13-205 applies. To the extent fraudulent concealment is implicated, Plaintiff also relies on 735 ILCS 5/13-215.

Second, even if Flynn argues that section 13-214.3 applies because he is an attorney, the face of the Complaint does not conclusively establish that the entire claim is untimely. Plaintiff alleges concealment, delayed discovery, and later discovery of the factual basis for the conspiracy, including the Tilschner / Exhibit 12 problem, the November 4, 2022 hearing, Flynn's November 30, 2022 response, the November 9, 2022 document-suppression evidence, and the February 1, 2023 dismissal of 17LA377. Plaintiff also alleges appeal-related injury and later inability to fairly litigate the issues created by the alleged concealment.

Third, limitations cannot be resolved by accepting Flynn's factual assertion that he did "nothing" beyond ordinary advocacy. Whether the Complaint alleges protected litigation communications only, or a broader course of conduct involving concealment and use of a distorted record, is at minimum a pleading and factual issue. If the Court finds that Count VI does not separate those theories clearly enough, Plaintiff requests leave to amend.

V. ABSOLUTE LITIGATION PRIVILEGE DOES NOT SUPPORT BLANKET DISMISSAL OF COUNT VI AS PLED

Flynn's strongest argument is absolute litigation privilege. Plaintiff addresses it directly. Plaintiff does not dispute that Illinois law protects attorneys from liability to non-clients for many litigation communications made in connection with pending or contemplated judicial proceedings. Plaintiff also does not ask this Court to impose liability on Flynn merely because Flynn argued motions, filed pleadings, communicated with counsel, or advocated for Popovich

and Mast.

But Flynn uses privilege as a pleading shortcut. He asks the Court to assume that every allegation involving Flynn is only a privileged communication. Count VI, as Plaintiff seeks to clarify it, is not based solely on the words Flynn wrote or spoke in 17LA377. The pleadings allege a broader conspiracy involving suppression, concealment, document irregularity, and coordinated use of a distorted record to obtain dismissal of 17LA377.

The distinction matters. Plaintiff's position is that litigation privilege protects the adversarial process, but does not require dismissal with prejudice where Plaintiff alleges noncommunicative conduct, concealment, evidence suppression, or participation in a fraudulent-concealment scheme. Plaintiff's filings-and-statements allegations are offered as evidence of how the allegedly distorted record was used, not as a claim that ordinary advocacy alone creates liability.

The Complaint and exhibits include, for example:

- 1. Tilschner and the November 20, 2013 meeting.** Plaintiff alleges Mast gave Plaintiff Tilschner v. Spangler and used Tilschner and Restatement section 318 to explain why the McGuires supposedly were not liable after an October 22, 2013 settlement offer to the McGuires had already been made. See **Complaint paragraphs 19-21; Exhibits 65** (Docket No. 0096), **107** (Docket No. 0117).
- 2. The Mast deposition Exhibit 12 issue.** Plaintiff alleges that Tilschner was not included in the Mast deposition Exhibit 12 materials despite its central relevance, and that the Exhibit 12 problem later became a central issue in 17LA377. See **Complaint paragraphs 135-145; Exhibits K18** (Docket No. 0138), **DG** (Docket No. 0266), **K21** (Docket No. 0137), **K22** (Docket No. 0136), **K23** (Docket No. 0135), **K24** (Docket No. 0134), **K25** (Docket No. 0130), **C20** (Docket No. 0261), **DJ** (Docket No. 0286).
- 3. The November 4, 2022 hearing.** Plaintiff alleges that the hearing exposed the Exhibit 12 problem and the surrounding uncertainty concerning what was and was not included in Exhibit 12. See **Complaint paragraph 142; Exhibit C20** (Docket

No. 0261).

4. **Flynn's November 30, 2022 response.** Plaintiff alleges that Flynn's response concerning Tilschner and Exhibit 12 illustrates the effect of the allegedly suppressed or distorted record in 17LA377. See **Complaint paragraph 144; Exhibit C21** (Docket No. 0260).
5. **Document-suppression evidence.** Plaintiff alleges later discovery of file-tree and document-suppression materials showing a systematic suppression mechanism. See **Complaint paragraph 188; Exhibit DW** (Docket No. 0168), **ED-2** (Docket No. 0155), **ED-3** (Docket No. 0154).
6. **Limitations/accrual use of the distorted record.** Plaintiff alleges that Defendants advanced a coordinated limitations/accrual theory that depended on concealed or distorted facts and was used to obtain dismissal of 17LA377. See **Complaint paragraph 189; Exhibits DP** (Docket No. 0275), **DQ-1** (Docket No. 0274), **DQ-2** (Docket No. 0273).

These allegations may ultimately require clarification. But they are not the same as suing Flynn simply for speaking in court. If the Court concludes that the present Count VI is too broad or insufficiently separates protected communications from alleged nonprivileged conduct, Plaintiff requests leave to amend rather than dismissal with prejudice.

VI. QUALIFIED ATTORNEY PRIVILEGE DOES NOT REQUIRE DISMISSAL AT THE PLEADING STAGE

Flynn alternatively invokes qualified attorney privilege. That argument also depends on Flynn's factual characterization that all alleged conduct was legitimate representation of Popovich and Mast.

Qualified privilege, by its nature, is not the same as absolute immunity. It should not defeat a pleading where Plaintiff alleges that the attorney acted with an independent wrongful purpose, participated in concealment, or acted as part of a conspiracy to injure Plaintiff and corrupt the adjudicative process. Plaintiff alleges that Flynn's conduct was "more than zealous defense" and that Flynn, Popovich, and Mast shared a common purpose with the other defendants. See

Complaint paragraphs 221-226.

At this stage, the Court should not decide as a matter of law that Flynn acted only within the legitimate scope of representation. Flynn's argument asks the Court to decide disputed intent and purpose issues on a motion to dismiss. If the Court believes Plaintiff must plead actual malice, independent wrongful purpose, or conduct outside the scope of legitimate representation with more specificity, Plaintiff requests leave to amend Count VI to do so.

VII. COUNT VI PLEADS ENOUGH FACTS TO SURVIVE 2-615 OR, AT MINIMUM, CAN BE AMENDED

Flynn argues Count VI is conclusory. Plaintiff disagrees.

Civil conspiracy may be inferred from the nature of the acts, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Direct evidence of an express agreement is rarely available at the pleading stage. The Complaint alleges a common purpose: to collapse Plaintiff's claims in 17LA377 and protect or shield former attorneys and related actors from liability for conduct in 12LA178 and BK 14-83578. See **Complaint paragraphs 221-226**. The Complaint also pleads overt acts and evidentiary facts. As to Flynn, Plaintiff relies on the following narrowed factual theory:

- A. Flynn represented Popovich and Mast in 17LA377 and advanced limitations/accrual arguments that Plaintiff alleges depended on a concealed or distorted factual record.
- B. Flynn addressed the Mast deposition Exhibit 12 issue, including the Tilschner issue, after Plaintiff raised concerns about what Exhibit 12 contained and omitted.
- C. Flynn's November 30, 2022 response is cited not as independently actionable advocacy, but as evidence of how Plaintiff alleges the Tilschner suppression and distorted Exhibit 12 record affected 17LA377.
- D. Plaintiff alleges the suppression/non-production of Tilschner and other document-production irregularities benefited Popovich and Mast in 17LA377 and assisted the limitations/accrual position used to defeat Plaintiff's claims.
- E. Plaintiff alleges the document-suppression/file-tree evidence discovered in

November 2022 shows a systematic method by which relevant evidence was concealed or withheld.

Flynn may deny these allegations. But denial is not a 2-615 basis for dismissal. If Flynn believes exhibits contradict the Complaint, that issue should be addressed under the proper procedural standard and only after the Court can determine what materials are properly before it.

At minimum, Plaintiff should be granted leave to amend Count VI to add a Flynn-specific overt-act chart identifying each alleged act, date, document, connection to the conspiracy, and why Plaintiff contends the act falls outside protected advocacy.

VIII. FRAUD-ON-THE-COURT ALLEGATIONS ARE PLED AS PART OF THE CONSPIRACY AND CONCEALMENT THEORY

Plaintiff is not asking the Court to recognize a free-standing damages tort for every alleged act of litigation misconduct. Plaintiff pleads fraud-on-the-court facts as part of the alleged civil conspiracy, concealment, accrual, and leave-to-amend analysis.

Flynn's motion treats the fraud-on-court allegations as nothing more than disagreement with adverse rulings. That is not Plaintiff's theory. Plaintiff alleges that the record presented in 17LA377 was materially affected by concealment, suppression, misrepresentation, and coordinated conduct. Plaintiff alleges that this distorted record affected the ability to fairly adjudicate the limitations/accrual issue, the Mast deposition issue, the Tilschner issue, and the ultimate summary-judgment ruling.

Whether Plaintiff can prove that theory is not the issue on a pleading motion. The issue is whether the claim should be dismissed with prejudice before Plaintiff is allowed to clarify any pleading defects. It should not.

IX. FLYNN'S SANCTIONS RHETORIC SHOULD BE DISREGARDED

Flynn repeatedly characterizes Plaintiff's allegations as "frivolous," "fantasy," and sanctionable. Plaintiff disputes that characterization.

Plaintiff has filed a detailed complaint supported by exhibits. Plaintiff is responding to the motion in good faith and is attempting to narrow the theory against Flynn to avoid any claim based solely on protected advocacy. If Flynn seeks sanctions, he must proceed under the applicable rule

and satisfy the procedural and substantive requirements for sanctions. Dismissal with prejudice should not be entered merely because Flynn uses sanctions language in a motion to dismiss.

X. THE TRUST-PLAINTIFF ISSUE IS MOOT OR, AT MOST, DOES NOT JUSTIFY DISMISSAL OF PLAINTIFF'S INDIVIDUAL CLAIMS

To the extent Flynn seeks dismissal of the Complaint as to The Paul R. Dulberg Revocable Trust, that issue is moot or limited to the Trust only.

On February 17, 2026, Plaintiff filed a Notice of Voluntary Dismissal as to Co-Plaintiff The Paul R. Dulberg Revocable Trust Only (Docket No. 0422), pursuant to 735 ILCS 5/2-1009. That Notice states that Plaintiff voluntarily dismissed, without prejudice, all claims asserted in this action by co-plaintiff The Paul R. Dulberg Revocable Trust. The Notice further states that the dismissal applies solely to the Trust and does not affect the claims asserted by Plaintiff Paul R. Dulberg, individually.

Accordingly, any Trust argument is not a basis to dismiss Count VI as to Plaintiff Paul R. Dulberg individually. To the extent no separate order has yet been entered on Plaintiff's February 17, 2026 Notice, Plaintiff asks the Court to enter that order and allow this matter to proceed with Paul R. Dulberg individually as the sole plaintiff.

XI. LEAVE TO AMEND SHOULD BE GRANTED IF THE COURT FINDS ANY PLEADING DEFECT

Dismissal with prejudice is not warranted. If the Court finds that Count VI is too broad, insufficiently particularized, or insufficiently separated from protected litigation communications, Plaintiff requests leave to amend.

An amended Count VI can:

1. expressly state that Plaintiff does not sue Flynn merely for ordinary advocacy or protected litigation communications;
2. separate protected communications from alleged nonprivileged conduct;
3. identify each Flynn-specific overt act by date, document, actor, and consequence;
4. identify which allegations are evidence of the conspiracy and which are alleged actionable conduct;

5. clarify limitations, accrual, fraudulent concealment, and later-discovery allegations;
6. clarify actual malice, independent wrongful purpose, or conduct outside legitimate representation if the Court finds such allegations necessary; and
7. remove or revise any prayer for relief the Court finds unavailable.

Because any pleading defect can be cured or narrowed by amendment, dismissal with prejudice should be denied.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant George K. Flynn's request to dismiss Count VI and deny dismissal with prejudice.

To the extent Flynn's motion to adopt parts of Popovich and Mast's motion has already been granted, Plaintiff requests that the Court find the adopted arguments do not justify dismissal of Count VI as to Flynn.

Alternatively, if the Court finds any portion of Count VI insufficiently pleaded as to Flynn, Plaintiff requests leave to amend rather than dismissal with prejudice.

Plaintiff further requests that, to the extent no separate order has yet been entered on Plaintiff's February 17, 2026 Notice of Voluntary Dismissal as to Co-Plaintiff The Paul R. Dulberg Revocable Trust Only, the Court enter an order dismissing The Paul R. Dulberg Revocable Trust as a party plaintiff without prejudice and allow this matter to proceed with Paul R. Dulberg individually as the sole plaintiff.

Submitted by: /s/ Paul R. Dulberg
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CERTIFICATE OF SERVICE

I certify that on **June 10, 2026**, I served a true and correct copy of the foregoing document upon all counsel and parties of record via eFileIL/EFSP electronic service to the extent available, and by email to any party not served through electronic service.

/s/ Paul R. Dulberg Date: **June 10, 2026**