No. 22-7845

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Daniel Coleman — PETITIONER
(Your Name)

vs.

Minneapolis Public Schools — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

8th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Coleman
(Your Name)

315 se Main St
(Address)

Mpls MN 55414
(City, State, Zip Code)

(612) 715-7908
(Phone Number)

Case No. # 22-3461

In the Supreme Court of the United States

Daniel Coleman,
Plaintiff/Appellant

Vs.
Minneapolis Public Schools
Defendant/ Appellee
Attorney: Jonathan Norrie & Jessica Kmetz
Bassford & Remele

ON WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT
BRIEF FOR PETITIONER
Case No. # 22-3461

QUESTION PRESENTED

Federal Rule of Civil Procedure 60(b)(1) authorizes relief from final judgment based on "mistake," as well as "inadvertence, surprise, or excusable neglect."

1. The question presented is: Whether Petitioner Daniel Coleman Rule 60 is timely under Federal rules of Procedure Rule 60?

2. The question presented is: Whether Rule 60 authorizes relief based on a mistake/inadvertence and/or fraud upon the court committed by opposing counsel?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §§ 1254, 1257, and 2101(c).
MN Statutes (Minn. Stat. § 518.58 (2012)
18 U.S.C. § 921(a)(25)
(Minnesota Statutes, section 121A.05)
(MN Stat 179A.06)
Individual with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Family Educational and Privacy Rights Act).
(Minn. Stat. 121A.05 &121A.06:Reports of Dangerous Weapons incidents in Schools)

Procedural History

1. Defendant Filed motion for summary judgment with a hearing scheduled for December, 2021.
2. Petitioner Daniel Colemans case was dismissed for summary Judgment on April 22, 2021 .
3. Mr. Coleman submitted a rule 59 and sought rehearing and certiorari for his rule 59.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 2/23/23.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 4/10/23, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

JURISDICTION

The United States Constitution provides jurisdiction pursuant to Article III Section 2:
The judicial Power shall extend to all Cases, inLaw and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.

Jurisdiction is also conferred pursuant to 28 U.S. 1254 (1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari upon the petition of any party to any civil or criminal Case, before or after rendition of judgment or decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §§ 1254, 1257, and 2101(c).
MN Statutes (Minn. Stat. § 518.58 (2012)
18 U.S.C. § 921(a)(25)
(Minnesota Statutes, section 121A.05)
(MN Stat 179A.06)
Individual with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Family Educational and Privacy Rights Act).
(Minn. Stat. 121A.05 &121A.06:Reports of Dangerous Weapons incidents in Schools)

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

CASES

Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985)

Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23.

The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934)

Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929)

Village of Willowbrook, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything.");

Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896);

Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949);

Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935).

Pumphrey v. K.W. Thompson

Tool Co., 62 F.3d 1128, 1131 (9th Cir. 1995)

Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991); see also In re Levander, 180 F.3d 1114, 1118-19 (9th Cir. 1999).

England v. Doyle, 281 F.2d 304, 310 (9th Cir. 1960).

Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991); see also In re Levander, 180 F.3d 1114, 1118-19 (9th Cir. 1999).

Pickford v. Talbott 225 U.S. 651, 657 (1912), see also Hazel-Atlas Co. v. Hartford Co., 322 US 238, 244-245 (1944).

4. Mr. Coleman's motion was denied due to being untimely
5. On April 18, 2021 Mr. Coleman filed a pro se motion Rule 60 that was mailed to the courts. The court filed the motion on April 21, 2021. As relevant here, Federal Rules of Civil procedure Rule 60 requires such motions to be filed one year or less from "the date on which the judgment becomes final."
6. Thus, Mr. Coleman's deadline for filing rule 60 expired on April 22, 2022. Mr. Coleman Filed his rule 60 motion within 1 year of the deadline.
7. November 15, 2022 The District Court denied Mr. Coleman's Rule 60 motion. It took over 6 months for the court to deny Mr. Coleman's motion.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

ISSUE 1: Petitioner filed rule 60 April 20, 2021, He was within his 1 year deadline, but the District court ruled his motion untimely. The court erred in this judgment.
Issue 2: The Defendant's counsel denied receiving evidence from Petitioner that resulted in the case being dismissed. 80% of the evidence that was dismissed was provided from the Defendant to the Plaintiff. The defendant deactivated access to the discovery link to prevent Plaintiff from the evidence to provide to the court.

Issue 1

STATEMENT

Many of us strive for greatness, but No one is perfect—and being accountable for our mistakes goes a long way.. On rare occasions, courts fail to apply dispositive precedent, Or they render their judgment unaware of misconduct and in this case discovery abuse. Federal Rule of Civil Procedure 60 undisputedly authorizes litigants to seek relief from final judgments based on specific kinds of legal errors and many others.

The question here is which part of Rule 60(b) applies when a district court fails to follow the operative rule for calculating a filing deadline, and erroneously deems a critical filing untimely. In addition, the court refused to hear Mr. Coleman's petition due to personal bias.

The answer is Rule 60(b)(6), a catch-all provision that encompasses "any other reason that justifies relief" that does not fit within Rules 60(b)(1)-(5). Rules 60(b)(2)-(5) those subsections cover newly discovered evidence, fraud, void judgments, and intervening developments that render the original judgment a nullity. Rule 60(b)(1)—which covers "mistakes"—as the only option besides Rule 60(b)(6). The two subsections are exclusive. Rule 60(b)(1) has a one year time limit. Mr. Coleman filed his motion within 12 months after the judgment he seeks to reopen, so if Rule 60(b)(1) governs, as Courts claims, the motion was untimely. But Rule 60 gives a 1 year deadline.
An effective legal system demands a proper balance between finality of judgments and the rendering of justice to litigants. On the one hand, there must be some point at which litigation terminates; a judgment would indeed be illusory if it could be opened at any time. On the other hand, no judge is infallible. There are often instances in which an error of law on the part of the court seriously prejudices the rights of a litigant. In many such cases, it is desirable that the court be able to alter, amend, or even vacate its final judgment.
Such relief is available in the federal judicial system under Federal Rules of Civil Procedure 59 and 60. In addition to these ordinary forms of relief, Federal Rule 60(b)6 provides that the district

court may relieve a party from a final judgment on the ground of "mistake," and permits a motion for such relief to be made within a reasonable time, but not more than one year after entry of the judgment.'
Rule 60(a) provides very liberal relief for the correction of clerical error on the part of the court.

Federal Rule of Civil Procedure 60 First promulgated in 1937, Rule 60 of the Federal Rules of Civil Procedure authorizes relief from final judgments for a wide variety of reasons. Rule 60(a) authorizes district courts to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record."

For example, district courts can grant Rule 60(a) relief when they accidentally swap two digits awarding damages on the verdict form or make a math error. Esquire Radio & Elecs., Inc. v. Montgomery Ward & Co.,804 F.2d 787, 795-96 (2d Cir. 1986); 11 Charles Allen Wright et al., Federal Practice and Procedure § 2854 & n.12 (3d ed. updated Apr. 2021) (Wright & Miller).

The court may correct such mistakes "on its own, with or without notice," or the parties can file a motion. Fed. R. Civ. P. 60(a). Timing is flexible: the court can provide relief "whenever" the mistake is found, although leave from the court of appeals is required if an appeal is pending. Id. Rule 60(b), in turn, lets a party "seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances." Gonzalez v. Crosby, 545 U.S. 524, 528 (2005).

Parties must file a motion, which courts will grant "on just terms" for the following reasons: 60(b)(1) covers "mistake, inadvertence, surprise, or excusable neglect." For example, if parties no-show because their lawyer misunderstood what day the judge said the trial would begin, that "mistake or excusable neglect" warrants relief. Ellingsworth v. Chrysler, 665 F.2d 180, 184 & n.3 (7th Cir. 1981). 60(b)(2) authorizes relief for "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." In this case Mr Coleman did not move for rule 59 in time. (DKT95)

Rule 60(b)(4) permits relief if "the judgment is void," for instance because the court lacked personal jurisdiction.Durukan Am., LLC v. Rain Trading, Inc., 787 F.3d 1161, 1163 (7th Cir. 2015). 60(b)(5) provides for relief if "the judgment has been satisfied, released, or discharged," if the judgment "is based on an earlier judgment that has been reversed or vacated," or if "applying [the judgment] prospectively is no longer equitable." Thus, if parties reach separate settlements, courts may apply Rule 60(b)(5) to reduce the total damages awarded because the judgment is partially "satisfied." BUC Int'l Corp. v. Int'l Yacht Council Ltd., 517 F.3d 1271, 1275 (11th Cir. 2008). Timing. Rule 60(b) sets different deadlines for different motions. Movants have a non-extendable one-year deadline to file motions under 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect," motions under 60(b)(2) for newly discovered evidence, and motions under 60(b)(3) identifying fraud. Fed. R. Civ. P. 6(b)(2), 60(c)(1).

By contrast, movants can file all other Rule 60(b) motions "within a reasonable time." Fed. R. Civ. P. 60(c)(1). Other bases for relief. Finally, Rule 60 "abolished" various common-law and equitable forms for seeking relief from final judgments, i.e., "bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela." Fed. R. Civ. P. 60(e).

There was no need to preserve these separate writs, because Rule 60(b) incorporated all of the grounds these writs covered. Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment. Conversely, Rule 60 does not affect courts' authority to grant certain other forms of relief, such

as "an independent action to relieve a party from a judgment" to prevent grave injustice. Fed. R. Civ. P. 60(d)(1); United States v. Beggerly, 524 U.S. 38, 47 (1998).

Shoehorning legal errors into Rule 60(b)(1) would also perversely give parties a year to raise legal errors without making the heightened showing required under Rule 60(b)(6). The normal tools for raising legal errors, a Rule 59(e) motion for reconsideration or a notice of appeal, typically given only a month. If Rule 60(b)(1) motions covered legal errors, dilatory parties could simply file de facto motions for reconsideration within a year without having to clear the "extraordinary circumstances" hurdle that Rule 60(b)(6) requires. The Federal Rules of Civil Procedure exist to provide clarity and efficiency.

Federal Rule of Civil Procedure 60 First promulgated in 1937, Rule 60 of the Federal Rules of Civil Procedure authorizes relief from final judgments for a wide variety of reasons.

Rule 60(a) authorizes district courts to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record."

For example, district courts can grant Rule 60(a) relief when they accidentally swap two digits awarding damages on the verdict form or make a math error. Esquire Radio & Elecs., Inc. v. Montgomery Ward & Co.,804 F.2d 787, 795-96 (2d Cir. 1986); 11 Charles Allen Wright et al., Federal Practice and Procedure § 2854 & n.12 (3d ed. updated Apr. 2021) (Wright & Miller). The court may correct such mistakes "on its own, with or without notice," or the parties can file a motion. Fed. R. Civ. P. 60(a). Timing is flexible: the court can provide relief "whenever" the mistake is found, although leave from the court of appeals is required if an appeal is pending. Id. Rule 60(b), in turn, lets a party "seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances." Gonzalez v. Crosby, 545 U.S. 524, 528 (2005). Parties must file a motion, which courts will grant "on just terms" for the following reasons: 60(b)(1) covers "mistake, inadvertence, surprise, or excusable neglect." For example, if parties no-show because their lawyer misunderstood what day the judge said the trial would begin, that "mistake or excusable neglect" warrants relief. Ellingsworth v. Chrysler, 665 F.2d 180, 184 & n.3 (7th Cir. 1981). 60(b)(2) authorizes relief for "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." For example, where a prison warden originally prevailed against a failure-to-train claim, Rule 60(b)(2) provided relief when new evidence of inadequate training emerged months after judgment. Luna v. Bell, 887 F.3d 290, 292-93 (6th Cir. 2018).

60(b)(3) authorizes relief in cases of "fraud . . . , misrepresentation, or misconduct by an opposing party," for instance when a plaintiff testified at trial that he was wrongfully terminated based on his back injury, but the injury was fictitious. Hernandez v. Results Staffing, Inc., 907 F.3d 354, 364 (5th Cir. 2018).

60(b)(4) permits relief if "the judgment is void," for instance because the court lacked personal jurisdiction.Durukan Am., LLC v. Rain Trading, Inc., 787 F.3d 1161, 1163 (7th Cir. 2015). 60(b)(5) provides for relief if "the judgment has been satisfied, released, or discharged," if the judgment "is based on an earlier judgment that has been reversed or vacated," or if "applying [the judgment] prospectively is no longer equitable." Thus, if parties reach separate settlements, courts may apply Rule 60(b)(5) to reduce the total damages awarded because the judgment is partially "satisfied." BUC Int'l Corp. v. Int'l Yacht Council Ltd., 517 F.3d 1271, 1275 (11th Cir.

2008). This provision likewise justifies relief if, for instance, a court enters a consent decree restructuring a prison system and "changed factual conditions" or "unforeseen obstacles" render the terms impracticable. Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 384 (1992).

60(b)(6) is a catch-all provision, authorizing relief for "any other reason that justifies relief." But Rule 60(b)(6) demands an additional step: the movant must also show "'extraordinary circumstances' justifying the reopening of a final judgment." Gonzalez, 545 U.S. at 535 (quoting Ackermann v. United States, 340 U.S. 193, 199 (1950)).

Timing. Rule 60(b) sets different deadlines for different motions. Movants have a non-extendable one-year deadline to file motions under 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect," motions under 60(b)(2) for newly discovered evidence, and motions under 60(b)(3) identifying fraud. Fed. R. Civ. P. 6(b)(2), 60(c)(1).

By contrast, movants can file all other Rule 60(b) motions "within a reasonable time." Fed. R. Civ. P. 60(c)(1). Other bases for relief. Finally, Rule 60 "abolished" various common-law and equitable forms for seeking relief from final judgments, i.e., "bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela." Fed. R. Civ. P. 60(e).

There was no need to preserve these separate writs, because Rule 60(b) incorporated all of the grounds these writs covered. Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment. Conversely, Rule 60 does not affect courts' authority to grant certain other forms of relief, such as "an independent action to relieve a party from a judgment" to prevent grave injustice. Fed. R. Civ. P. 60(d)(1); United States v. Beggerly, 524 U.S. 38, 47 (1998).

Summary of the Case

The Defendant failed to accommodate Plaintiff's chronic asthma and retaliated after Plaintiff sought accommodation for his disability from Principal Kristiana Ward ("Principal Ward"). Plaintiff experienced retaliation due to a breach of confidentiality. To clarify, a confidential and private letter (email) was submitted by Plaintiff's mother to the Minnesota Department of Education Commissioner; Dr. Brenda Casellius. The content of the email was about a student having a gun at Bryn Mawr School, which was forwarded to the Superintendent of the District and for which Plaintiff was reprimanded. (Ex.#18) (Minn. Stat. 121A.05 &121A.06:Reports of Dangerous Weapons incidents in Schools)

Plaintiff also contends his PERLA rights were violated because the District suspended him for serving in the capacity of a "whistleblower" who exercised his right to express issues and concerns about the conditions of his employment and safety of the students and staff.

The Defendant also violated the safety policy Minn stat 121A.06 and Minn. Stat. 121A.035. Plaintiff Disputes Defendant's. Plaintiff has a substantial amount of evidence and emails, exemplifying instances where he's asked for support, emails from staff thanking him for his work, requests to lead academic/behavior duties and admitting that Plaintiff is "better" at connecting with students.
This complaint was sufficient to impute to Minneapolis Public Schools general corporate knowledge of the plaintiff's protected activity. The plaintiff made disability aware to Defendant that his protected activity of asthma was documented on his district paperwork on multiple

occasions. (Ex. 31,32) (Docket 95) (See Reed, 95 F.3d at 1178 (holding that a plaintiff's complaint to an officer of the company communicated his concerns to the company as a whole for purposes of the knowledge prong of the prima facie case); see also Summa v. Hofstra Univ., 708 F.3d 115, 125–26 (2d Cir.2013). Therefore, Plaintiff satisfied the knowledge prong of the prima facie case. He was reminded he had a Target on his Back as stated by Portlynn Henderson at arbitration after Plaintiff raised concerns about Bryn Mawrs poor proficiency rating and disciplinary process at August 29,2016 staff meeting. The period from Plaintiff's complaint of having a disability/whistleblower claim to his termination is very short and evidence shows immediate retaliation everytime Plaintiff expressed concern for students well being. See Gorzynski, 596 F.3d at 110 ("Though this Court has not drawn a bright line defining, for the purposes of a prima facie case, the outer limits beyond which a temporal relationship is too attenuated to establish causation, we have previously held that five months is not too long to find the causal relationship.") (citations omitted); Gorman–Bakos, 252 F.3d at 554–55.

Nothing in the record establishes that Plaintiff acted in bad faith when on August 29 he spoke up about 0% and 5% school wide proficiency ratings & behavior, September 16 request for student IEP for escalated student, November 28 letter to Brenda Casselius stating student had a gun, and December 8 refusing to go outside due to disability.

It is illegal to have any firearm on school grounds, the Gun-Free School Zones Act (GFSZA) is an act of the U.S. Congress prohibiting any unauthorized individual from knowingly possessing a loaded or unsecured firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone as defined by 18 U.S.C. § 921(a)(25). Unlawful firearm possession. Each school board must adopt a policy requiring the appropriate school official to report a student possessing an unlawful firearm to the criminal or juvenile justice systems as soon as practicable (Minnesota Statutes, section 121A.05).
Schools must report to the state Department of Education incidents involving the use or possession of a dangerous weapon in school zones. The name of the student cannot be included in the report. Without this personally identifying information, the report is not education data and is public (Minnesota Statutes, section 121A.06). The Plaintiff was within reason to report a student having a gun at the school. (EX. 17)
Soon after this complaint was made the Plaintiff experienced retaliation because the Defendant ordered a disciplinary meeting. Plaintiff's email was forwarded to Superintendent Ed Graf and sent to Minneapolis Public Schools.
Plaintiff had enough documentation of retaliation that disproves the Defendant's allegations.

1. Defendant's Counsel advised key witnesses no longer worked for the Defendant. When in fact, the witnesses were still employed. This caused Mr. Coleman to miss the deadline for interviewing witnesses. May-August 2021.
2. Defendant Filed motion for summary judgment with a hearing scheduled for December, 2021.
3. By Order dated April 22, 2021 the Courts approved Defendants Motion for summary Judgment, dismissing Plaintiff's evidence.
   Jeffreys v. City of New York, 426 F.3d 549, 555 (2d Cir.2005), there is a "need for caution about granting summary judgment to an employer in a discrimination case where . the merits turn on a dispute as to the employer's intent," Holcomb v. Iona Coll., 521 F.3d 130, 137 (2d Cir.2008).

This complaint was sufficient to impute to Minneapolis Public Schools general corporate knowledge of the plaintiff's protected activity. The plaintiff made disability aware to Defendant that his protected activity of asthma was documented on his district paperwork on multiple

occasions. (Ex. 31,32) (Docket 95) (See Reed, 95 F.3d at 1178 (holding that a plaintiff's complaint to an officer of the company communicated his concerns to the company as a whole for purposes of the knowledge prong of the

Ultimately, Mr. Coleman was robbed of justice because Jonathan Norrie made a mistake by lying about not receiving or having access to evidence. The fact of the matter is that Jonathan Norrie did have the evidence as it was provided by the Defendant.

In 1946, Rule 60(b) was amended. Rule 60(b)(1) retained "mistake, inadvertence, surprise, or excusable neglect" as a ground for relief, but made clear that other actors besides the moving party could be responsible for such defects. Rule 60(b) also abolished the traditional writs and parceled out their grounds for relief across the new Rules 60(b)(2)-(6). Legal errors apparent from the court's opinion or the pleadings—including the legal error at issue here—fell in Rule 60(b)(6) where they remain today. The 1946 amendment did not change the meaning of "mistake" to include legal errors.
Rule 60's structure reinforces that "mistake" does not reach legal errors. The word "mistake" also appears in Rule 60(a), which provides relief from "a clerical mistake or a mistake arising from oversight or omission."

B. Judge Doty made an error ruling my motion rule 60 as untimely, when in fact it was timely. The Court erred in judgment of Law when denying my Rule 60 due to being "untimely". Mr. Coleman was within the one year time deadline. (Dkt 135) (131) The Court shows bias by denying Mr. Coleman's IFP even though Mr. Coleman qualifies, the court denied his IFP request because they believe they made the correct decision. This is biased because the District court ruled on my case without all of the evidence and denied my IFP due to Judge Doty's personal views. (Dkt 142) The Defendant denied having evidence that they provided to the Plaintiff. It doesn't make sense to how they would make such a claim when they provided the evidence to Mr. Coleman. According to Lankton v. Superior Court, 55 P.2d 1170, 1170 (Cal. 1936) (refusing to correct "a judicial error" under section 473 because such errors "could only be corrected by the court upon a motion for a new trial, or by an appellate court upon an appeal.")

What effect does an act of "fraud upon the court" have upon the court proceeding? "Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ...");

In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935). Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

In one case the Ninth Circuit Court of Appeals held that the **failure of a lawyer to disclose evidence during the discovery phase of the litigation** constituted fraud upon the court. The United States Supreme Court has also noted that the courts have the inherent power to vacate judgments on basis of fraud upon the court.

A judge is not the court. People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980). 2. What is "fraud on the court"? Whenever any officer of the court commits fraud during a proceeding in the court.] Fraud upon the court engaged in "fraud upon the court". In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.

It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function. Thus where the impartial functions of the court have been directly corrupted." "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

If someone fails "to pay careful and prudent attention" to court proceedings, say by falling asleep in court, that person commits inadvertence, not legal error. Similarly, a legal error is not a "surprise" that might "tend[] to mislead" a litigant or prompt the other side to take "undue advantage." This behavior was exhibited by Judge Doty, as he said he was "resting his eyes" during the Summary Judgement hearing. He also stated that the Defendants counsel can get in "Big Trouble" if his affidavit stating he didn't receive evidence was untrue. E.g., Rooks v. Am. Brass Co., 263 F.2d 166, 168 (6th Cir. 1959). Further, courts cannot cause judgments to go awry due to "inadvertence," "surprise," and "excusable neglect"—suggesting that courts do not make "mistake[s]" for Rule 60(b)(1) "Inadvertence" is a problem arising from a party's inattention to proceedings where that party's "rights" could be affected. "Surprise," too, involves circumstances that befuddle or mislead a party, prompting the other side to take advantage.

The phrase "mistake, inadvertence, surprise, or excusable neglect" is a term of art that marks back to the mid-19th century, when States were beginning to codify civil procedure. Seventeen state codes used that exact phrase as grounds for reopening, and they uniformly understood that "mistake, inadvertence, surprise, or excusable neglect" did not encompass legal errors.

In 1937, the drafters of Federal Rule of Civil Procedure 60 repotted that old soil, carrying the same meaning forward. Rule 60(b) originally authorized relief only for "mistake, inadvertence, surprise, or excusable neglect," while preserving common-law and equitable remedies for all other errors—including legal errors apparent from the face of the record. An overwhelming contemporaneous consensus of commentators and courts agreed that the new Federal Rules replicated what state codes had done, and that "mistake" under Rule 60 did not include legal

errors. Modern-day Rule 60(b)(1) retains the same "mistake, inadvertence, surprise, or excusable neglect language. The rest of modern-day Rule 60(b), including Rule 60(b)(6), simply codifies all the old remedies. So legal errors that are apparent from the face of the court's opinion or pleadings now fit within Rule 60(b)(6) Many other textual and contextual clues confirm that a "mistake" under Rule 60(b)(1) is not a legal error.

An adjacent provision, Rule 60(a), uses "mistake" to refer to non-legal errors. The three defects accompanying "mis-take" in Rule 60(b)(1)—"inadvertence, surprise, or excusable neglect"—undisputedly exclude legal errors. And Rule 60(b) groups 60(b)(1) with two other provisions. (60(b)(2) and (3)) by setting a one-year filing deadline forall three. Rules 60(b)(2) and (3) are also limited to factbound, non-legal errors. It would defy credulity for Rule 60's drafters to have made Rule 60(b)(1)'s "mistake" the one word that does not belong with the others. Rule 60(b)(1) motions must be filed within a year, whereas motions under those other subsections can be filed at any "reasonable time." It is anyone's guess under the government's interpretation which Rule 60(b) provision would ultimately cover particular legal errors, let alone which deadline would govern.

It is important that both parties be given equal opportunity to present their case. Mr. Coleman still has not been afforded the right to a fair trial. Plaintiff has acted in good faith and followed all necessary procedures in order to present his evidence and have a fair legal process.

Federal Rule of Civil Procedure 60 First promulgated in 1937, Rule 60 of the Federal Rules of Civil Procedure authorizes relief from final judgments for a wide variety of reasons. Rule 60(a) authorizes district courts to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record."

For example, district courts can grant Rule 60(a) relief when they accidentally swap two digits awarding damages on the verdict form or make a math error. Esquire Radio & Elecs., Inc. v. Montgomery Ward & Co 804 F.2d 787, 795-96 (2d Cir. 1986); 11 Charles Allen Wright et al., Federal Practice and Procedure § 2854 & n.12 (3d ed. updated Apr. 2021) (Wright & Miller).

The Court may correct such mistakes "on its own, with or without notice," or the parties can file a motion. Fed. R. Civ. P. 60(a). Timing is flexible: the court can provide relief "whenever" the mistake is found, although leave from the court of appeals is required if an appeal is pending. Id. Rule 60(b), in turn, lets a party "seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances." Gonzalez v. Crosby, 545 U.S. 524, 528 (2005).

60(b)(2) authorizes relief for "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 60(b)(3) authorizes relief in cases of "fraud . . . misrepresentation, or misconduct by an opposing party," for instance when a plaintiff testified at trial that he was wrongfully terminated based on his back injury, but the injury was fictitious. Hernandez v. Results Staffing, Inc., 907 F.3d 354, 364 (5th Cir. 2018).

So long as the court committed legal errors due to "oversight or omission," those errors would apparently fall within Rule 60(a). If the judge overlooks that the operative statute is superseded or the law clerk misses a red flag on Westlaw, Rule 60(a) would seemingly apply under Rule 60(a).

The Court describes the error here as an "untimely" and views Mr. Coleman was not in good faith to proceed with Rule 60. The truth of the matter is that Plaintiff was timely and only wishes to exercise his right to a fair trial and fair discovery process. Mr. Coleman's Rule 59 was not submitted within the allotted amount of time, but Petitioner submitted his rule 60 within 1 year

from the Districts courts ruling on April 22, 2021. Judge Doty exercised judicial bias by stating Mr. Coleman's Rule 60 was untimely, denied IFP and stated that they would not change their decision even if the rule 60 was timely. Dismissing evidence and undermining fraud upon the court affects our community and all litigants. Especially pro se Litigants! We cannot protect ourselves if the court does not respect our rights.

If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994). Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.")

REASON PETITION SHOULD BE GRANTED

It is very important for all civilians to be able to exercise their rights and use the FRCP to protect themselves from injustice per the rules of civil procedure.

Counselor Norrie admitted to making a mistake and having some of the exhibits mentioned in his brief. (DKT 104) Petitioner Daniel Coleman was timely and he was denied a fair judicial process due fraud upon the court and Resulting in the inability to present over 300 documents to represent his case. That is an absolute disservice to our honorable Judicial system.

If a Judgment is to be ruled upon, all evidence should be considered and rules of the law should be upheld. The Defendant engaged in fraud and discovery abuse/ misconduct that interfered with the Petitioners ability to gain evidence, interview witnesses and schedule time for a court reporter. The Defendant and Counselor Norrie denied employees were no longer employed with Minneapolis Public Schools to conduct witness interviews. When in fact the employees were still working for Minneapolis Public Schools.

The Court has the Power to Vacate the Judgment that was entered against the Petitioner on the grounds of 1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) and (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party. Rule 60 also states "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding."As the Judgment on Petitioner was only entered on April 23, 2021 and Petitioner Filed by April 20, 2022(Docket 95). His rule 60 motion was timely filed on April 20, 2022. (Docket 131).

The Petition should be granted because the District Court ruled Petitioner's Rule 60 as Untimely, but he submitted his Rule 60 motion within 1 year per Federal Rule of Civil Procedure. Petitioner was also denied the right to a fair judicial process, Without evidence a party is at a disadvantage and not given an equal opportunity to represent themselves.

CONCLUSION

In conclusion, The writ for certiorari from Plaintiff Daniel Coleman's Rule 60 motion should be granted. Rule 60(b) strikes a balance between justice and finality. Mr. Coleman was not given the opportunity to present his case fully and submitted a Rule 60 motion to rectify the issues of misconduct and Fraud. The Rule 60 motion was incorrectly ruled untimely, when in Fact Mr. Coleman submitted his motion before the deadline expired. The FRCP rule 60 grants 1 year for a movant to file rule 60. In this case the court made an error as Mr. Coleman timely filed his Rule 60 motion (Dkt. 131). Plaintiff acted in good faith and has been transparent in his attempt to seek justice for being discriminated against and violation of his rights, yet he was faced with fraudulent conduct that affected the outcome of his case.

Daniel Coleman

May 17, 2023

Signed Daniel Coleman