

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

PAUL R. DULBERG, INDIVIDUALLY
AND THE PAUL R. DULBERG
REVOCABLE TRUST,

Plaintiff,

v.

THOMAS W. GOOCH, SABINA SERSHON,
EDWARD X. CLINTON, JULIA WILLIAMS,
ALPHONSE TALARICO, GEORGE FLYNN,
THOMAS J. POPOVICH, HANS MAST, THE
GOOCH FIRM, CLINTON LAW FIRM, LLC.,
LAW OFFICE OF ALPHONSE A. TALARICO

Defendants.

Case No. 2025LA360

**DEFENDANT GEORGE K. FLYNN'S REPLY IN SUPPORT OF COMBINED MOTION
TO DISMISS PLAINTIFF'S COMPLAINT AND MOTION TO ADOPT**

Defendant GEORGE K. FLYNN ("Flynn"), by and through himself and his undersigned attorneys, KAUFMAN DOLOWICH, LLP, for his Reply in Support of his Combined Motion to Dismiss Plaintiff's Complaint, Pursuant to 735 ILCS 5/2-619.1, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-615 states as follows:

I. INTRODUCTION

Paul Dulberg "Dulberg" continues his sanctionable conduct with his baseless pursuit of a Conspiracy claim against Flynn, the lawyer for his former adversaries. In his Response, Dulberg doubles-down on his unsupported conclusions, and essentially concedes that he has not plead sufficient facts in support of his Conspiracy claims. Dulberg's Response does nothing to amplify his conclusions that Flynn engaged in a Conspiracy with two (2) McHenry County Judges and

several of his own former lawyers. His Complaint and Response are nothing but a web of innuendos and conclusions. He does not plead any facts about how the alleged conspiracy was formed; when and who formed any agreement to conspire against him, and what the agreement was; he does not plead what meetings or communications were conducted between and among the alleged conspirators, including Flynn. Notably, he does not allege one single communication outside of the pleadings and court hearings in connection with his failed malpractice case against Popovich and Dulberg, because he can't. There is no specific allegation about Flynn's agreement or involvement in a conspiracy, only Dulberg's conclusions that Flynn was a conspirator. Dulberg also fails to squarely address any of the arguments contained in Flynn's motion to dismiss. Instead he seeks leave to amend, but no amendment can ever cure his claim, which should have never been brought in the first place. Instead he just regurgitates talking points- "Plaintiff alleges concealment, delayed discovery, and later discovery of the factual basis for the conspiracy, including the Tilshner/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 17 LA 377. But he does not explain what any of these things mean—again, a smokescreen of innuendos.

II. THE TWO YEAR STATUTE OF LIMITATIONS BARS COUNT VI

Flynn's former clients, Thomas J. Popovich and Hans Mast ("Popovich Defendants") have filed a Motion to Dismiss Dulberg's claims against them in this case. The court allowed Flynn to adopt section II a. (Statute of Limitations) at page 9 of the Popovich Defendants' Motion to Dismiss, brought under 735 ILCS 5/2-619(a)(5). Dulberg glosses over the statute of limitations application to Flynn, and merely states at Res. p. 3, "Flynn's adopted limitations argument also assumes that allegations concerning the alleged conspiracy ended with the February 1, 2023 judgment in 17 LA 377. He again states conclusions that there were "later

discovered facts, concealment, suppression...”. But he does not explain what Flynn’s involvement was, and how it affected Dulberg. He cites to nothing outside of the record, and nothing from the record that amounts to a conspiracy or any wrongdoing. Dulberg does not analyze any caselaw, or even attempt to distinguish or discuss any of the cases cited by Popovich and Mast, and adopted by Flynn. *Schrock v. Ungaretti & Harris, Ltd.* 2019 Ill. App. (1st) 161698 at ¶48 is controlling. With respect to Flynn’s involvement in defending Dulberg’s appeal, he does not plead any specific wrongdoing by Flynn, or how the fact of the appeal should toll the accrual of the statute of limitations. Count VI must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).

III. COUNT VI MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM UNDER 735 ILCS 5/2-615

Dulberg fails to address any of the cases cited by Popovich and Mast and adopted by Flynn, and fails to address the arguments made that Dulberg does not meet the heightened pleading standard for Conspiracy. He failed to address Popovich and Mast’s argument that he fails to plead facts in support of the elements of Conspiracy set forth in *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62 (1994). Again, all Dulberg offers are unsupported conclusory claims, with no factual support about with whom Flynn agreed to conspire, what acts were taken in furtherance of the conspiracy, and the “who, what, where, and why” as to the agreement to conspire. No amendment should be allowed. Count VI must be dismissed with prejudice pursuant to 735 ILCS 5/2-615.

IV. THE ABSOLUTE LITIGATION PRIVILEGE BARS DULBERG’S CLAIM AGAINST FLYNN

Dulberg’s conspiracy claim against Flynn, the lawyer who represented the defendants in a legal malpractice lawsuit he filed, is barred by the Absolute Litigation Privilege. Dulberg does

nothing to address the well-established bar in Illinois to his claim. Most notably, Dulberg fails to even acknowledge or distinguish the law cited by Flynn. The Absolute Litigation Privilege immunizes an attorney from any liability to a non-client for communications made in connection with a pending or potential judicial proceeding. *Johnson v. Johnson & Bell, Ltd.*, 2014 IL App (1st) 122677, ¶15; *Nix v. Sawyer*, 466 A.2d 407, 410-11 (Del. Super. 1983); *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.*, 639 So. 2d 606, 608 (Fla. 1994). The privilege is by its name absolute, meaning the attorney's motives are irrelevant. *O'Callaghan*, 2015 IL App (1st) 142152, ¶25. The privilege applies to an attorney's communications before, during, and after litigation, and includes statements both in and out of court. *Scarpelli v. McDermott Will & Emery LLP*, 2018 IL App (1st) 170874, ¶20. The absolute litigation privilege bars all claims arising out of any communications related to litigation, regardless of the legal theory pled, as a plaintiff cannot use creative pleading in an attempt to circumvent this doctrine. *Johnson*, 2014 IL App (1st) 122677, ¶¶14, 17 (affirming dismissal of claims for invasion of privacy, negligence, negligent infliction of emotional distress, and breach of oral and written contracts); see also *O'Callaghan*, 2015 IL App (1st) 142152, ¶1 (affirming dismissal of claims for intentional infliction of emotional distress and strict liability for ultrahazardous activity); *Scarpelli*, 2018 IL App (1st) 170874, ¶28 (affirming dismissal of claim for intrusion upon seclusion).

Dulberg correctly admits that the Absolute Litigation Privilege is Flynn's strongest argument (Res. p. 4). But he does not analyze the law. He repeats his mantra that "the pleadings allege a broader conspiracy involving suppression, concealment, document irregularity, and coordinated use of a distorted record." (Res. p. 5). Dulberg admits that his allegations "may require clarification." Flynn submits that 1) it is too late for clarification, and 2) Dulberg's word salad of

unsupported wrongful allegations can never be sufficiently clarified. Count VI must be dismissed with prejudice pursuant to 735 ILCS 5/2-615.

V. FLYNN'S CONDUCT IN DEFENDING THE POPOVICH DEFENDANTS IS PROTECTED BY QUALIFIED IMMUNITY

Dulberg does nothing to analyze or respond to Flynn's alternative assertion of Qualified Immunity. The Qualified Attorney Privilege, as opposed to the Absolute Litigation Privilege, more broadly applies to **all** of an attorney's actions taken on behalf of a client, even if such work does not occur in connection with litigation. *Schott v. Glover*, 109 Ill. App. 3d 230, 234-35 (1st Dist. 1982)(emphasis added) see also *Davis v. W. Ctr. City Neighborhood Planning Advisory Comm.*, 2003 Del. Super. LEXIS 81, *9-12, 2003 WL 908885 (Del. Super. Mar. 7, 2003), *aff'd* 836 A.2d 513, 2003 Del. LEXIS 538 (Del. 2003); *Sussman v. Damian*, 355 So. 2d 809, 812 (Fla. 3d DCA 1977). This Qualified Privilege insulates an attorney from liability to a non-client for any claims that relate to the attorney's actions taken or communications made in the performance of legal services (while such claims are also barred by the absolute litigation privilege, discussed in Section A, *supra*, to the extent such legal services pertain to litigation). *Schott*, 109 Ill. App. 3d at 234-35. **The privilege can only be defeated if the non-client pleads actual malice, meaning the attorney must have intended to harm the non-client in a manner independent of and unrelated to the attorney's efforts to serve the client.** *Id* (emphasis added). Dulberg utterly fails to plead actual malice. He fails to allege any fact that Flynn intended to harm him in a manner independent of Flynn's efforts to serve Popovich and Mast. He fails to plead, because he can never so plead, that Flynn had ever heard of or met Dulberg before he was retained to defend them.

Dulberg fails to analyze or address the cases cited by Flynn which outline the broad reach of Qualified Immunity. *Salaymeh v. InterQual, Inc.*, 155 Ill. App. 3d 1040, 1046 (5th Dist. 1987)

(conspiracy and intentional interference with contract); *Farwell v. Senior Servs. Assocs.*, 2012 IL App (2d) 110669, ¶23 (malicious prosecution and abuse of process); *Thrall Car Mfg. Co. v. Lindquist*, 145 Ill. App. 3d 712, 717-18 (1st Dist. 1986) (conspiracy to defraud, and inducement to defraud and breach an agreement); *Boyd Real Estate, Inc. v. Shissler Seed Co.*, 213 Ill. App. 3d 648, 652-53 (3rd Dist. 1991) (tortious interference with contract and with prospective economic advantage); *Gold v. Vasileff*, 160 Ill. App. 3d 125, 127-28 (5th Dist. 1987) (fraud).

Salaaymeh, Thrall, and Boyd are ignored by Dulberg. His waiver is telling. Count VI and any other claim against Flynn must be dismissed with prejudice based on Qualified Immunity under 735 ILCS 5/2-615.

VI. CONCLUSION

WHEREFORE, Defendant GEORGE K. FLYNN respectfully requests that this Honorable Court enter an Order dismissing Plaintiff's Complaint at Law (Count VI) with prejudice pursuant to 735 ILCS 5/2-615 and for any additional relief this court deems fair and proper.

Dated: July 2, 2026

Respectfully submitted,

/s/ George K. Flynn

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