

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

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

**PLAINTIFF PAUL R. DULBERG’S MOTION FOR LEAVE TO FILE CONSOLIDATED
SUR-REPLY INSTANTER TO DEFENDANTS’ REPLIES IN SUPPORT OF THEIR
MOTIONS TO DISMISS**

Plaintiff Paul R. Dulberg (“Plaintiff”), appearing pro se, respectfully moves this Court for leave to file instanter the attached Consolidated Sur-Reply to the replies filed by Defendants Thomas W. Gooch, Sabina Sershon, and The Gooch Firm; Edward X. Clinton, Julia Williams, and Clinton Law Firm, LLC; Alphonse Talarico and Law Office of Alphonse A. Talarico; George K. Flynn; and Thomas J. Popovich and Hans Mast. The proposed Consolidated Sur-Reply is attached as Exhibit ET. Plaintiff requests that, upon granting leave, the Court deem Exhibit ET filed instanter without requiring a separate later filing. Plaintiff brings this Motion pursuant to 22nd Judicial Circuit Local Rules 2.01 and 2.02, 735 ILCS 5/1-104(b), and the Court’s inherent authority to control briefing and manage its docket. Plaintiff states as follows:

1. Plaintiff filed responses to the pending motions to dismiss on or about June 10, 2026, including responses to the Popovich/Mast, Clinton, Flynn, Talarico, and Gooch/Sershon motions.
2. Defendants then filed reply briefs on June 30, July 1, and July 2, 2026. Those replies do not merely repeat opening arguments. They add or materially sharpen several dispositive theories that Plaintiff has not yet had a fair opportunity to address.
3. Plaintiff does not seek an additional round of briefing to reargue points already made. The attached proposed sur-reply is limited to reply-stage new matter and materially sharpened arguments concerning limitations, fraudulent concealment, successor counsel, litigation privilege, and the proper characterization of Plaintiff’s claims. A sur-reply is

appropriate where a reply brief raises new matter or materially reframes issues in a way that the nonmovant has not had a fair opportunity to address.

4. The Popovich/Mast reply newly argues, or materially sharpens the argument, that fraudulent concealment cannot apply because the Popovich Defendants were not the “concealor” of certain documents, and that Williams alone is the alleged concealor. The proposed sur-reply responds that Plaintiff’s Count VI theory is not limited to one isolated document-production event, but alleges a broader sequence of concealment, suppression, document irregularity, and coordinated use of a distorted 17LA377 record.
5. The Popovich/Mast reply also overstates Plaintiff’s position concerning ordinary 2012-2015 malpractice allegations. Plaintiff seeks leave to clarify that he is not attempting to revive a barred ordinary malpractice claim against Popovich and Mast, but uses the 2012-2015 facts as background, motive, concealment chronology, and context for later alleged overt acts and record distortion.
6. The Clinton Defendants’ reply materially sharpens the argument that even the February 1, 2023 dismissal date would make the December 4, 2025 filing late under a two-year statute, and further argues that the underlying Popovich/Mast malpractice claim was already extinguished before Clinton/Williams were retained. The proposed sur-reply addresses why those arguments depend on disputed accrual, fraudulent concealment, case-within-a-case, and causation issues.
7. Several replies advance an overbroad successor-counsel theory, treating the presence of later counsel as an automatic superseding cause. Plaintiff seeks leave to respond that successor counsel does not defeat causation as a matter of law where the Complaint alleges continuing concealment, a distorted record, hidden or omitted materials, and later counsel who allegedly continued or failed to correct the same damage mechanism.
8. Flynn’s reply expands the absolute litigation privilege and qualified attorney privilege arguments, including the contention that Plaintiff alleges no communications outside pleadings and hearings and cannot plead actual malice or conduct beyond ordinary

advocacy. The proposed sur-reply clarifies that Plaintiff does not seek liability for ordinary protected advocacy alone, but alleges broader nonprivileged concealment, suppression, document irregularity, and coordinated use of a distorted record, with litigation communications pleaded as evidence of how the distorted record was used.

9. The Gooch/Sershon reply materially sharpens the argument that Plaintiff's ARDC complaints prove civil accrual as a matter of law. Plaintiff seeks leave to respond that an ARDC complaint is not a civil complaint for damages and does not establish, as a matter of law, knowledge of every civil cause of action, every defendant's role, every concealed fact, every overt act, or every damages theory.

10. The Talarico reply asserts a broad time-bar theory but does not address the specific within-two-year allegations pleaded against Talarico, including the December 4, 2023 appeal dismissal, January 2024 Supreme Court-petition/resignation events, May 2024 ARDC-related conduct, August 2025 statements/filings in 22L010905, refusal to provide files, and continuing harm.

11. A consolidated sur-reply will aid the Court by presenting one focused response rather than multiple separate sur-replies. It will not prejudice Defendants because it is limited to reply-stage new matter, does not attach new evidence, and does not seek to expand the pleadings except to preserve Plaintiff's alternative request for leave to amend if the Court finds any pleading defect. Defendants remain free to object to the filing of the sur-reply, but they are not prejudiced by Plaintiff being allowed to answer arguments first raised or materially sharpened in reply.

12. The proposed Consolidated Sur-Reply is attached as Exhibit ET. Plaintiff requests that, upon granting leave, the Court deem Exhibit ET filed instanter without requiring a separate later filing.

13. To the extent the Court applies Local Rule 2.02(E)'s five-page limitation for reply briefs by analogy to Plaintiff's proposed sur-reply, Plaintiff respectfully requests leave to file the seven-page proposed Consolidated Sur-Reply attached as Exhibit ET. The proposed sur-

reply is limited to new matter and materially sharpened arguments raised in Defendants' replies and is shorter than the general fifteen-page limit in Local Rule 2.01(Q).

WHEREFORE, Plaintiff Paul R. Dulberg respectfully requests that this Court enter an order granting Plaintiff leave to file the attached Consolidated Sur-Reply instant, deeming the Consolidated Sur-Reply attached as Exhibit ET filed instant as of the date of the Court's order granting this Motion, and granting such other and further relief as the Court deems just.

Submitted by: /s/ Paul R. Dulberg

Paul R. Dulberg (pro se)

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CERTIFICATE OF SERVICE

I certify that on **July 16, 2026**, I served a true and correct copy of the foregoing Motion for Leave to File Consolidated Sur-Reply Instant and attached Exhibit ET, Proposed Consolidated Sur-Reply, 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: **July 16, 2026**

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EXHIBIT ET

**[PROPOSED] PLAINTIFF PAUL R. DULBERG’S CONSOLIDATED SUR-REPLY TO
DEFENDANTS’ REPLIES IN SUPPORT OF THEIR MOTIONS TO DISMISS**

Submitted for filing instanter upon entry of an order granting Plaintiff’s Motion for Leave

Plaintiff Paul R. Dulberg (“Plaintiff”), appearing pro se, submits this proposed consolidated sur-reply only to address new matter and materially sharpened arguments raised in Defendants’ reply briefs. Plaintiff does not repeat every argument from his prior responses and relies on those responses for all points not addressed below.

I. Scope of this Sur-Reply

The replies should not be used to obtain dismissal with prejudice on theories that were either first raised in reply or materially reframed after Plaintiff filed his responses. The Court may deny the motions without reaching this sur-reply; however, if the Court considers the reply-stage arguments discussed below, Plaintiff respectfully requests that the Court consider this response as well.

The central reply-stage problem is that Defendants treat Plaintiff’s Complaint as one ordinary malpractice claim accruing at the earliest possible date. That characterization ignores Plaintiff’s pleaded distinction between: (1) background facts from 12LA178, BK 14-83578, and 17LA377; (2) ordinary professional-negligence allegations; (3) alleged fraudulent concealment and delayed discovery; (4) later overt acts and document irregularities; and (5) the Count VI conspiracy/fraud-on-the-court theory alleging use of a distorted record to obtain dismissal of 17LA377.

II. Popovich/Mast: The Reply Improperly Narrows Fraudulent Concealment to One

Alleged Concealor

Popovich and Mast argue in reply that fraudulent concealment cannot apply because they were not the “concealor” of certain information, pointing to Williams as the alleged concealor of the October 22 settlement-offer document and to other materials that Plaintiff allegedly discovered before 2023. That argument improperly isolates one alleged production failure and ignores the broader Count VI theory.

Plaintiff’s claim against Popovich and Mast is not limited to the assertion that one attorney failed to produce one document. Plaintiff alleges a sequence involving the October 22, 2013 settlement-offer document, the November 20, 2013 Tilschner explanation, the Mast deposition Exhibit 12 issue, later subpoena/response-chain problems, November 2022 document-suppression evidence, and coordinated limitations/accrual positions used in 17LA377. At the pleading stage, those allegations must be considered as a whole, not severed into isolated fragments.

Defendants also argue that Mast did not conceal Tilschner because Plaintiff alleges Mast gave Tilschner to Plaintiff. That argument misses the pleaded point. Plaintiff alleges the significance of Tilschner changed when it was compared against the prior October 22, 2013 settlement offer and later Exhibit 12/document-production record. The issue is not merely whether Plaintiff once possessed the case citation; the issue is whether the later record presented in 17LA377 was materially incomplete, distorted, or used in a way that concealed the significance of the October 2013 offer and the McGuire-liability explanation.

III. Popovich/Mast: Plaintiff Did Not Concede That the 2012-2015 Facts Are Irrelevant

Popovich and Mast further argue that Plaintiff admitted the 2012-2015 representation cannot support any claim because the statute of repose has expired. Plaintiff clarifies the point. Plaintiff is not attempting, through Count VI, to revive the same ordinary 17LA377 malpractice claim based solely on Popovich and Mast’s 2012-2015 representation in 12LA178. The 2012-2015 facts remain relevant as background, motive, context, concealment chronology, and explanation for why later document suppression, Exhibit 12 irregularities, Tilschner issues, and limitations/

accrual arguments mattered. If the Court concludes that some ordinary attorney-service allegations are barred by repose, the remedy should be to narrow the allegations or grant leave to amend, not to dismiss the later conspiracy/concealment theory with prejudice.

Plaintiff also notes that the Popovich/Mast reply refers to an “October 22, 2012 settlement offer.” Plaintiff’s pleaded document is the October 22, 2013 settlement-offer document. Plaintiff raises this only to prevent record confusion.

IV. Discovery of Isolated Documents Does Not Establish Discovery of the Entire Cause of Action

Several replies argue that Plaintiff discovered some documents or suspected some attorney error before 2023, and therefore all claims are untimely as a matter of law. That reasoning collapses suspicion, partial knowledge, and document possession into complete discovery of a civil cause of action.

Plaintiff alleges progressive discovery. The alleged discovery chronology includes the 2019 discovery of the October 22, 2013 offer, the 2020 Mast deposition and Exhibit 12 issues, the November 2022 hearing and document-suppression evidence, the February 1, 2023 dismissal of 17LA377, the December 4, 2023 appellate dismissal, and later ARDC and related-proceeding materials. Whether those facts were sufficient to put Plaintiff on notice of each claim against each defendant is a fact-intensive issue. It should not be resolved against Plaintiff on a motion to dismiss by selecting the earliest possible date from the record.

The same problem applies to the Gooch/Sershon reliance on ARDC complaints. An ARDC complaint is not a civil complaint for damages and does not establish, as a matter of law, that Plaintiff knew every civil cause of action, every defendant’s role, every concealed fact, every overt act, every proximate-cause theory, and every damages theory. At most, the ARDC filings are part of the chronology; they are not conclusive accrual findings.

V. Clinton: The Reply’s “Already Dead Before We Arrived” Argument Requires Disputed Accrual and Case-Within-A-Case Findings

The Clinton Defendants’ reply argues that Plaintiff’s malpractice claim against Popovich and Mast accrued, at the latest, by the November 24, 2014 bankruptcy filing and was already

time-barred before Clinton/Williams were retained. That argument asks the Court to decide the central case-within-a-case limitations issue against Plaintiff on the pleadings.

Plaintiff alleges that Clinton and Williams did not merely inherit an already-dead case. Plaintiff alleges they preserved and carried forward an incorrect or incomplete limitations/accrual framing, failed to plead or use material facts from 12LA178 and BK 14-83578, failed to use or disclose the McGuire/Gagnon, October 22, 2013, Tilschner, bankruptcy/ADR, and document-suppression evidence, and left the Court and successor counsel with a distorted litigation record. Whether those facts would have changed the 17LA377 limitations analysis is not properly decided as a matter of law on reply.

The Clinton reply also argues that even accepting February 1, 2023 as the most favorable accrual date, the December 4, 2025 filing is still late under a two-year statute. That argument assumes the Court first rejects fraudulent concealment, delayed discovery, later injury, and Plaintiff's alternative limitations theories as a matter of law. Plaintiff has pleaded concealment and delayed discovery. Those issues require factual development and, at minimum, should not result in dismissal with prejudice before amendment.

VI. Successor Counsel Does Not Create Automatic Superseding Cause

Popovich/Mast, Clinton, and Gooch/Sershon all rely on successor-counsel arguments. Their replies treat the existence of later counsel as if it automatically breaks causation. That is not Plaintiff's pleaded case.

Plaintiff alleges a continuing concealment and distorted-record sequence. He alleges that later counsel did not cure a clean, obvious, and fully disclosed error, but instead inherited, continued, failed to correct, or concealed the same damage mechanism. Whether later counsel had a full and fair opportunity to cure, whether the defects were discoverable, and whether later counsel's conduct was superseding are factual questions. Those questions should not be decided against Plaintiff on a motion to dismiss.

If the Court concludes that the Complaint should separate the roles of each successive attorney more clearly, Plaintiff requests leave to amend with an overt-act and causation chart

identifying each defendant, act, date, document, and alleged consequence.

VII. Flynn: Litigation Privilege Does Not Justify Blanket Dismissal of the Narrowed Theory

Flynn's reply relies heavily on absolute litigation privilege and qualified attorney privilege. Plaintiff does not seek liability against Flynn merely because Flynn filed pleadings, argued motions, defended depositions, communicated as counsel, or advocated for Popovich and Mast. Ordinary protected advocacy is not the basis of the narrowed theory.

Plaintiff's narrowed theory is that Flynn's litigation positions and filings are evidence of how a distorted record was used in 17LA377, while the pleaded wrongful conduct concerns broader concealment, suppression, document irregularity, and coordinated use of that distorted record to obtain dismissal and conceal underlying facts. To the extent the Court finds Count VI too broad as to Flynn, Plaintiff requests leave to amend to separate: (1) protected advocacy offered only as evidentiary context; from (2) alleged nonprivileged overt acts, concealment, or conduct outside legitimate representation.

Flynn also argues that Plaintiff pleads no communications outside pleadings and hearings and "can't" plead such facts. That assertion is a factual conclusion drawn against Plaintiff. The Complaint and responses identify document-production issues, Exhibit 12 issues, Tilschner issues, subpoena/response-chain issues, and document-suppression/file-tree allegations. Whether those allegations ultimately prove Flynn's participation is not a 2-615 dismissal question.

VIII. Talarico: The Reply Does Not Address the Within-Two-Year Allegations

Talarico's reply asserts a broad time-bar theory by referring to conduct going back to 2012 and alleged accrual in 2022 and 2023. The reply does not address Plaintiff's specific allegations against Talarico within two years of the December 4, 2025 filing, including the December 4, 2023 appeal dismissal, January 2024 Supreme Court-petition instructions and resignation, May 2024 ARDC-related conduct, August 2025 statements and filings in 22L010905, refusal to provide files, and continuing harm.

Those allegations may be disputed, but they cannot be ignored. At minimum, Talarico's reply does not establish from the face of the Complaint that every claim against him is time-

barred and incapable of amendment.

IX. The Replies Seek Dismissal With Prejudice Based on Factual Inferences Against Plaintiff

Across the replies, Defendants ask the Court to infer what Plaintiff knew, when he knew it, what he could have discovered sooner, whether concealment was material, whether later counsel had a fair opportunity to cure, and whether alleged document irregularities affected the 17LA377 judgment. Those are factual inferences against Plaintiff.

On a pleading-stage motion, those inferences should be drawn in Plaintiff's favor, not against him. If the Court finds that the Complaint is too lengthy, insufficiently separated by defendant, insufficiently particularized as to fraud, or unclear as to which allegations are background versus actionable conduct, Plaintiff requests leave to amend rather than dismissal with prejudice.

X. Leave to Amend Remains the Proper Alternative

Plaintiff can amend to address any pleading-form concerns by: (1) separating ordinary malpractice, fraud, fraudulent concealment, and civil conspiracy into clearer counts; (2) identifying each misrepresentation or omission by date, actor, document, recipient, reliance, and damage; (3) providing a progressive-discovery timeline; (4) providing a defendant-by-defendant overt-act chart; (5) clarifying which 2012-2015 facts are background rather than independent time-barred malpractice claims; and (6) narrowing any fraud-on-the-court language so it is pleaded as part of concealment, conspiracy, accrual, proximate-cause, and leave-to-amend analysis rather than as an overbroad standalone label.

At minimum, the reply briefs demonstrate that any perceived defect concerns organization, particularity, or separation of theories, all of which can be cured by amendment. Dismissal with prejudice would therefore be premature where the reply-stage arguments themselves show that the dispute turns on characterization, chronology, intent, discovery, concealment, causation, and the interaction among multiple underlying proceedings.

WHEREFORE, Plaintiff Paul R. Dulberg respectfully requests that the Court deny Defendants' motions to dismiss. Alternatively, if the Court finds any portion of the Complaint insufficiently pleaded, Plaintiff requests leave to amend rather than dismissal with prejudice, and

such other and further relief as the Court deems just.

Submitted by: /s/ Paul R. Dulberg

Paul R. Dulberg (pro se)

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I certify that on **July 16, 2026**, I served a true and correct copy of the foregoing Proposed Consolidated Sur-Reply, submitted as Exhibit ET to Plaintiff's Motion for Leave to File Consolidated Sur-Reply Instantly, 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: **July 16, 2026**