No.

In The
Supreme Court of the United States

ANDREW W. SHALABY,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Alan J. Gould
Supreme Ct. No. 37573
6450 Mesa Oaks Court
Santa Rosa, CA 94509
Tel. 707-806-2977
email: gould202680@gmail.com
Attorney for Petitioner

QUESTIONS PRESENTED FOR REVIEW

This petition seeks to resolve a paradox wherein the lower court systemically issues certain orders without affording due process, and in turn the Court of Appeals systemically dismisses appeals from such orders as akin to "administrative" decisions, and stating that the appellant may seek judicial redress instead.

1. Did Judicial Nominee Mr. Iain D. Johnston fabricate a non-existent certiorari petition case name on his response to the U.S. Senate's Questionnaire for Judicial Nominees, falsely characterize it as a "Bluebooking error," and fabricate allegations about the informant to the District Court, resulting in issuance of the order dismissed by the Court of Appeals for lack of jurisdiction?[1]

2. Has the Seventh Circuit Court of Appeals been systemically dismissing similar appeals for many years on the mistaken belief that the federal court could be sued in a civil court?

3. Have the systemic dismissals of such appeals

---

[1]Mr. Johnston characterized a false Supreme Court petition case name he reported on p.34 of his response to the Senate as a "Bluebooking error" (See *A.W.S. v. Johnston*, 4:22-cv-04718-JSW (N. Dist. CA), dkt. 36 p.9:6-7), and does not deny that he made a false reporting to the District Court about the informant Mr. Shalaby (*Id.* at 11:6-22).

caused the District Court to adopt a regular practice of opening civil cases as the plaintiff while also serving as Judge, entering orders adverse to their defendants, then closing the cases the same day, without having filed or served any complaints, and without affording defendants the opportunity to respond?[2]

4. Does the Court of Appeals' practice of dismissing such appeals violate its own decisional authorities?

5. Does the Court of Appeals' awareness that the District Court systemically issues such orders without affording due process independently invoke the Court of Appeals' managerial jurisdiction to correct the District Court's ongoing wrongful practice?

6. Does the participation of a magistrate judge as a voting member on the District Court's Executive Committee, without consent of the defendant, on dispositive matters, violate 28 U.S.C. section 636(c)?

7. Does affirmance based on a non-final underlying order disqualifying an attorney warrant overturning *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424 (1985), a holding which states that orders disqualifying attorneys are not appealable under the "collateral order" exception to the final judgment rule?

---

[2] See, for example, Pacer docket for: *In re Long*, 1:05-cv-05709 (N. Dist. IL); *In re Kowalski*, 1:18-cv-07228 (N. Dist. IL); *In re Shalaby*, 1:20-cv-4315 (N. Dist. IL).

PARTIES TO THE PROCEEDING

1. Andrew W. Shalaby;

2. United States District Court for the Northern District of Illinois

CORPORATE DISCLOSURE STATEMENT

There are no corporations involved.

STATEMENT OF RELATED CASES

- *In re Shalaby* (7th Cir. 2019) 775 F.App'x 249.
- *Bailey / Shalaby v. Worthington, et al.,* 7th Cir. No. 22-2111 (Pending).
- *A.W.S. v. Iain D. Johnston*, 22-cv-04718-JSW U.S. Dist. Ct., N. Dist. CA (pending).

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

FEDERAL STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Andrew W. Shalaby petitions for a Writ of Certiorari to review the Seventh Circuit Court of Appeals' final order dismissing in part, and affirming in part, the underlying appeal.

OPINIONS BELOW

The Court of Appeals dismissed Mr. Shalaby's appeal from the District Court's order requiring that he be escorted by U.S. Marshals during courthouse visits ("escort order," Appendix C p.12a), stating only that the order was "unusual" and "more akin to the order in *In re Long*, 475 F.3d 880 (7th Cir. 2007)," without citing statutory authorities. Appendix A, pp. 8a-9a.

The Court of Appeals affirmed the District Court's denial of Mr. Shalaby's application for bar membership (Appendix D p.15a), contradicting the reason it dismissed the appeal from the "unusual" escort order. Appendix A, p.7a.

JURISDICTION

1. United States Supreme Court

The United States Supreme Court has jurisdiction over the final order from the United States Court of Appeals pursuant to 28 U.S.C. section 1254(1). The order of the Court of Appeals was entered on July 5, 2020 (Appendix A p. 1a). A timely petition for

rehearing was filed on August 19, 2022 pursuant to FRAP 40(a)(1)(A) (within 45 days because the United States was the other party). (Docket 42 in underlying appeal.) The Court of Appeals issued its order denying rehearing on August 30, 2022 (Appendix B, p. 10a). Petitioner filed a timely request for an extension to file this petition on November 14, 2022. The Honorable Justice Barrett granted the request on November 18, 2022 and set January 27, 2023 as the due date. (U.S.S.C. No 22A443, November 18, 2022.)

2. Court of Appeals

The Court of Appeals has jurisdiction over decisions of the U.S. District Courts pursuant to 28 U.S.C. section 1291.

3. Federal Court

The United States District Court for the Northern District of Illinois entered its underlying escort order on July 23, 2020 (Appendix C p.12a), and subsequent bar membership denial order on September 2, 2020 (Appendix D p.15a). The District Court had jurisdiction pursuant to U.S. Constitution, Article III, Section 2, Clause 1, because the United States was a party. However, with regard to the escort order, the District Court also put "Federal Question" down as the "Nature of Suit" in the PACER docketing system, *In Re: Andrew W. Shalaby*, 1:20-cv-04315, therefore 28 U.S.C. section 1331 also applies.

STATUTORY PROVISIONS INVOLVED

1. U.S. Const., Art. III, Section 2, Clause 1

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. 28 U.S.C. section1291

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the District Courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of

> the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS §§ 1292(c) and (d) and 1295].

3. 28 U.S.C. section 636(c)

> (1) Upon the consent of the parties, a full-time United States magistrate [magistrate judge] or a part-time United States magistrate [magistrate judge] who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the District Court or courts he serves. [...]
>
> (2) If a magistrate [magistrate judge] is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate [magistrate judge] to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. [...]

STATEMENT OF THE CASE

A. Jurisdiction of the Court of First Instance

The District Court had jurisdiction pursuant to U.S. Constitution, Article III, Section 2, because the United States was a party. However, with regard to the escort order, the District Court put "Federal Question" down as the "Nature of Suit" in the PACER docketing system, *In Re: Andrew W. Shalaby*, 1:20-cv-04315, therefore 28 U.S.C. section 1331 also applies.

B. Parties

The respondent and civil plaintiff is the United States District Court for the Northern District of Illinois, the Court's Executive Committee presiding, which includes a magistrate judge as a voting member on the underlying dispositive matters, without party consent (in violation of 28 U.S.C. section 636(c)(1)).[3]

---

[3]The Court's Internal Operating Procedure (IOP), section 2(b), describes the composition of the Executive Committee as follows:

> (b) Composition of the Executive Committee. The Executive Committee shall be composed of the chief judge, the next district court judge eligible to be chief judge, four regular active judges of the Court, the presiding magistrate judge, and the clerk of the Court. The chief judge or, in the absence of the chief judge, the next district court judge eligible to be chief judge, shall preside over the meetings of the Executive Committee. The clerk shall serve as secretary to the Executive Committee.

The petitioner and civil defendant is Andrew W. Shalaby, a California attorney (Appendix A, B, C).

C. Judicial Nominee's Misrepresentation to the Senate Committee on the Judiciary Was the Triggering Event

The triggering event underlying the District Court order was a misrepresentation made by Judicial Nominee, Magistrate Ian D. Johnston of U.S. District Court for the Northern District of Illinois, and related misleading statements on his published response to the Senate Questionnaire for Judicial Nominees, beginning with a false allegation that a petition for certiorari was filed with this Court:

> *Bailey v. Worthington Cylinder Corporation, Inc.*, No. 16 CV 7548 (N.D. Ill.), cert. filed Nov. 26,2019, cert. denied Jan. 27,2020 (U.S. 19-681). (See Mr. Johnston's Response to the Senate Questionnaire, p.34.][4]

No such petition for certiorari was ever filed. Mr. Johnston also seriously mislead the Senate with regard to the reason he refused to disqualify himself from the *Bailey* case he presided over when he was a

---

[4]Mr. Johnston's response to the Senate Questionnaire is at: https://www.judiciary.senate.gov/imo/media/doc/Iain%20Johnston%20SJQ%20-%20PUBLIC.pdf

magistrate judge. (See Questionnaire response p.38, compare to *Baily v. Bernzomatic* (N.D. Ill., Feb. 1, 2019, No. 16 CV 07548 dkt. 402) 2019 U.S. Dist. LEXIS 16313, at *27, further discussed below.)

Mr. Johnston characterized his misrepresentation that a petition for certiorari had been filed in *"Bailey v. Worthington, Inc.,* No. 17 CV 7548," as a "Bluebooking error":

> [i]f a Bluebooking error is the basis of a defamation claim, then Lord have mercy on all attorneys, judicial law clerks, and judges! (*A.W.S. v. Johnston,* 4:22-cv-04718-JSW (N. Dist. CA), dkt. 36 p.9:6-7.)

However, the case number he referenced, 19-681, was a different case altogether, it was this petitioner's earlier petition, *Andrew W. Shalaby v. United States District Court* (2020), 140 S.Ct. 957, 206 L.Ed.2d 121. That Supreme Court petition related to denial of Mr. Shalaby's application for admission to the general bar of the U.S. District Court for the Northern District of Illinois, whereas the *Bailey* case related to the disqualification matters Mr. Johnston mislead the Senate about on page 38 of his response to the questionnaire. Mr. Johnston made clear his intentions on his filing of 12/27/22 in *A.W.S. v. Johnston,* 4:22-cv-04718-JSW (N. Dist. CA, dkt. 36 p.9:6-7, as having to do with decisions of how he recused himself from cases:

> [t]he response discussed my decisions about how I recuse myself from cases.

The recusal concern Mr. Johnston mislead the Senate about was a very serious matter, because it lead to disbarment of Mr. Shalaby from the *Bailey* case (detailed further below), leaving Mr. Bailey helplessly pro per from January 13, 2020 (dkt. 515) to November 26, 2021 (dkt. 651), which in turn lead to horrible consequences.

The recusal matter arose because Mr. Johnston worked for the same law firm that represented "Bernzomatic," the party Mr. Bailey was suing, in an earlier case, Mr. Shalaby's own, which Mr. Johnston did not properly inform the Senate about. Mr. Shalaby had been injured on April 21, 2006 by the same product which killed others and injured Mr. Bailey, a handheld torch manufactured by "Bernzomatic" (a.k.a. Worthington, Inc.)[5] Mr. Johnston worked for the same law firm that represented Bernzomatic, the Holland & Knight Firm).[6] Mr. Johnston did not disclose that Mr. Shalaby was the plaintiff and injury victim in that case. He also did not disclose that after he left the Holland & Knight firm, he continued a co-counsel

---

[5]For a list of some of the Bernzomatic cases where people were injured or killed by the products, see *Shalaby v. Bernzomatic*, 9th Cir. No. 21-55034, dkt. 25 pp. 12-13.

[6]The Holland & Knight law firm obtained a prefiling order against Mr. Shalaby in 2012, which remains in litigation to date, *Shalaby v. Bernzomatic*, 9th Cir. No. 22-55309, after Mr. Bailey and others were injured (some killed) by the Bernzomatic torch product.

relationship with the firm during pendency of Mr. Shalaby's case. Nor did he disclose Mr. Bailey's vehement objection to the fact that Mr. Johnston, sitting as a Magistrate Judge, took the seemingly unprecedented step of hiring his own "court-appointed" product liability expert in the case. See *Bailey v. Worthington*, 1:16-cv-7548, dkt. 157, 236.

Mr. Johnston's allegation that a petition for certiorari had been sought and denied in *Bailey v. Worthington, Inc.* therefore gave the false impression that the recusal matter was appealed and decided in his favor, but this is not true. These matters are just now before the Court of Appeals as part and parcel of the order disqualifying Mr. Shalaby from the *Bailey* case, in the pending related appeal, *Bailey v. Worthington, et al.*, 7th Cir. Court of Appeal No. 22-2111. That appeal includes the recusal matter detailed on the order disqualifying Mr. Shalaby:

> Attorney Shalaby's response argues that Magistrate Judge Johnston still violated 28 U.S.C. § 455(b)(2) by failing to recuse himself because, after he left Holland and Knight, Magistrate Judge Johnston had appeared as co-counsel in some cases with a Holland & Knight attorney, Jack Siegel. Attorney Shalaby argues serving as co-counsel with a Holland & Knight attorney falls within the ambit of the language of 28 U.S.C. § 455(b)(2)[...] (*Baily v. Bernzomatic* (N.D.Ill. Feb. 1, 2019, No. 16 CV 07548) 2019 U.S.Dist.LEXIS 16313, at *25-26.)

Mr. Shalaby also had a mandatory duty to report Mr. Johnston under American Bar Association Model Rule of Conduct 8.3(b) because Mr. Johnston's response to the Senate Questionnaire included revelation that the facts he concealed from the Senate presented the same reasons he disqualified himself from two other cases listed on his response to the Questionnaire. On p.38, he disclosed that he disqualified himself in *Precision Governors, LLC v. Leap Power Solutions, LLC*, 16CV50242, and *Metropulos v. Wasserman,* 14 CV 50025, because he remained in close contact with his former partners and colleagues. However, he did not disclose that he also remained in close contact and worked as a co-counsel with the Holland & Knight firm[7], yet he refused to disqualify himself from Mr. Bailey's case, and added to this impropriety by retaining his own "court-appointed" product liability expert, improperly taking an active hand in the litigation.

E. Mr. Johnston Does Not Deny He Made the False Reporting to the District Court, Triggering the Escort Order

There is ample evidence that Mr. Johnston made the false reporting about Mr. Shalaby to the District Court because of the timing. The escort order was issued just two days after Mr. Shalaby contacted the

---

[7]See, for example, *Capital Fitness of Arlington Heights, Inc. v. Vill. of Arlington Heights* (2009) 394 Ill.App. 3d 913, 915 [333 Ill.Dec. 755, 758, 915 N.E.2d 826, 829], in which Mr. Johnston served as co-counsel with Holland and Kinght.

Court with regard to the misrepresentations Mr. Johnston made about the Bailey case on his response to the Senate Questionnaire.

American Bar Association Model Rule of Conduct 8.3(b) mandated reporting the matter.[8] Therefore, on July 20, 2020 and July 21, 2020, Mr. Shalaby contacted the Court regarding Mr. Johnston's misrepresentations to the Senate (Appendix A, p.13a ¶ 1). Two days later, on July 23, 2020, the District Court issued its "boiler-plated"[9] escort order based on false and contrived allegations that Mr. Shalaby had been seen at the courthouse in Illinois, and seen engaged in conduct which was so disturbing that it warranted the issuance of the order requiring the Marshals to escort Mr. Shalaby during any future visits to the courthouse. Mr. Shalaby had been in his home state of California the entire time, therefore the falsity was easily proved.

---

[8]ABA 8.3 states: "(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

[9]The term "boiler-plated" refers to nearly identical wording used after the words, "IT IS HEREBY ORDERED" and "IT IS FURTHER ORDERED" on the class of Executive Committee orders imposing U.S. Marshal escort requirements and similar restrictions on cases spanning many years, as further explained below. In all cases falling under the rubric "boiler-plated" as used herein, the cases were opened by the Executive Committee, a sole order was placed into the docket as document number one in each instance, and the cases was closed on the same day, as illustrated in the PACER dockets of *In re Long* and *In re Kowolski* (infra).

On a pro per filing made by Mr. Johnston on December 27, 2023, he does not deny that he made the reporting, and does not deny that the allegations of having seen Mr. Shalaby at the courthouse and having seen him engaged in disturbing behavior were false and contrived. Instead, he only states the reporting was protected by privilege:

> Likewise, the alleged statements made by me [Ian D. Johnston] to the Executive Committee are also privileged as these statements were directed to a body investigating attorney misconduct. (*A.W.S. v. Johnston,* 4:22-cv-04718-JSW (N. Dist. CA), dkt. 36 p.2:22-24.)

Also, the Executive Committee, the Seventh Circuit Court of Appeals, the judicial misconduct division of the Court of Appeals, the California State Bar, and the Department of Justice have all likely investigated the matter, and none of these entities deny that the allegations that Mr. Shalaby was seen at the Rockford courthouse and seen engaged in disturbing behavior were false, and that Mr. Johnston was the person that fabricated these false facts that caused the Executive Committee to issue its escort order. Despite this, Mr. Johnston continues to refuse to inform the Executive Committee that the allegations about Mr. Shalaby were false so that the escort order could be terminated, leaving the defamatory escort order "active", which is the reason Mr. Shalaby filed the declaratory action, *A.W.S. v. Johnston,* 4:22-cv-04718-JSW.

(1) The Related Appeal Involves Mr. Johnston's Other False Allegations and Improprieties

The related appeal, *Bailey / Shalaby v. Worthington*, et al., 7th Cir. No. 22-2111 (pending), aries in relation to other serious misrepresentations by Mr. Johnston. The Court of Appeals' order explains that the Executive Committee denied Mr. Shalaby's bar membership application because of a non-final District Court order revoking Mr. Shalaby's pro hac vice admission in the *Bailey* case, based on "multiple misrepresentations" to the Court (Appendix A p.2a):

> That denial had been based on a detailed 48-page order issued by Judge Reinhard revoking Mr. Shalaby's admission *pro hac vice* in a pending civil case, *Bailey v. Worthington*, No. 16-cv- 07548, based on multiple misrepresentations Mr. Shalaby had made to the court.

However, it is not true that Mr. Shalaby made multiple misrepresentations, and Mr. Johnston was also the source of this misinformation, and even continues making misrepresentations at this time. For his other misrepresentations contained in the *Bailey* docket, an example is found in *Bernzomatic v. Worthington*, 1:16-cv-7548, dkt. 333 p. 4 ¶ 4, where then Magistrate Judge Johnston acknowledged that Mr. Shalaby was not required to report an earlier federal court matter as a "sanction" because it was not a "sanction," but he nevertheless misrepresented that Mr. Shalaby was "not truthful", only to later be

overturned by supervising Judge Reinhard. This was what Magistrate Judge Johnston stated on dkt. 333 p.4 (*Bailey*, 1:16-cv-7548):

> ...[t]he [Magistrate Johnston] Court has found that Mr. Shalaby should have disclosed these proceedings to the Court when he filed his application to proceed pro hac vice.

Compare to Judge Reinhard's order reversing, dkt. 382, p.8 ¶ 1:

> It was contrary to law to find it within the scope of discipline that was reportable on the PHV application. The order [333] is modified accordingly to reflect this ordered payment was not required to be reported on Attorney Shalaby's PHV application.

Mr. Johnston's other misrepresentations included a false contempt allegation referenced on dkt. 161 in *Bailey v. Worthington,* 1:26-cv-07548, which was responded-to on dkt. 164 pp. 5-6, and discharged at dkt. 238).

For his present-day misrepresentations, one possibly very serious misrepresentation appears to be his denial that he blocked certain documents from being filed in the *Bailey* case in January 2021, despite the fact that he was removed from the case almost two years earlier (*Bailey* dkt. 446, April 12, 2019). The District Court informed Mr. Bailey that the filings

were blocked, and the blocked filings bore Judge Johnston's file-stamp and name. See *A.W.S. v. Johnston*, 4:22-cv-04718-JSW, Mr. Johnston's representation on dkt.38-1 ¶ 4 regarding the "blocked filings" and his representation that he had no involvement in the Bailey case, and compare to the evidence at dkt. 42-3 (court confirmation of blocked filings), 42-4 (blocked document referenced in 42-3), and in *Bailey v. Worthington*, *et al.*, dkts. 608 and 609, blocked filings bearing the filed stamps identifying "JUDGE IAIN D. JOHNSTON".) The Executive Committee was located in Chicago, and received notice of filings only in *In re Shalaby*, 1:20-cv-4315. However, Mr. Johnston was at the Rockford courthouse where the *Bailey* case was pending, and the documents which were blocked from filing later appeared bearing the "FILED" stamp identifying "JUDGE IAN D. JOHNSTON" (*Bailey* dkts. 608, 609). The District Court informed Mr. Bailey that his filing was blocked because it "pertains to a restricted filer," referring to Mr. Shalaby, who was the subject of the escort order (*A.W.S. v. Johnston,* dkt. 42-3).

Mr. Johnston, now a federal judge, also continues to misrepresent facts present-day, in *A.W.S. v. Johnston*, 4:22-cv-04718-JSW (N. Dist. CA), on dkt. 36 p.9:21, where he first misrepresents that Mr. Shalaby's declaratory action presents a defamation claim with regard to the false Supreme Court case name he presented on p.34 of his response to the Senate Questionnaire, then based on his own false characterization, jabs as follows:

> These statements are only defamatory to

> a narcistic [sic], conspiratorial, paranoid mind." (*Id*. at dkt. 36 p.9:12.)[10]

Despite these statements, Mr. Johnston does not deny his false presentation on his response to the Senate Questionnaire but calls it a "Bluebooking error," and does not deny that he fabricated the false allegations regarding Mr. Shalaby having visited the Rockford courthouse and having been engaged in disturbing conduct, but states such false statements are protected by privilege. (*A.W.S. v. Johnston,* 4:22-cv-04718-JSW (N. Dist. CA), dkt. 36 pp. 2:22-24, 9:6-7, and 11:6-8.)

H. Court of Appeals Acknowledges That the Escort Order Is "Unusual" Because No Complaint Was Filed and No Hearing Was Afforded

The Court of Appeals declares that the District Court order is "unusual" (Appendix A, p. 5a):

> The unusual order that Mr. Shalaby be accompanied by U.S. Marshals is another story.

This is likely because the Court of Appeals recognizes that it is most unusual for a District Court to open a case as a plaintiff and also serve as the judge, never file a complaint or charging document, enter only the

---

[10] Also on dkt. 34, Mr. Johnston jabs: "[o]n a personal note, I hope you obtain the therapy and treatment you need."

adverse order as the sole document number one in the docket, then immediately close the case the same day. However, it is this systemic practice which mandated reversal, not dismissal. Instead, the Court of Appeals dismissed the appeal as to the escort order, based on its own earlier case decisions, but without statutory authority or case law from any other jurisdiction:

> This order is more akin to the order in *In re Long*, 475 F.3d 880 (7th Cir. 2007), where the Executive Committee barred a person from access to the court library in the Dirksen courthouse in Chicago based on various incidents of refusal to behave appropriately in the library.

The Court of Appeals also erroneously believed that judicial redress was an available remedy:

> The executive committee in excluding him was acting in a proprietary capacity, just like a restaurant that expels an unruly customer and forbids him to return. Such an action is not judicial; rather it is the kind of action that the person against whom it was taken might seek judicial redress for. Our jurisdiction is limited to review of judicial orders and of regulatory orders by administrative agencies. (Emphasis added.) *In re Long* (7th Cir. 2007) 475 F.3d 880, 880-881.)

In re Kowolski, In re Long, and other cases posted on

the PACER system, reveal that the District Court has adopted a systemic pattern of opening such cases as the plaintiff, also sitting as judge, never filing and serving complaints or charging documents, entering adverse orders as the sole document in the dockets, then closing these cases the same day, because it knows that the Court of Appeals will declare that those orders are akin to "administrative" decisions and dismiss appeals from those orders as it has done here.

The District Court described the order as a "civil action" ("Civil Action No. 20 C 4315"), and captioned it "*In the Matter of Andrew W. Shalaby*" (Appendix C p.12a). The order was therefore "unusual" because of its unbelievable complete absence of due process. (See PACER docket, *In Re: Andrew W. Shalaby*, 1:20-cv-04315, and note the date the case was opened and closed, both July 23, 2020.)

The order also falsely stated,

> The Executive Committee has received troubling reports concerning Mr. Shalaby's behavior during recent visits to the Stanley Roszkowski Rockford Federal Courthouse in Rockford, Illinois. In addition to Mr. Shalaby's disruptive behavior during Court hearings and his false statements on Court documents, Mr. Shalaby has failed to comply with the orders from the Executive Committee: [...]. (Appendix C p.12a.)

Based on the false reporting, the order imposed a perpetual requirement that Mr. Shalaby be escorted by

U.S. Marshals during visits to the Courthouse in Rockford, IL (Appendix C p.13a):

> IT IS HEREBY ORDERED That to maintain judicial security, the court imposes an escort requirement: Upon his arrival at the Stanley J. Roszkowski U.S. Courthouse at 327 S. Church Street, Rockford, Illinois 61101 or the Dirksen U.S. Courthouse at 219 S. Dearborn Street, Chicago, Illinois, 60604, Andrew Shalaby is ordered to sign in at the security desk.
>
> IT IS FURTHER ORDERED That a representative of the U.S. Marshals Service shall accompany Mr. Shalaby at all times while he is present in the Stanley J. Roszkowski U.S. Courthouse or in the Dirksen U.S. Courthouse, and
>
> IT IS FURTHER ORDERED That failure to comply with this order may lead to additional restrictions on Mr. Shalaby's movement in the Northern District of Illinois Courthouses, and
>
> IT IS FURTHER ORDERED That the Clerk shall cause to be created and maintained a miscellaneous docket with the title "In the matter of Andrew W. Shalaby" and case number 20 C 4315. The miscellaneous docket shall serve as

> the repository of this order and any order or minute order entered pursuant to this order. All orders will be entered on the docket following standard docketing procedures. A brief entry will be made on the docket indicating the receipt of any materials from Mr. Shalaby.
>
> IT IS FURTHER ORDERED That the Clerk shall cause a copy of this order to be emailed to Mr. Shalaby at the email address on record.

The order was "boiler-plated" because it was nearly identical to earlier orders issued to other defendants over the years. Compare, for example, the wording used on the order in *In re Kowalski,* 765 F. App'x 139 (7th Cir. 2019) (ILND case number 1:18-cv-07228), which is almost identical to the wording used on the escort order in Appendix C, pp.13a-14a:

> IT IS HEREBY ORDERED That to maintain judicial security, Robert M. Kowalski is ordered to sign in upon arrival at the Dirksen U.S. Courthouse at 219 S. Dearborn Street, Chicago, Illinois, 60604 or at the Stanley J. Roszkowski U.S. Courthouse at 327 S. Church Street, Rockford, Illinois 61101, and
>
> IT IS FURTHER ORDERED That a representative of the U.S. Marshals Service shall accompany Mr. Kowalski at

> all times while he is present in the Dirksen U.S. Courthouse or in the Stanley J. Roszkowski U.S. Courthouse,
>
> and IT IS FURTHER ORDERED That failure to comply with this order may lead to further sanctions,
>
> and IT IS FURTHER ORDERED That a miscellaneous file with the title "In the matter of Robert M. Kowalski" and case number 18 C 7228 shall serve as the repository of this order, and any order or minute order entered pursuant to this order. The Clerk will also maintain a miscellaneous docket associated with the file. All orders retained in the file will be entered on that docket following standard docketing procedures.
>
> IT IS FURTHER ORDERED That the Clerk shall cause a copy of this order to be emailed to Mr. Kowalski at Robert.224@icloud.com. Signed by the Executive Committee on 10/30/2018. Emailed notice. (jjr,) (Entered: 10/30/2018)

Also see the order issued as dkt. 1 in *In re Long*, 1:05-cv-05709 (N. Dist. IL), and note that the operative wording is also almost identical. In a like fashion, that case was also opened and closed the same day of September 23, 2005, as were Mr. Shalaby's, Mr.

Kowalski's, and others.

The allegations about Mr. Shalaby, upon which the escort order was based, were contrived, and their falsity is not in dispute by the Executive Committee, the Court of Appeals, the California State Bar, or the Department of Justice.

F. The District Court's Allegation That Mr. Shalaby Also Violated "No Email" Orders Is Also Incorrect

The District Court presents other factually incorrect allegations on its escort order (Appendix C pp. 12a-13a):

> In addition to Mr. Shalaby's disruptive behavior during Court hearings and his false statements on Court documents, Mr. Shalaby has failed to comply with the orders from the Executive Committee: He was directed to communicate with the Clerk's Office only by way of United States Mail (see orders dated February 18, 2020 and July 10, 2020 in 18 D 21). Mr. Shalaby continued to violate this Court's order by emailing the Clerk's Office staff on July 20, 2020 and July 21, 2020.

The Court's error is self-evident, because it refers to case "18 D 21," which it never placed on the PACER docket. That case dealt only with Mr. Shalaby's first petition for admission to the general bar, and that is

all. There was no perpetual restriction as suggested on the escort order. In case 18 D 21, the Executive Committee issued its order requiring Mr. Shalaby to communicate with the Court by mail instead of email in relation to that matter. However, the two correspondences relating to Mr. Johnston's misrepresentations to the Senate had nothing to do with case 18 D 21. Moreover, the Court of Appeals declared that the order restricting communications was not judicial, but was an administrative act, and on this basis dismissed the appeal as to that matter as well. (Appendix A p.5a). Yet despite this, even Mr. Johnston incorrectly characterizes the order as a "court order." (*A.W.S. v. Johnston,* 4:22-cv-04718-JSW (N. Dist. CA), dkt. 38.)

To the extent that the Court of Appeals recognizes that the District Court has treated the "administrative" order restricting communications to have applied to Mr. Shalaby's July 20, 2020 and July 20, 2020 communications pertaining to Mr. Johnston's misrepresentations to the Senate, a restriction of this nature would extend beyond the administrative proceedings pertaining to bar admissions, because it would be a perpetual discriminatory restriction, barring an attorney from communicating with every division of the federal court, and would broadly apply to any and all conceivable matters, and this would make the order judicial and appealable.

The District Court failed to file and serve any complaint alleging a violation of the order restricting communications in case 18 D 21, and even failed to afford Mr. Shalaby an opportunity to respond, which is the systemic violation of due process also observed

in *In re Long, In re Kowalski*, and other similar cases filed by the Executive Committee posted on PACER.

G. The Court of Appeals Failed to Discharge its Concurrent Managerial Duties

The Court of Appeals also oversees and manages its district courts and Judges through its Judicial Council. Mr. Shalaby filed complaints pertaining to the contrived allegations presented on the District Court's escort order, therefore the Court of Appeals' Judicial Council presumably investigated the matter. Had the Court of Appeals found a scintilla of truth to the allegations that Mr. Shalaby had been seen at the Rockford courthouse and seen engaged in disturbing behavior, it certainly would have stated so in its decision. Likewise, the Court's Judicial Council does not dispute that Mr. Johnston made the false reporting, therefore, the Court of Appeals is presumed to know that Mr. Johnston made the false allegations about Mr. Shalaby to the District Court, yet it has failed to discharge its concurrent managerial duties, leaving Federal Judge Johnston to continue to make such serious misrepresentations without consequence, and leaving the Executive Committee to continue to maintain the escort order as "active" despite its awareness the allegations upon which it is based were false and contrived. The Court of Appeals' Judicial Council has also failed to act to put to an end the Executive Committee's systemic practice of opening cases as plaintiff and as judge, entering a sole docket entry as the order adverse to its named defendants (dkt. No. 1), then closing the cases the same day,

without ever filing and serving any charging document, and without ever affording those defendants an opportunity to be heard, as evidenced in *In re Long*, *In re Kowolski,* and *In re Shalaby*.

H. Appellate Finding That 28 U.S.C. § 636(c) Was Inapplicable

In affirming the portion of the District Court's dispositive order denying Mr. Shalaby's application for admission to the bar of the court, the Court of Appeals found that the participation of a magistrate judge as a voting member on the Executive Committee did not violate 28 U.S.C. section 636. (Appendix A pp.6a-7a.) However, 28 U.S.C. section 636(c)(1) mandates the consent of the parties before a magistrate judge can gain jurisdiction to enter dispositive orders, and no consent was given in this case. The District Court's practice of allowing magistrate judges to serve as voting members, which is codified under its Internal Operating Procedure section (2)(b), is therefore is an ongoing violation of 28 U.S.C. section 636(c)(1).

I. The Effects of *Richardson-Merrell* on the Court of Appeals' Order Regarding Denial of Mr. Shalaby's Petition for Bar Membership

The Court of Appeals stated that "[T]he panel that decided appeal no. 19-2369 is treating this appeal as successive under this Court's Internal Operating Procedure 6(b)." (Appendix A, p.2a.) Appeal 19-2369 is listed as related case *In re Shalaby* (7th Cir. 2019) 775 F.App'x 249). That appeal was from the District

Court's denial of Mr. Shalaby's earlier petition for admission to the general bar of the U.S. Dist. Ct. for the Northern District of Illinois. The denial of admission was based on the District Court's non-final order revoking Mr. Shalaby's Pro Hac Vice admission in *Bailey*. The District Court stated its reasons for disqualifying Mr. Shalaby in *Baily v. Bernzomatic* (N.D.Ill. Feb. 1, 2019, No. 16 CV 07548) 2019 U.S.Dist.LEXIS 16313, as follows:

> But, again, the matters before the court are Attorney Shalaby's actions occurring after the order [333] on defendants' motion to revoke his PHV admission. The motion filed by defendants has been decided. That decision was not to revoke his PHV admission...(*Id.* at 64.)
>
> Attorney Shalaby's response argues that Magistrate Judge Johnston still violated 28 U.S.C. § 455(b)(2) by failing to recuse himself because, after he left Holland and Knight, Magistrate Judge Johnston had appeared as co-counsel in some cases with a Holland & Knight attorney, Jack Siegel...(*Id.* at 25.)
>
> In its research, the court found no case in which the language of Section 455(b)(2) was construed to apply to a judge who was a former member of a law firm and, who, after withdrawing from that firm, had appeared as co-counsel with a

> member of that firm in an unrelated matter at the same time that a different member of that firm was serving as a lawyer in the matter in controversy. Attorney Shalaby did not cite any cases in support of his position on this matter. Local Rule 83.50 of the United States District Court for the Northern District of Illinois adopts the American Bar Associations Model Rules of Professional Conduct ("Model Rules"). Rule 8.2(a) of the Model Rules provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." Attorney Shalaby's statements clearly were made with reckless disregard as to their truth or falsity. [*23] A simple review of the transcript of the hearing would have revealed that Magistrate Judge Johnston had left Holland & Knight prior to its attorney's entry of appearance in Attorney Shalaby's personal action against defendants. (*Id.* at 27.)

Mr. Shalaby had previously appealed the revocation order, arguing that the "collateral order" exception to the "final judgments" rule applied. See *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468. However, the Court of Appeals dismissed that appeal, finding that under this Court's decision in *Richardson-Merrell, Inc.*

v. Koller, 472 U.S. 424, the "collateral order" exception did not apply:

> But an order granting or denying a motion to disqualify counsel in a civil case is not immediately appealable under the collateral order doctrine. See *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 105 S. Ct. 2757, 86 L. Ed. 2d 340 (1985). Plaintiff Kurtis Bailey must wait until the case is at an end to seek review of this order. Similarly, an attorney must wait to appeal such an order until the district court has entered a judgment on the merits of the underlying case. (*Bailey v. Worthington Cylinder Corp*. (7th Cir. June 18, 2019, No. 19-1265) 2019 U.S. App. LEXIS 24267, at *2.)

Even though the order revoking Mr. Shalaby's pro hac vice admission could not yet be appealed, because under *Richardson-Merrell, Inc.* the *Bailey* case had to first reach its end, the District Court used the revocation order to deny Mr. Shalaby's petitions for admission to the general bar of the Court due to the revocation order. See order denying bar membership, Appendix D p. 15a-16a ("IT IS HEREBY ORDERED that all above-listed submissions, including petitions, motions and requests are summarily denied.") On its order, the Court of Appeals explained that the context of the earlier of the successive appeals:

> That denial had been based on a detailed 48-page order issued by Judge Reinhard revoking Mr. Shalaby's admission pro hac vice in a pending civil case, *Bailey v. Worthington*, No. 16-cv-07548, based on multiple representations Mr. Shalaby made to the court. (Appendix A, p.2a.)[11]

However, it is not true that Mr. Shalaby made multiple representations to the court, as explained above, yet now there is no remedy with regard to the orders denying his petitions for admission to the general bar, or the defamatory effects of those orders, which likely give rise to the collateral order exception to the final judgment rule, warranting re-examination of the holding in *Richardson-Merrell, Inc.* to determine if it should be modified or overturned.

J. The Subsequent Civil Filing and Predictable Motion to Dismiss by the United States District Court

The Court of Appeals' erroneous belief that appeals from orders such as the escort order at issue could be dismissed because the aggrieved party could seek judicial redress has been tested in *A.W.S. v. Johnston,* 4:22-cv-04718-JSW (N. Dist. CA), a declaratory action aimed at setting aside the escort order nunc-pro-tunc

---

[11]The Court of Appeals had to have reached this conclusion by speculation, because the District Court's denial was a summary denial. (Appendix D pp.15a-16a.)

on grounds of the underlying misrepresented facts. Predictably, the United States Department of Justice, representing the District Court, has moved to dismiss the action, despite the fact that the District Court is not even a party to the action. Mr. Johnston also has a motion to dismiss pending. Both motions include substantive grounds of privilege and immunity. See *A.W.S. v. Johnston,* 4:22-cv-04718-JSW (N. Dist. CA), docket numbers 36 and 37. The Court of Appeals was therefore mistaken in its belief that judicial redress was an available option, because this Court made clear in *Stump v. Sparkman* (1978) 435 U.S. 349, 359 [98 S.Ct. 1099, 1106, 55 L.Ed.2d 331, 341]), that the court has absolute immunity even if its exercise of authority is flawed by the commission of grave procedural errors.

REASONS FOR GRANTING THE PETITION

1. Systemic Wrongful Dismissals of Appeals

This petition should be granted because for many years the Seventh Circuit Court of Appeals has been erroneously dismissing appeals by defining certain orders as akin to "administrative" orders, while inconsistently deciding other orders as "judicial" orders, and contradicting its own rationale.

In *In re Palmisano* (7th Cir. 1995) 70 F.3d 483, 484, the Court of Appeals explains the difficulties it faces when deciding whether orders issued by the Executive Committee:

> Palmisano's appeal presents an immediate difficulty. Disbarment sounds

> like an administrative rather than a judicial step, an impression reinforced by its assignment to the Executive Committee, the administrative arm of the court.

In some cases, such as *In re Palmisano*, and *In re Shalaby* as to one of the orders at issue, the Court of Appeals found it had jurisdiction and decided those matters on the merits. In other cases, and even under the same rationale that it used to decide *In re Palmisano* and *In re Shalaby*, the Court of Appeals inconsistently dismissed those appeals. This case presents a hybrid where both occurrences, a partial affirmance and a partial dismissal, have taken place.

The Court of Appeals explained that the determining factor was whether the order appealed had a concrete adverse affect that could be rectified by further judicial action. *In re Palmisano* (7th Cir. 1995) 70 F.3d 483, 484. However, in *In re Long*, *In re Kowolski,* and *In re Shalaby*, an appellate decision rectifies the adverse affects of the orders, therefore the Court of Appeals has been dismissing these cases in error for many years.

2. Systemic Due Process Violation by the District Court

This case also presents a very serious systemic violation of due process where the District Court has on several occasions opened civil cases as both plaintiff and judge, entered as the sole docket entry the orders adverse upon its defendants, then closed the cases the

same day, without ever having filed and served any complaint or charging document. In response to this systemic violation of due process, the Court of Appeals dismisses appeals from such orders under its mistaken belief that the aggrieved party can seek judicial redress instead, which causes the District Court to continue its practice of systemic due process violations.

3. Systemic Violation of 28 U.S.C. § 636(c)(1)

The U.S. Dist. Court's Internal Operating Procedure 2(b) requires a magistrate judge to sit as a voting member, but this violates 28 U.S.C. section 636(c)(1) if the defendant does not consent as to dispositive matters, as was the case here. The Court of Appeals has mistakenly approved this procedural violation. See Appendix A p.7a. If this problem is not resolved by the Supreme Court, it shall continue, because of the requirement of IOP 2(b) that a magistrate judge serve as a voting member on the Exeuctive Committee on such dispositive matters, even without party consent as required by 28 U.S.C. section 636(c)(1).

4. Reconsideration of *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424

Finally, the Supreme Court should grant certiorari to determine if it should modify or overturn its decision in *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424 (1985), because the Court of Appeals has used the non-final order disqualifying Mr. Shalaby in the

Bailey case to affirm the District Court's order denying Mr. Shalaby's admission to the general bar of the court, revealing a fact pattern that was not considered by the Supreme Court in *Richardson-Merrell*. This Court explained the "collateral order" exception to the final judgment rule as follows:

> To fall within the "collateral order" exception to the "final judgment" rule, an order must "conclusively determine the disputed question," "resolve an important issue completely separate from the merits of the action," and "be effectively unreviewable on appeal from a final judgment." (*Id.* at 425.)

This Court held in *Richardson-Merrell, Inc.* that the collateral order exception did not apply, therefore an order disqualifying an attorney could not be appealed until the case has reached its end. (*Id.* at 440.) In contrast, the Seventh Circuit Court of Appeals now states the following, in *Bailey / Shalaby v. Worthington*, 7th Cir. No. 22-2111, order dated July 1, 2022, dkt.6:

> Appellant Andrew W. Shalaby may not appeal the order he wants reviewed - the February 1, 2019 order revoking his pro hac vice admission. That ruling, as the district court's explicitly stated, was directed solely to "this case." See district court order of February 1, 2019 at p. 47. And, since this case is at an end, the matter appears moot - there appears no

> meaningful relief that this court could fashion in the event appellant Andrew W. Shalaby prevails. (Emphasis added.)[12]

This Court states that an order disqualifying an attorney cannot be appealed until the case is at its end, while the Court of Appeals contradicts by stating that the order disqualifying Mr. Shalaby appears moot because the case has reached "an end." On grounds that the Court of Appeals affirmed the order denying Mr. Shalaby's membership to the bar based on the non-final order revoking Mr. Shalaby's Pro Hac Vice admission (Appendix A, p.2a), this now presents a basis to determine whether the collateral order exception to the final judgment rule applies and justifies overturing *Richardson-Merrell*.

SUMMARY OF THE ARGUMENT

1. Court of Appeals' Error Spans Many Years

For many years, the Court of Appeals has been inconsistently re-defining some, but not all, orders issued by the District Court's Executive Committee, as non-judicial, and dismissing those appeals on this erroneous basis.

///

///

[12] In appeal 22-2111 Worthington Ind. also has a pending motion to dismiss the appeal for the same reason (dkt. 38).

2. The District Court Has Been Systemically Violating Due Process for Many Years

For many years, the District Court has been opening cases as plaintiff and judge, entering orders adverse to its designated defendants, then closing those cases the same day, without ever filing and serving complaints, and without ever affording hearings. This is a very serious systemic due process violation.

3. The District Court Has Been Allowing Magistrates to Be Voting Members on Dispositive Matters Without the Consent Required under 28 U.S.C. Section 636(c)(2)

For many years the District Court, by way of its Internal Operating Procedure 2(b), has required magistrate judges to be voting members on dispositive matters such as this, without party consent, in violation of 28 U.S.C. section 636(c)(2).

4. The Supreme Court Likely Did Not Consider Collateral Consequences of Making Attorney Disqualification Orders Non-appealable until after Entry of Final Judgment, as Are Now Observed Here

While deciding *Richardson-Merrell, Inc.,* the United States Supreme Court was not likely aware that if an order disqualifying an attorney was not appealable under the "collateral order" exception to the final judgment rule, this would result in other bar disqualifications before the revocation order could be

appealed, as demonstrated in this case. Now the Court of Appeals also believes that when a plaintiff voluntarily dismisses his case, the revocation order cannot be appealed. (*Bailey/Shalaby v. Worthington*, 7th Cir. No. 22-2111, order dated July 1, 2022, dkt.6.) This leaves the disqualified attorney with an order that causes permanent professional and reputational damage damage without the ability to seek judicial redress, and therefore warrants reconsideration of *Richardson-Merrell*, *Inc.*

///

///

///

///

///

///

ARGUMENT

I. REPEATED DISMISSALS OF APPEALS OF EXECUTIVE COMMITTEE ORDERS VIOLATE ARTICLE III S.2 CL.1

The Court of Appeals has a duty to decide appeals under U.S. Const., Article III Section 2 Cl.1. The Court of Appeals has jurisdiction to reverse the District Court's order under 28 U.S.C. section 1291, which states in relevant part:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, [...]

In *In re Palmisano* the Court of Appeals found it had jurisdiction by finding that the Executive Committee's order was judicial, and affirmed, explaining the reason:

> But the discipline or disbarment of an attorney presents a case or controversy within the meaning of Article III of the Constitution, <u>because it has concrete adverse effects on the attorney that can be rectified by further judicial action</u>. (Emphasis added.) (*Id.* at 484.)

The determining factor was whether the order appealed had a concrete adverse affect that could be

rectified by further judicial action, which describes the escort order well, because of the disrepute it brings to Mr. Shalaby's professional reputation, the pending State Bar investigation over the matter (*A.W.S. v. Johnston*, 22-cv-04718-JSW dkt. 27 p.2:16-18), and the adverse consequences of additional sanctions imposed under the order for failure to comply. Without acknowledging any of these adverse affects, the Court of Appeals simply dismissed the appeal, the same way it dismissed the appeals in the two cases it cited, *In re Long* and *In re Kowalski,* 765 F. App'x 139 (7th Cir. 2019). In *In re Long* the Court of Appeals reasoned that the aggrieved party could simply pursue a judicial remedy, directly contradicting *Stump v. Sparkman* (1978) 435 U.S. 349, 359 [98 S.Ct. 1099, 1106, 55 L.Ed.2d 331, 341]), explaining that the court has absolute immunity even if its exercise of authority is flawed by the commission of grave procedural errors. Consistent with this premise, in *A.W.S. v. Johnston*, 22-cv-04718-JSW, the District Court now has a motion to dismiss which includes assertions of immunity and privilege (dkt. 37). One lower court simply cannot reverse the order of another lower court. The remedy must vest with the Court of Appeals, therefore the dismissal is improper.

II. THE DISTRICT COURT HAS BEEN SYSTEMICALLY VIOLATING DUE PROCESS FOR MANY YEARS

For many years, the District Court has been opening cases as the plaintiff and judge, entering as the sole docket entry its orders adverse to its named

defendants, then, closing those cases the same day, without ever having filed or served any complaints, and without ever having afforded the defendants opportunities to be heard. This bears out not only in this case, but also in *In re Long*, *In re Kowolski*, and other cases posted on the PACER docket. The District Court's repeated due process violations are therefore undisputed. The United States Supreme Court should therefore grant certiorari and put an end to this practice of the United States District Court for the Northern District of Illinois.

III. THE DISTRICT COURT HAS BEEN SYSTEMICALLY VIOLATING 28 U.S.C. § 636(c), BY APPLYING IOP 2(b)

The District Court has codified the composition of its Executive Committee to include a Magistrate Judge as a voting member on dispositive matters such as the one before this Court. See The U.S. Dist. Court Internal Operating Procedure, section 2(b), quoted above. This systemically violates 28 U.S.C. section 636(c)(1), which states in relevant part:

> (1) Upon the consent of the parties, a full-time United States magistrate [magistrate judge] or a part-time United States magistrate [magistrate judge] who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such

> jurisdiction by the district court or courts he serves.

The United States Supreme Court should therefore bring to an end the codified practice of the Executive Committee in allowing a Magistrate Judge to be a voting member on dispositive matters without obtaining the consent of the defendants mandated under 28 U.S.C. section 636(c)(1).

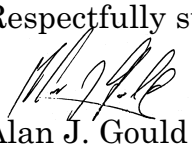
IV. *RICHARDSON-MERRELL, INC.* SHOULD BE RECONSIDERED

Richardson-Merrell, Inc. v. Koller, 472 U.S. 424 (1985), is the United States Supreme Court's holding which states that orders disqualifying attorneys are not appealable under the "collateral order" exception to the final judgment rule. However, this case now illustrates that the non-final order disqualifying Mr. Shalaby from the *Bailey* case was used by the District Court to deny him admission to the general bar of the Court, and used by the Court of Appeals to affirm that decision. Also, now the Court of Appeals believes that an appeal from the revocation is moot in light of the plaintiff's voluntary dismissal, leaving no remedy for the injury the revocation order perpetually causes to the disqualified attorney petitioner. This fact pattern is therefore presented to the United States Supreme Court to determine whether it should reconsider its holding in *Richardson-Merrell, Inc.*, and overturn that decision if such facts warrant application of the "collateral order" exception to the "final judgment" rule.

CONCLUSION

The United States Supreme Court grant certiorari to determine whether it should: (1) put an end to the District Court's systemic practice of opening cases as plaintiff, sitting as judge, entering orders without filing and serving complaints, and closing the cases the same day, as it did in *In re Long, In re Kowolski, In re Shalaby*, and the several other cases posted on the PACER system; (2) put an end to the District Court's application of its Internal Operating Procedure 2(b) requiring the participation of a magistrate judge as a voting member on dispositive matters, because this practice systemically violates 28 U.S.C. section 636(c)(1); (3) put an end to the systemic dismissal of appeals from Executive Committee orders under the mistaken belief that judicial redress is an available alternative; and (4) reconsider whether *Richardson-Merrell, Inc.* should be modified or overturned.

Respectfully submitted,



Alan J. Gould
6450 Mesa Oaks Court
Santa Rosa, CA 94509
Tel. 707-806-2977
email: gould202680@gmail.com
Attorney for Petitioner