ORIGINAL

No. 22-900

FILED
MAR 14 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

GANIYU AYINLA JAIYEOLA,

Petitioner,

v.

ROBERT ALLEN BRUNDAGE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

GANIYU A. JAIYEOLA
Pro Se
10870 North Stelling Road,
#37D
Cupertino, CA 95014
(616) 635-4025
ganiyu.jaiyeola@gmail.com

QUESTIONS PRESENTED

Question 1 presented is:

> Whether a District Court can nullify an existing diversity jurisdiction by doing sua sponte conversion of one of Plaintiff's two witnesses into Plaintiff's second Defendant without a hearing or full briefing; an action that destroyed Plaintiff's diversity jurisdiction, denied Plaintiff due process, and resulted in the dismissal of Plaintiff's complaint for lack of subject-matter jurisdiction.

"Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United States*, 518 U.S. 81, 100 (1996); *United States v. Titterington*, 374 F.3d 453, 456 (6th Cir. 2004)."[1]

The two primary sources of subject-matter jurisdiction of the federal courts are diversity jurisdiction and federal question jurisdiction. Diversity jurisdiction generally permits individuals to bring claims in federal court where the claim exceeds $75,000 and the parties are citizens of different states. *See* 28 U.S.C. § 1332.

"We have an "independent obligation to determine whether subject-matter jurisdiction exists, even in the

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[1] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

QUESTIONS PRESENTED – Continued

absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006)."[2] ".."a federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002)."[3] "When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. See *United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002). Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid objection may lead a court midway through briefing to dismiss a complaint in its entirety. "[M]any months of work on the part of the attorneys and the court may be wasted." *Henderson*, 562 U.S., at ___, 131 S.Ct., at 1202. Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted" *Gonzalez v. Thaler*, 565 U.S. 134 (2012). A Court cannot create jurisdiction where none existed.

A Federal Court must have an "independent interest in ensuringthat legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988). "A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 234 U.S. 394. It is an opportunity

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[2] *Copen, et al. v. United States, et al.*, No. 20-3136 (6th Cir. 2021).

[3] *Freed v. Thomas, et al.*, No. 18-2312 (6th Cir. 2020).

QUESTIONS PRESENTED – Continued

which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965). The denial of due process implied that the Court "was without jurisdiction to render a final and binding decree." *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Due process requires an "opportunity for hearing appropriate to the nature of the case" *Mullane*. And the "hearing must measure up to the standards of due process" *Mullane*. When a judgment violates "due process of law", the judgment must be reversed. *See Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930). "We generally review a claim of procedural or substantive unreasonableness under the deferential abuse of discretion standard, meaning we will grant relief "when a ruling is based on an error of law or a clearly erroneous finding of fact, or when the reviewing court is otherwise left with the definite and firm conviction that the district court committed a clear error of judgment." *United States v. Moon*, 808 F.3d 1085, 1090 (6th Cir. 2015) (quoting *United States v. Kerley*, 784 F.3d 327, 347 (6th Cir. 2015))."[4]

Question 2 presented is:

Whether a litigant can waive or forfeit an issue that determined subject-matter jurisdiction because the issue was not mentioned in

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[4] *United States v. Hymes*, No. 20-5905 (6th Cir. 2021).

QUESTIONS PRESENTED – Continued

the complaint but the issue was raised in the pleadings.

The Clerk of the District Court violated Plaintiff's First Amendment rights, Plaintiff did not mention the violation in the Complaint but Plaintiff mentioned the violation in the pleadings.

"Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid objection may lead a court midway through briefing to dismiss a complaint in its entirety. "[M]any months of work on the part of the attorneys and the court may be wasted." *Henderson*, 562 U.S., at ___, 131 S.Ct., at 1202. Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted" *Gonzalez v. Thaler*, 565 U.S. 134 (2012).

The District Court held that "Supplemental jurisdiction pursuant to 28 U.S.C. § 1367 alone cannot provide the basis for subject matter jurisdiction (ECF No. 11 citing *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065, 1068 n.3 (11th Cir. 2001) and 4 Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure, § 3722 (4th ed.))." (App. 11). 28 U.S.C. § 1367 provides litigants an "opportunity to pursue complete relief in a federal-court lawsuit." *Arbaugh v. Y & H Corp.*, 126 S.Ct. 1235, 1240 (2006). Supplemental jurisdiction allows a federal court to adjudicate a claim over which it does not have independent subject-matter jurisdiction,

QUESTIONS PRESENTED – Continued

on the basis that the claim is related to a claim over which the federal court does have independent jurisdiction.

"[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.""[5]. "The statute's plain text allows parties to amend a complaint's "defective allegations of jurisdiction." 28 U.S.C. § 1653."[6] Where a complaint is not frivolous, a litigant should be allowed to amend a complaint. *See Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974). Both the District Court and the appellate Court did not give Plaintiff the opportunity to amend his complaint.

Question 3 presented is:

> Whether the Sixth Circuit Court of Appeals panel denied Plaintiff due process and was "procedurally unreasonable"[7] by granting the Defendant's Motion for judicial notice (in their decision) but denied Plaintiff the opportunity to be heard.

"The rules at issue here are the Federal Rules of Civil Procedure, which have the same force of law that any statute does." *In re Nat'l Prescription Opiate Litig.*,

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[5] *In re DePuy Orthopaedics, Inc.*, Nos. 19-3494/3501/3503/3504/3505/3506/3507/3508/3510/3511/3512/3513 (6th Cir. 2020).

[6] *In re DePuy Orthopaedics, Inc.*.

[7] *United States v. Cozad*, No. 20-3233 (10th Cir. January 3, 2022).

QUESTIONS PRESENTED – Continued

No. 20-3075 (6th Cir. 2020). "Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United States*, 518 U.S. 81, 100 (1996); *United States v. Titterington*, 374 F.3d 453, 456 (6th Cir. 2004)."[8] "Federal Rule of Evidence 201(c)(1) authorizes a court to take judicial notice without a request from a party. However subsection (e) of Rule 201 emphasizes that a party "is still entitled to be heard" when a court takes judicial notice before notifying a party. Underlying this rule is the notion that "[b]asic considerations of procedural fairness demand an opportunity to be heard on the propriety of taking judicial notice and the tenor of the matter noticed." Fed.R.Evid. 201(e) advisory committee's note. Thus, Rule 201 contains a procedural requirement – "namely, that the parties be given notice and an opportunity to object to the taking of judicial notice." *United States v. Hoyts Cinemas Corp.*, 380 F.3d 558, 570 (1st Cir.2004)." *Pickett v. Sheridan Health Care*, 664 F.3d 632, 648 (7th Cir. 2011). When a Court violates "procedural fairness" the Court is "procedural unreasonable"[9], the Court's decision would be based on an error of law, the Court would have committed a clear error of judgment, and the decision of the Court must be vacated. *Walters, et*

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[8] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

[9] *United States v. Cozad*, No. 20-3233 (10th Cir. January 3, 2022).

QUESTIONS PRESENTED – Continued

al. v. Richard Snyder, et al., Nos. 22-1353/1355/1357/1358/1360 (6th Cir. 2022).

"a departure from established modes of procedure [can] render the judgment void," [*Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L.Ed. 914 (1876)], *supra*, 93 U.S. at 283, **where the procedural defects are of sufficient magnitude to constitute a violation of due process**, or, as sometimes more circularly put, where the defects are "so unfair as to deprive theproceedings of vitality," *Eagles v. U.S.*, 329 U.S. 304, 314, 67 S.Ct. 313, 319, 91 L.Ed. 308 (1946), or where the procedural irregularities are serious enough to be deemed "jurisdictional," *Yale v. National Indemnity Co.*, 602 F.2d 642, 644 (4th Cir. 1979); Recent Cases, 62 Harv. L. Rev. 1400, 1401 (1949). *See* generally Restatement of the Law of Judgments § 8 (1942)." *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1027 (5th Cir. 1982).

Question 4 presented is:

> Whether Plaintiff has Federal question subject-matter jurisdiction because Plaintiff suffered a particularized injury because of the Defendant's violation of unauthorized practice of law.

"Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United*

QUESTIONS PRESENTED – Continued

States, 518 U.S. 81, 100 (1996); *United States v. Titterington*, 374 F.3d 453, 456 (6th Cir. 2004)."[10]

Under federal question jurisdiction, a litigant – regardless of the value of the claim – may bring a claim in federal court if it arises under federal law, including the U.S. Constitution. *See* 28 U.S.C. § 1331. Federal question jurisdiction requires that the federal element appears on the face of a well-plead complaint, is a substantial component of the complainant's claim, and is of significant federal interest. **Federal question subject-matter jurisdiction** is frequently derived from federal statutes granting a cause of action to parties **who have suffered a particular injury**.

Plaintiff suffered an injury from the Defendant's UPL violation at the Federal District Court. "extreme emotional distress – establishes a cognizable injury in fact"[11]. Defendant's UPL violation caused the Plaintiff "extreme emotional distress" because the violation was in Plaintiff's sudden unintended acceleration 1996 Toyota Camry 2013 car accident lawsuit against Toyota. An injury must be "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan*, 504 U.S. at 560). To qualify as particularized, an injury "must affect the plaintiff

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[10] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

[11] *Gerber, et al. v. Herskovitz, et al.*, No. 20-1870 (6th Cir. 2021).

QUESTIONS PRESENTED – Continued

in a personal and individual way," *Lujan*, 504 U.S. at 560 n.1, not in a general manner that affects the entire citizenry, *Lance v. Coffman*, 549 U.S. 437, 439 (2007)." *Gerber, et al.* "To establish standing under Article III of the U.S. Constitution, a plaintiff must establish (1) an injury, (2) that results from the defendant's conduct, and (3) that a court can redress. *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021). To fulfill the injury requirement, a plaintiff must allege she has suffered a concrete and individualized violation of a legally protected interest. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 & n.1 (1992). A defendant's alleged misconduct must "personally harm the plaintiff." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021)."[12] Plaintiff's "injury is particularized" because it affected Plaintiff "in a personal and individual way" and the Defendant "personally harm the plaintiff". This "particularized" injury arose because Defendant Brundage violated UPL at the Federal District Court.

[12] *Carroll v. Hill, et al.*, No. 21-3885 (6th Cir. 2022).

PARTIES

The petitioner is Ganiyu Ayinla Jaiyeola. The respondent is Robert Allen Brundage.

DIRECTLY RELATED CASES

Jaiyeola v. Brundage, No. 22-1083, Sixth Circuit Court of Appeals, judgment entered November 14, 2022

Jaiyeola v. Brundage, No. 1:21-cv-1053, Western District of Michigan, judgment entered February 8, 2022

Jaiyeola v. Dorwin, No. 22-1424, Sixth Circuit Court of Appeals, judgment entered October 5, 2022

Jaiyeola v. Dorwin, No. 1:22-cv-129, Western District of Michigan, judgment entered April 26, 2022

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Petitioner Ganiyu Ayinla Jaiyeola respectfully pray that this Court grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered on November 14, 2022.

OPINIONS BELOW

The November 14, 2022, opinion of the court of appeals is set out at App. 1-9 of the Appendix. The February 8, 2022 decision of the district court is set out at App. 10-14 of the Appendix. The December 27, 2022, order denying rehearing en banc is set out at App. 15 of the Appendix. The opinions and orders are not reported.

JURISDICTION

The decision of the court of appeals was entered on November 14, 2022. A timely petition for rehearing en banc was denied on December 27, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The district court had jurisdiction pursuant to 28 U.S.C. § 1331.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

U.S. Const. art. III, §2:

> 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. (https://www.law.cornell.edu/constitution/200barticleiii).

Judicial Notice:

> Judicial Notice is codified as 28 U.S.C. – ARTICLE II. JUDICIAL NOTICE and stated under Federal Rules of Evidence 201 – Judicial Notice of Adjudicative Facts.

Fed. R. Evid. 201. Judicial Notice of Adjudicative Facts:

> (a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> (b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially

notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) **Taking Notice. The court:**

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

(e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(https://www.law.cornell.edu/rules/fre/rule_201).

STATEMENT OF THE CASE

Background

This is a State of Michigan Unauthorized Practice of Law ("UPL") case at the Federal District Court in Grand Rapids, Michigan. The UPL violation occurred at the Federal District Court. The District Court case (R.1:21-cv-01053) from which this appeal arose came out of a motor vehicle product liability case (R.1:17-cv-00562) in which pro se Plaintiff Ganiyu Jaiyeola ("Plaintiff" or "Jaiyeola") asserted claims for injuries and other damages against Toyota Motor Corporation and Aisan Industry Co., Ltd. (both indicated as "Toyota") arising out of Plaintiff's 1996 Toyota Camry LE ("Camry") sudden unintended acceleration ("SUA")[15] car accident that occurred on November 25, 2013. Plaintiff is a disable because of the SUA car accident. Jaiyeola has three (3) children (15, 12, and 9 years). The facts on Plaintiff's Camry, the Camry accident of November 25, 2013, Plaintiffs' injuries (including Brain (Subdural Hematoma), Spinal Cord (Cervical Stenosis with Myelopathy), and Fractured Left Eye Socket), brain surgery, pending spinal cord surgery, and health prognosis are stated in Plaintiff's affidavit. (Plaintiff's Affidavit, R[16]. 243-2, Page ID #5500-5510; R. = (R.1:17-cv-00562)).

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[15] "SUA" refers to sudden unintended acceleration of the Camry.

[16] "R." refers to the record entry number in the District Court Docket. "R'." refers to the record entry number in a Sixth Circuit Docket.

The State of Michigan law on UPL that Attorney Brundage violated is codified as MCL 600.916(1) ("A person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state. A person who violates this section is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter."). Brundage violated the State of Michigan's UPL at the Federal District Court (W.D. Mich.) in Grand Rapids, Michigan.

David L. Ayers and Carmen M. Bickerdt are the Attorneys of record in (R.1:17-cv-00562; *Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 1:17-cv-00562 (W.D. Mich.)). Robert Allen Brundage is not an Attorney of record in (R.1:17-cv-00562). Brundage is an Attorney of record for Toyota at the Sixth Circuit (R'.19-1918, R'.21-2737, and R'.21-1812). Plaintiff filed a lawsuit (R.1:21-cv-01053; *Jaiyeola v. Brundage*, No. 1:21-cv-01053 (W.D. Mich.)) against Brundage for UPL violation in Michigan. The lawsuit also asserted that

Attorney Brundage ghostwrote pleadings to (R.1:17-cv-00562).

"Ghostwriting refers to the practice of a lawyer drafting pleadings, briefs, or other documents filed with a court by a . . . litigant when the lawyer's role in drafting the document is not disclosed."[17]. " . . . If a brief is prepared in any substantial part by a member of the bar, it must be signed by him. . . ."[18]. "We hold that the participation by an attorney in drafting .. brief is per se substantial, and must be acknowledged by signature."[19]. The District Court asserted that an " . . . attorney is an officer of the court, and I have to take them at their word . . . "[20]. Attorneys are required to be honest with the Court. "Federal courts possess certain inherent powers, including "the ability to fashion an appropriate sanction for conduct which abuses the judicial process." "[21]. UPL and ghostwriting of pleadings are conduct that abuse the Federal Court judicial process.

In *Doherty v. Lockwood*, No. 235451 (Mich. Ct. App. October 07, 2003), the Michigan Court of Appeals held as follows as regards UPL in Michigan: "..our Supreme Court . . . determined that "a person engages in the practice of law when he counsels or assists another in

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[17] https://www.wisbar.org/NewsPublications/RotundaReport/Pages/Article.aspx?ArticleID=7851.

[18] *Ellis v. State of Maine*, 448 F.2d 1325 (1st Cir. 1971).

[19] *Duran v. Carris*, 238 F.3d 1268 (10th Cir. 2001).

[20] R.87, PageID.1306, Lines 9-12 in (R.1:17-cv-00562).

[21] *Goodyear Tire & Rubber Co.*.

matters that require the use of legal discretion and profound legal knowledge.". . . .". *Doherty* therefore explains MCL 600.916(1).

Brundage violated the State of Michigan's UPL at the Federal District Court in Michigan (W.D. Mich.) for the following reasons[22]: **A.)** He was not licensed to practice law in Michigan; **B.)** He was not admitted to practice law at the U.S. District Court for the Western District of Michigan (W.D. Mich.; a Federal Court); **C.)** He had no pro hac vice admission or practice status at W.D. Mich.; **D.)** He was not living temporarily in Michigan when he violated UPL; and **E.)** Brundage cannot assign his UPL to remote legal work from California to Michigan because he was not licensed to practice law in Michigan.

Brundage admitted that he violated UPL in Michigan when he asserted as follows: **A.)** ". . . . When R.383 was drafted and filed, ... I quickly reviewed on my phone a non-final draft of what became R.383. I reviewed the draft for substance, and did not look at the attorney block. . . .". (Brundage Declaration, R'.21-2737, Doc. #17-3, Page ID #3, ¶ 6). **B.)** ". . . . I was not in Michigan when I reviewed the draft of R.383 or when it was filed.". (Brundage Declaration, R'.21-2737,

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[22] *Shapiro v. Steinberg*, 176 Mich. App. 683, 440 N.W.2d 9 (Mich. Ct. App. 1989); *Doherty*; *In Re: ERNEST J. DESILETS*, No. 99-90364 (Bankr. W.D. Mich. April 17, 2000); *Rittenhouse v. Delta Home Improvement, Inc.*, 255 B.R. 294 (W.D. Mich. 2000); *In re: Ernest J. Desilets*, 291 F.3d 925 (6th Cir. 2002); *Fla. Bar re Advisory Opinion – Out-of-State Attorney Working Remotely from Fla. Home*, No. SC20-1220 (Fla. May. 20, 2021).

Doc. #17-3, Page ID #3, ¶ 7). The above assertions by Brundage confirmed that he violated UPL. Bickerdt also confirmed that Brundage violated UPL in Michigan when she asserted as follows: "The draft was reviewed by multiple attorneys, including myself, Mr. Ayers, and Mr. Brundage.". (Bickerdt Declaration, R'.21-2737, Doc. #17-2, Page ID #4, ¶ 9).

"Federal courts possess certain inherent powers, including "the ability to fashion an appropriate sanction for conduct which abuses the judicial process." "[23]. The conduct of Brundage in ghostwriting pleadings and violating UPL constitute "conduct which abuses the judicial process" and a violation of Fed. R. Civ. P. 1 ("Rule 1"). Rule 1 calls for "just, speedy, and inexpensive determination of every action and proceeding.". The "just" refers to fairness. Brundage was unfair to pro se Plaintiff because of Brundages' violations of UPL and ghostwriting of pleadings. " . . . the Federal Rules of Civil Procedure, have the same force of law that any statute does."[24].

Plaintiff filed a UPL Complaint against Attorney Brundage. Fed. R. Civ. P. 55(a) states as follows: "(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.". On January 25, 2022, Plaintiff filed a motion

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[23] *Goodyear Tire & Rubber Co.*.

[24] *In re Nat'l Prescription Opiate Litig.*, No. 20-3075 (6th Cir. 2020).

with the District Court Clerk for entry of default against Brundage regarding Plaintiff's UPL Complaint against Brundage. (R.22-1, Page ID #775-807). On February 4, 2022, Plaintiff filed a motion requesting the Clerk to rule on (R.22-1, PageID.773). (R.23-1, Page ID #824-829). On February 8, 2022, Plaintiff filed a second motion with the District Court Clerk for entry of default against Brundage. (R.28-1, PageID #913-929). **The District Court Clerk did not consider the two default motions against Brundage and the Clerk never noticed Plaintiff on the two default motions. Plaintiff filed a lawsuit against the Clerk for violating Plaintiff's First Amendment rights and for denying Plaintiff due process.** (*Jaiyeola v. Dorwin*, 1:22-cv-00129 (W.D. Mich. 2022).). Brundage's failure to plead against Plaintiff's UPL Complaint confirmed the following: **A.)** That Brundage violated UPL, **B.)** That Brundage violated judicial processes, and **C.)** That Brundage violated Rule 1.

As explained in Plaintiff's Complaint, Plaintiff was aware of Brundages' UPL violations through the following events: **A.)** Brundage was not an Attorney of record for (R.1:17-cv-00562) but on August 26, 2021, Plaintiff received an email (with R.371 – for R.1:17-cv-00562) from Brundage's Secretary. Brundage Secretary's email was copied to Brundage, Bickerdt, and Ayers. **B.)** On August 27, 2021, pro se Plaintiff sent an email to Brundage's Secretary asking her to clarify why Plaintiff should be receiving R.371 from Brundage and why was Brundage copied on her email to Plaintiff. Brundage's Secretary did not reply Plaintiff's email.

C.) On August 28, 2021, Plaintiff sent an email to Bickerdt asking her to clarify why Brundage sent R.371 to Plaintiff. **D.)** On August 30, 2021, Bickerdt did not answer Plaintiffs' questions in her reply to Plaintiff. Neither Bickerdt nor Brundage nor Ayers clarified their roles in putting together R.371.

Plaintiff suffered an injury from the Defendant's UPL violation at the Federal District Court. "Extreme emotional distress – establishes a cognizable injury in fact"[25]. Defendant's UPL violation caused the Plaintiff "extreme emotional distress" because the violation was in Plaintiff's SUA 1996 Toyota Camry car accident lawsuit against Toyota. An injury must be "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan*, 504 U.S. at 560). To qualify as particularized, an injury "must affect the plaintiff in a personal and individual way," *Lujan*, 504 U.S. at 560 n.1, not in a general manner that affects the entire citizenry, *Lance v. Coffman*, 549 U.S. 437, 439 (2007).". *Gerber, et al.*. " . . . To establish standing under Article III of the U.S. Constitution, a plaintiff must establish (1) an injury, (2) that results from the defendant's conduct, and (3) that a court can redress. *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021). To fulfill the injury requirement, a plaintiff must allege she has suffered a concrete and individualized violation of a legally protected interest. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 & n.1 (1992). A

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[25] *Gerber, et al. v. Herskovitz, et al.*, No. 20-1870 (6th Cir. 2021).

defendant's alleged misconduct must "personally harm the plaintiff." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021)."[26] Plaintiff's "injury is particularized" because it affected Plaintiff "in a personal and individual way" and the Defendant "personally harm the plaintiff". This "particularized" injury arose because Brundage violated UPL at the Federal District Court.

The Magistrate Judge ("Magistrate") sua sponte filed a Report and Recommendation ("RR") to dismiss Plaintiff's Complaint. In an Order dated February 8, 2022, the District Court accepted the Magistrate's Report and Recommendation and dismissed Plaintiff's complaint for lack of subject-matter jurisdiction.

Plaintiff had subject-matter jurisdiction. The two primary sources of subject-matter jurisdiction at the federal courts are diversity jurisdiction and federal question jurisdiction. The District Court nullified Plaintiff's diversity jurisdiction by sua sponte converting Bickerdt (a witness) into a Defendant. and nullified Plaintiff's supplemental jurisdiction by ruling that "28 U.S.C. § 1367 alone cannot provide the basis for subject matter jurisdiction". *See Jaiyeola v. Brundage*, Case No. 1:21-cv-01053, ECF No. 25, PageID.834 (W.D. Mich. February 8, 2022). But Plaintiff had Federal question jurisdiction because the Clerk violated Plaintiff's First Amendment rights; therefore Plaintiff's supplemental jurisdiction was not alone. However, the District Court nullified Plaintiff's Federal question jurisdiction because Plaintiff did not mention the Clerk's violation in

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[26] *Carroll v. Hill, et al.*, No. 21-3885 (6th Cir. 2022).

Plaintiff's Complaint. And the Court did not allow Plaintiff to amend his Complaint.

On February 9, 2022, Plaintiff filed a Motion for Reconsideration[27] of the Order in R.25. Also, on February 9, 2022, Plaintiff timely filed a Notice of Appeal[28]. *See* Fed. R. App. P. 4.

Proceedings Below

District Court

A precedence of Unauthorized Practice of Law lawsuit in the District Court (*In Re: ERNEST J. DESILETS*, No. 99-90364 (Bankr. W.D. Mich. April 17, 2000)) supported the fact that the District Court had subject matter jurisdiction, diversity jurisdiction, personal jurisdiction, and Federal question jurisdiction because the violation occurred at a Federal Court. First, "issues to be decided are clearly related to"[29] to the issues in (R.1:17-cv-00562) because Attorney Brundages' UPL violations were violations of the judicial processes involved with (R.1:17-cv-00562). "Federal courts possess certain inherent powers, including "the ability to fashion an appropriate sanction for conduct which abuses the judicial process."". (*Goodyear Tire & Rubber Co. v. Haeger, et al.*, 137 S. Ct. 1178 (2017)). "A district court has inherent authority to award sanctions when a party litigates in bad faith or

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[27] (R.30-1, Page ID #969-978).

[28] ("Notice of Appeal", R.29, Page ID #8261).

[29] *In Re: ERNEST J. DESILETS*.

commits a fraud on the court. See *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 512-16 (6th Cir. 2002) (. . .). In *First Bank of Marietta*, the Sixth Circuit noted that a district court may invoke its inherent authority to impose sanctions for bad-faith conduct, even if the district court failed to consider whether sanctions may be appropriate under any rules or statutes."[30]

Second,. " . . . the court has the inherent authority to regulate those admitted to practice before it."[31]. Attorney Brundage was not admitted to practice before the District Court but since he violated UPL in Michigan before the District Court (a Federal Court), the Court must exercise its authority to regulate his practice. Attorney Brundage ghostwrote pleadings that Attorney Carmen Bickert and Attorney David Ayers submitted to the District Court and he violated UPL in Michigan by reviewing the pleadings that Bickerdt and Ayers submitted to the Federal District Court. Both Ayers and Bickerdt enabled Brundage to violate UPL in Michigan.

Third, Attorney Brundage UPL violations are subject to disciplinarian actions by the State Bar of California and the State Bar of Michigan. A State Bar disciplinary action "is justiciable. See *In re Calvo*, 88

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[30] *Quantum Sail Design Group, LLC v. Jannie Reuvers Sails, Ltd. et al.*, No. 1:2013cv00879 – Document 233 (W.D. Mich. 2018).

[31] *In Re: ERNEST J. DESILETS.*

F.3d 962, 965-66 (11th Cir. 1996) (bar disciplinary action is justiciable)."[32].

Fourth, complete diversity jurisdiction existed because Attorney Brundage is a resident of California while Plaintiff was a resident of Michigan and the amount involved in the litigation was more than $75,000.00 (Seventy five thousand dollars). "With regard to diversity jurisdiction, it is firmly established that parties attempting to demonstrate that such jurisdiction exists must show that: (1) the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs; and (2) there is complete diversity of citizenship between the disputing parties. 28 U.S.C. § 1332(a)."[33].

The District Court nullified Plaintiff's subject-matter jurisdiction by nullifying Plaintiff's diversity jurisdiction and nullified Plaintiff's Federal question jurisdiction. The Court nullified Plaintiff's diversity jurisdiction by doing a sua sponte conversion of a witness (Attorney Bickerdt) to a Defendant; without a hearing or full briefing. A Court or a litigant is not allowed to create jurisdiction where none existed.

The District Court gave two reasons for nullifying Plaintiff's Federal question jurisdiction. First, the Court asserted as follows: "To the extent Plaintiff is now claiming that this Court has jurisdiction because the Clerk of Court violated Plaintiff's First

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[32] *In Re: ERNEST J. DESILETS.*

[33] *Hale v. Morgan Stanley Smith Barney LLC*, No. 20-3412 (6th Cir. 2020).

Amendment rights by rejecting some of his filings or some other violation of federal law, Plaintiff failed to allege any such claim in the Complaint. Accordingly, the Court finds that federal question jurisdiction does not exist." *See Jaiyeola v. Brundage*, Case No. 1:21-cv-01053, ECF No. 25, PageID.834 (W.D. Mich. February 8, 2022). The Court was not correct on when issues related to jurisdiction are raised. Issues related to jurisdiction can be raised at any time. "Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid objection may lead a court midway through briefing to dismiss a complaint in its entirety. "[M]any months of work on the part of the attorneys and the court may be wasted." *Henderson*, 562 U.S., at ___, 131 S.Ct., at 1202. Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted. . . ." *Gonzalez v. Thaler*, 565 U.S. 134 (2012). Second, the Court held that "Supplemental jurisdiction pursuant to 28 U.S.C. § 1367 alone cannot provide the basis for subject matter jurisdiction (ECF No. 11 citing *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065, 1068 n.3 (11th Cir. 2001) and 4 Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure, § 3722 (4th ed.))." *See Jaiyeola v. Brundage*, Case No. 1:21-cv-01053, ECF No. 25, PageID.834 (W.D. Mich. February 8, 2022). However, Plaintiff had Federal question jurisdiction but the Court nullified it.

Court of Appeals

The Sixth Court of Appeals did not consider the following issues raised at the District Court: **1.)** That the District Court nullified Plaintiff's diversity jurisdiction by sua sponte converting a witness into a Defendant. **2.)** That the District Court nullified Plaintiff's Federal question jurisdiction with the following two reasons: **A.)** The Clerk's Constitutional and due process violations of Plaintiffs' rights were not raised in the Complaint. **B.)** The District Court assertion that supplemental jurisdiction alone cannot confer subject-matter jurisdiction; but Plaintiff had Federal question jurisdiction (through the Clerk's violations) that the Court nullified.

The court of appeals affirmed the decision of the District Court. As part of its decision affirming the District Court's decision, the panel held that **"we GRANT Brundage's motion to take judicial notice"**. *See Jaiyeola v. Brundage*, No. 22-1083, Doc.# 27-2 (6th Cir. 2022). However, **the panel denied Plaintiff the opportunity to be heard**. Rule 201.

" "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." "[34]. "The statute's plain text allows parties to amend a complaint's "defective allegations of jurisdiction." 28 U.S.C. § 1653."[35]. Where a complaint is not frivolous, a litigant should be allowed to amend a

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[34] *In re DePuy Orthopaedics, Inc.*, Nos. 19-3494/3501/3503/3504/3505/3506/3507/3508/3510/3511/3512/3513 (6th Cir. 2020).

[35] *In re DePuy Orthopaedics, Inc.*.

complaint. *See Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974). Both the District Court and the appellate Court did not give Plaintiff the opportunity to amend his complaint. Indeed, the District Court sua sponte converted a witness into a Defendant and thereby destroyed Plaintiff's diversity jurisdiction claim. Plaintiff raised the issue of the witness-to-Defendant conversion at the appeals court. The conversion issue was not considered by the panel. A Court cannot sua sponte convert a witness into a Defendant without a compelling reason that would be meaningful to a reasonable person. A reasonable person is "'. . . a well-informed, thoughtful and objective observer,' who is 'an average member of the public,' not a 'hypersensitive, cynical, and suspicious person.'" . . . " *United States v. Mobley*, No. 19-3122 (10th Cir. 2020).

The panel held that " . . . we GRANT Brundage's motion to take judicial notice, . . . ". (21a.). The panel did not give Plaintiff the opportunity to be heard. Rule 201. Plaintiff pointed out the error of law regarding Rule 201 in his petition for rehearing. Rehearing was denied. Plaintiff was denied due process. "A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U. S. 385, 234 U.S. 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965).

REASONS FOR GRANTING THE WRIT

I. A DISTRICT COURT VIOLATED A PLAINTIFF'S CONSTITUTIONAL AND DUE PROCESS RIGHTS WHEN THE DISTRICT COURT SUA SPONTE NULLIFIED AN EXISTING DIVERSITY JURISDICTION BY CONVERTING A WITNESS INTO A DEFENDANT WITHOUT A HEARING OR FULL BRIEFING

"Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United States*, 518 U.S. 81, 100 (1996); *United States v. Titterington*, 374 F.3d 453, 456 (6th Cir. 2004)."[36]

The Supreme Could has held that Courts should avoid "basic procedural innovations" especially to the "aspects of the litigatory process which bear upon the ultimate outcome of the litigation." *Colgrove v. Battin*, 413 U.S. 149 (1973) (quoting *Miner v. Atlass*, 363 U.S. 641 (1960)). The Court urges Courts to use Federal Rules where Federal Rules are available rather than resort to Local Rules. When a Court engages in "basic procedural innovations", the Court is going to be "procedurally unreasonable", an error of law would occur, and the error of judgment that would result would have to be vacated.

In this case, the District Court sua sponte converted a witness into a Defendant and destroyed

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[36] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

Plaintiff's diversity jurisdiction claim. The District Court held no hearing or full briefing on the diversity jurisdiction issue.

The District Court denied Plaintiff due process. A Federal Court must have an "independent interest in ensuring . . . that legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988). "A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 234 U.S. 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner."*Armstrong v. Manzo*, 380 U.S. 545 (1965). The denial of due process implied that the Court "was without jurisdiction to render a final and binding decree.". *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Due process requires an "opportunity for hearing appropriate to the nature of the case" *Mullane*. And the "hearing must measure up to the standards of due process" *Mullane*. When a judgment violates "due process of law", the judgment must be reversed. *See Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930). "We generally review a claim of procedural or substantive unreasonableness under the deferential abuse of discretion standard, meaning we will grant relief "when a ruling is based on an error of law or a clearly erroneous finding of fact, or when the reviewing court is otherwise left with the definite and firm conviction that the district court committed a clear error of judgment." *United States v. Moon*, 808 F.3d 1085, 1090 (6th Cir.

2015) (quoting *United States v. Kerley*, 784 F.3d 327, 347 (6th Cir. 2015)).”[37]

“ . . . a departure from established modes of procedure [can] render the judgment void,” [*Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L.Ed. 914 (1876)], *supra*, 93 U.S. at 283, **where the procedural defects are of sufficient magnitude to constitute a violation of due process**, or, as sometimes more circularly put, where the defects are “so unfair as to deprive the . . . proceedings of vitality,” *Eagles v. U.S.*, 329 U.S. 304, 314, 67 S.Ct. 313, 319, 91 L.Ed. 308 (1946), or where the procedural irregularities are serious enough to be deemed “jurisdictional,” *Yale v. National Indemnity Co.*, 602 F.2d 642, 644 (4th Cir. 1979); Recent Cases, 62 Harv. L. Rev. 1400, 1401 (1949). *See* generally Restatement of the Law of Judgments § 8 (1942).” *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1027 (5th Cir. 1982).

II. AN ISSUE THAT DETERMINED SUBJECT-MATTER JURISDICTION CANNOT BE WAIVED OR FORFEITED IF IT IS RAISED IN THE PLEADINGS BUT NOT RAISED IN THE COMPLAINT

The two primary sources of subject-matter jurisdiction at the federal courts are diversity jurisdiction and federal question jurisdiction.

The District Court gave two reasons for nullifying Plaintiff’s Federal question jurisdiction. First, the

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[37] *United States v. Hymes*, No. 20-5905 (6th Cir. 2021).

Court asserted as follows: **"To the extent Plaintiff is now claiming that this Court has jurisdiction because the Clerk of Court violated Plaintiff's First Amendment rights . . . or some other violation of federal law, Plaintiff failed to allege any such claim in the Complaint. Accordingly, the Court finds that federal question jurisdiction does not exist."** *See Jaiyeola v. Brundage*, Case No. 1:21-cv-01053, ECF No. 25, PageID.834 (W.D. Mich. February 8, 2022). Second, the District Court held that **"Supplemental jurisdiction pursuant to 28 U.S.C. § 1367 alone cannot provide the basis for subject matter jurisdiction (ECF No. 11 citing *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065, 1068 n.3 (11th Cir. 2001) and 4 Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure, § 3722 (4th ed.))."** *See Jaiyeola v. Brundage*, Case No. 1:21-cv-01053, ECF No. 25, PageID.834 (W.D. Mich. February 8, 2022). However, there is Federal question jurisdiction because the determination as to whether there is federal question jurisdiction is made on the basis of the plaintiff's pleadings and not upon the response or the facts as they may develop. *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986); *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983). Plaintiff stated in his pleadings that the Clerk violated Plaintiff's First Amendment rights and denied Plaintiff due process.

"Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid

objection may lead a court midway through briefing to dismiss a complaint in its entirety. "[M]any months of work on the part of the attorneys and the court may be wasted." *Henderson*, 562 U.S., at ___, 131 S.Ct., at 1202. Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted. . . ." *Gonzalez v. Thaler*, 565 U.S. 134 (2012).

" "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." "[38]. **"The statute's plain text allows parties to amend a complaint's "defective allegations of jurisdiction." 28 U.S.C. § 1653."**[39]. Where a complaint is not frivolous, a litigant should be allowed to amend a complaint. *See Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974). Both the District Court and the appellate Court did not give Plaintiff the opportunity to amend his complaint. Since the Clerk's violation of "Plaintiff's First Amendment rights by rejecting some of his filings" is a Federal question jurisdiction issue, Plaintiff could not have "waived or forfeited" subject-matter jurisdiction because "Subject-matter jurisdiction can never be waived or forfeited." *Gonzalez*. The Sixth Circuit panel did not address the subject-matter waiver or forfeiture issue. Plaintiff never waived or forfeited his subject-matter jurisdiction issues.

28 U.S.C. § 1367 provides for supplemental jurisdiction in federal courts. 28 U.S.C. § 1367 provides litigants

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[38] *In re DePuy Orthopaedics, Inc.*, Nos. 19-3494/3501/3503/3504/3505/3506/3507/3508/3510/3511/3512/3513 (6th Cir. 2020).

[39] *In re DePuy Orthopaedics, Inc.*.

an "opportunity . . . to pursue complete relief in a federal-court lawsuit." *Arbaugh v. Y & H Corp.*, 126 S.Ct. 1235, 1240 (2006). Supplemental jurisdiction allows a federal court to adjudicate a claim over which it does not have independent subject-matter jurisdiction, on the basis that the claim is related to a claim over which the federal court does have independent jurisdiction. Section 1367 codified the concept of pendent or ancillary jurisdiction set forth in *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966)[40]. There is a Federal question jurisdiction issue in this case because " . . . the Clerk of Court violated Plaintiff's First Amendment rights . . . or some other violation of federal law . . . " (App. 11). The determination as to whether there is federal question jurisdiction is made on the basis of the plaintiff's pleadings and not upon the response or the facts as they may develop. *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986); *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983). In this lawsuit, the determination of Federal question jurisdiction is not based on the Complaint but on Plaintiffs' pleadings and Plaintiffs' pleadings clearly asserted Federal question jurisdiction by stating in his pleadings that the Clerk did not enter default (TWO times) against Defendant Brundage; a violation of Fed. R. Civ. P. 55(a) and a denial of due process to Plaintiff. " . . . the Clerk of Court violated Plaintiff's First Amendment rights

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[40] *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 165 (1997); *Palmer v. Hospital Authority of Randolph Cty.*, 22 F.3d 1559, 1563 (11th Cir. 1994).

. . . or some other violation of federal law . . . " (App. 11). As regards Fed. R. Civ. P. 55(a), "The rules at issue here are the Federal Rules of Civil Procedure, which have the same force of law that any statute does." *In re Nat'l Prescription Opiate Litig.*, No. 20-3075 (6th Cir. 2020). Also, Defendant Brundage violated UPL at a Federal Court thereby committing a fraud on the Federal Court. " . . . If a brief is prepared in any substantial part by a member of the bar, it must be signed by him. . . ."[41]. "We hold that the participation by an attorney in drafting . . . brief is per se substantial, and must be acknowledged by signature."[42]. Defendant Brundage abused the judicial process at a Federal District Court.

III. WHEN A COURT GRANTS A LITIGANT'S MOTION FOR JUDICIAL NOTICE, THE OPPOSING LITIGANT(S) MUST BE GRANTED THE OPPORTUNITY TO BE HEARD (FED. R. EVID. 201)

A Federal Court must have an "independent interest in ensuring . . . that legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988). Judicial notice should not be used " . . . as a vehicle to circumvent the Federal Rules of Civil Procedure." ". *Ansfield et al. v. Omnicare et al.*, No. 13-5597 (6th Cir. 2014). "The rules at issue here are the Federal Rules of Civil Procedure, which have

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[41] *Ellis v. State of Maine*, 448 F.2d 1325 (1st Cir. 1971).

[42] *Duran v. Carris*, 238 F.3d 1268 (10th Cir. 2001).

the same force of law that any statute does." *In re Nat'l Prescription Opiate Litig.*, No. 20-3075 (6th Cir. 2020). "Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United States*, 518 U.S. 81, 100 (1996); *United States v. Titterington*, 374 F.3d 453, 456 (6th Cir. 2004)."[43] When a "procedural requirement" is met, "procedural fairness" follows. *Pickett v. Sheridan Health Care*, 664 F.3d 632, 648 (7th Cir. 2011). A lack of "procedural fairness" results in a denial of due process; the opportunity to be heard. "A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 234 U.S. 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965). The denial of due process implied that the Court "was without jurisdiction to render a final and binding decree." *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Due process defects are "so unfair as to deprive the . . . proceedings of vitality" *Eagles v. U.S.*, 329 U.S. 304, 314, 67 S.Ct. 313, 319, 91 L.Ed. 308 (1946). Due process requires an "opportunity for hearing appropriate to the nature of the case" *Mullane*. And the "hearing must measure up to the standards of due process" *Mullane*. When a judgment violates "due process of law", the judgment must be reversed. *See Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930). "We generally review a claim of procedural or substantive unreasonableness under the deferential

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[43] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

abuse of discretion standard, meaning we will grant relief "when a ruling is based on an error of law or a clearly erroneous finding of fact, or when the reviewing court is otherwise left with the definite and firm conviction that the district court committed a clear error of judgment." *United States v. Moon*, 808 F.3d 1085, 1090 (6th Cir. 2015) (quoting *United States v. Kerley*, 784 F.3d 327, 347 (6th Cir. 2015))."[44]

This case presents an excellent vehicle for resolving the question presented regarding Judicial Notice. Fed. R. Evid. 201.

The panel held that " . . . we GRANT Brundage's motion to take judicial notice, . . . ". (App. 9). The panel did not give Plaintiff the opportunity to be heard. Fed. R. Evid. 201. "Federal Rule of Evidence 201(c)(1) authorizes a court to take judicial notice without a request from a party. However subsection (e) of Rule 201 emphasizes that a party "is still entitled to be heard" when a court takes judicial notice before notifying a party. Underlying this rule is the notion that "[b]asic considerations of procedural fairness demand an opportunity to be heard on the propriety of taking judicial notice and the tenor of the matter noticed." Fed.R.Evid. 201(e) advisory committee's note. Thus, Rule 201 contains a procedural requirement – "namely, that the parties be given notice and an opportunity to object to the taking of judicial notice." *United States v. Hoyts Cinemas Corp.*, 380 F.3d 558, 570 (1st Cir.2004)."

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[44] *United States v. Hymes*, No. 20-5905 (6th Cir. 2021).

Pickett v. Sheridan Health Care, 664 F.3d 632, 648 (7th Cir. 2011).

" . . . a departure from established modes of procedure [can] render the judgment void," [*Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L.Ed. 914 (1876)], *supra*, 93 U.S. at 283, **where the procedural defects are of sufficient magnitude to constitute a violation of due process**, or, as sometimes more circularly put, where the defects are "so unfair as to deprive the . . . proceedings of vitality," *Eagles v. U.S.*, 329 U.S. 304, 314, 67 S.Ct. 313, 319, 91 L.Ed. 308 (1946), or where the procedural irregularities are serious enough to be deemed "jurisdictional," *Yale v. National Indemnity Co.*, 602 F.2d 642, 644 (4th Cir. 1979); Recent Cases, 62 Harv. L. Rev. 1400, 1401 (1949). *See* generally Restatement of the Law of Judgments § 8 (1942)." *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1027 (5th Cir. 1982).

Plaintiff requested for a rehearing at the Sixth Circuit Court of Appeals; the Motion was denied. A rehearing at the Sixth Circuit Court of Appeals would have corrected for the opportunity to be heard that Plaintiff was denied after the Defendant's judicial notice Motion was granted by the panel.

Plaintiff was denied a hearing at the District Court and at the Sixth Circuit Court of Appeals; a denial of due process. The lack of a hearing distinguishes this case from *Wantou v. Wal-Mart Stores Texas, L.L.C.*, No. 20-40284 (S.Ct. January 23, 2023), cert. denied. In *Wantou*, the District Court used the wrong legal test, the Fifth Circuit affirmed, and the Supreme Court

denied the cert petition; however Wantou had a hearing at the District Court and at the Fifth Circuit Court of Appeals.

IV. A PLAINTIFF HAS FEDERAL QUESTION SUBJECT-MATTER JURISDICTION IF PLAINTIFF HAS SUFFERED A PARTICULARIZED INJURY BECAUSE OF DEFENDANT'S VIOLATION OF UNAUTHORIZED PRACTICE OF LAW AT A FEDERAL COURT

Plaintiff suffered an injury from the Defendant's UPL violation at the Federal District Court. "extreme emotional distress – establishes a cognizable injury in fact"[45]. Defendant's UPL violation caused the Plaintiff "extreme emotional distress" because the violation was in a lawsuit against Toyota; regarding Plaintiff's sudden unintended acceleration 1996 Toyota Camry 2013 car accident.

The facts on Plaintiff's Camry, the Camry accident of November 25, 2013, Plaintiffs' injuries (including Brain (Subdural Hematoma), Spinal Cord (Cervical Stenosis with Myelopathy), and Fractured Left Eye Socket), brain surgery, pending spinal cord surgery, and health prognosis are stated in Plaintiff's affidavit.

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[45] *Gerber, et al. v. Herskovitz, et al.*, No. 20-1870 (6th Cir. 2021).

(Plaintiff's Affidavit, R[46]. 243-2, Page ID #5500-5510; R. = (R.1:17-cv-00562)).

An injury must be "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan*, 504 U.S. at 560). To qualify as particularized, an injury "must affect the plaintiff in a personal and individual way," *Lujan*, 504 U.S. at 560 n.1, not in a general manner that affects the entire citizenry, *Lance v. Coffman*, 549 U.S. 437, 439 (2007).". *Gerber, et al.*. " . . . To establish standing under Article III of the U.S. Constitution, a plaintiff must establish (1) an injury, (2) that results from the defendant's conduct, and (3) that a court can redress. *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021). To fulfill the injury requirement, a plaintiff must allege she has suffered a concrete and individualized violation of a legally protected interest. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 & n.1 (1992). A defendant's alleged misconduct must "personally harm the plaintiff." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021)."[47] Plaintiff's "injury is particularized" because it affected Plaintiff "in a personal and individual way" and the Defendant "personally harm the plaintiff". This "particularized" injury arose because Brundage violated UPL at the Federal District Court. Plaintiff

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[46] "R." refers to the record entry number in the District Court Docket. "R'." refers to the record entry number in a Sixth Circuit Docket.

[47] *Carroll v. Hill, et al.*, No. 21-3885 (6th Cir. 2022).

therefore had a standing as a result of his "particularized" injury and the Court has subject-matter jurisdiction over the issues in this State of Michigan UPL case that occurred at a Federal District Court in Michigan.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

GANIYU AYINLA JAIYEOLA
Pro Se
10870 North Stelling Road,
#37D
Cupertino, CA 95014
(616) 635-4025
ganiyu.jaiyeola@gmail.com