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Appendix A
United States Court of Appeals
for the Ninth Circuit

No. 22-55970

Peter Kleidman,
Plaintiff-Appellant
v.
Martin R. Barash, et al.,
Defendants-Appellees

Filed July 3, 2023

Before: Silverman, R. Nelson, Bumatay,
Circuit Judges

ORDER GRANTING APPELLEES' MOTION
FOR SUMMARY AFFIRMANCE

Upon a review of the record and the opening brief, we conclude that the questions raised in this appeal are so insubstantial as not to require further argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). Accordingly, appellees' opposed motion for summary affirmance (Docket Entry No. 12) is granted. The request to stay the briefing schedule (included in Docket Entry No. 12) is denied as moot.
AFFIRMED.

Appendix B
United States Court of Appeals
for the Ninth Circuit

No. 22-55970

Peter Kleidman,
Plaintiff-Appellant
v.
Martin R. Barash, et al.,
Defendants-Appellees

Filed October 12, 2023

Before: Silverman, R. Nelson, Bumatay,
Circuit Judges

ORDER DENYING APPELLANT'S MOTION
FOR RECONSIDERATION

The amended motion for reconsideration of the July 3, 2023 order (Docket Entry No. 19) is denied and the amended motion for reconsideration en banc is denied on behalf of the court. See 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

The motion for reconsideration (Docket Entry No. 18) is denied as moot.

No further filings will be entertained in this closed case.

Appendix C
United States District Court
Central District of California

No. 2:22-cv-00610-DMG-JPR
2022 WL 1613019

Peter Kleidman,
Plaintiff
v.
Martin R. Barash, et al.,
Defendants

Filed April 21, 2022

Before Hon. Dolly M. Gee,
District Court Judge

DISTRICT COURT'S ORDER

On November 29, 2021, Plaintiff Peter Kleidman, proceeding pro se, filed the instant action in Los Angeles County Superior Court against Defendants Hon. Martin R. Barash, United States Bankruptcy Judge, and Hon. Maureen Tighe, Chief Judge, United States Bankruptcy Court for the Central District of California. Compl. [Doc. # 1-1]. On January 27, 2022, Defendants timely removed the action to this Court pursuant to 28 U.S.C. section 1442(a)(3), which allows the removal of actions against "any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties." Notice of Removal [Doc. # 1]. Plaintiff filed the operative First Amended Complaint ("FAC") on March 7, 2022. [Doc.

14.] In his FAC, Plaintiff asserts claims for violation of due process and equal protection related to a bankruptcy case in which he is the debtor.

On March 21, 2022, Defendants filed the instant motion to dismiss Plaintiff's FAC pursuant to Federal Rule of Civil Procedure 12(b)(6) ("MTD"). [Doc. # 16.] The MTD is fully briefed. [Doc. ## 17, 18.] Having considered the parties' written submissions, the Court deems the matter appropriate for decision without oral argument, and renders the following decision granting Defendants' MTD. See Fed. R. Civ. P. 78; C.D. Cal. Local Rule 7-15.

I. BACKGROUND AND PLAINTIFF'S CLAIMS

Plaintiff is the debtor in a bankruptcy case, *In re Peter Brown Kleidman*, Case No. BK 12-11243-MB, before Judge Barash. FAC at ¶ 2. Plaintiff is also the plaintiff in a related adversary proceeding, *Kleidman v. Hilton & Hyland Real Estate, Inc.*, Case No. BK 17-1007-MB, also before Judge Barash. *Id.* at ¶ 3. Plaintiff asserts that Judge Barash "has developed intense feelings of animosity against Plaintiff," such that Judge Barash is no longer able to fairly oversee *Kleidman v. Hilton & Hyland*. *Id.* at ¶ 4. Judge Barash has allegedly manifested his hostility toward Plaintiff by raising his voice angrily to Plaintiff and making "harsh, unfounded accusations" against Plaintiff without warning in hearings and at a conference. *Id.* Plaintiff expressly states in his FAC that Chief Judge Tighe "is not sued herein for any alleged wrongdoing." *Id.* at ¶ 1.

Plaintiff asserts Judge Barash has violated his right to due process by failing to rule impartially (Claim 1). FAC ¶ 10. Plaintiff seeks a judicial declaration that Judge Barash has violated Plaintiff's due process rights (Claim 2) and seeks to

enjoin Judge Barash from presiding over *Kleidman v. Hilton & Hyland* (Claim 3). *Id.* at ¶ 12.

Plaintiff also challenges the constitutionality of certain court rules. Plaintiff asserts these rules are likely to benefit Judge Barash and harm Plaintiff in these proceedings, and that he will be more likely to prevail in his claim against Judge Barash if these rules are "dismantled." FAC ¶ 8. Plaintiff challenges Local Bankruptcy Rule 9013-1(j)(1), which requires counsel—or, in the case of parties appearing without counsel, the parties themselves—to be present at hearings on motions (Claim 4). *Id.* at ¶ 16. Plaintiff asserts this rule violates his due process and equal protection rights because the rule would force Plaintiff, who lives on the East Coast, to travel to California for hearings. *Id.* at ¶ 18. Plaintiff challenges Central District of California Local Rule 7-14 on the same basis (Claim 5). See *id.* at ¶¶ 22-23. Plaintiff also challenges the so-called "Rule of Interpanel Accord," the principle that a Ninth Circuit panel is bound by the circuit's own precedent, which Plaintiff contends is unconstitutional (Claim 6); Rule 10 of the United States Supreme Court, which lays out the Supreme Court's considerations in evaluating whether or not to grant review on a writ of certiorari (Claim 7); and Ninth Circuit Rule 36-3, which provides that unpublished dispositions are not precedent (Claims 8 and 9). See *id.* at ¶¶ 26-30, 32, 34-36, 38. Plaintiff seeks a declaration stating these rules are unconstitutional (Claim 10).

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may seek dismissal of a complaint for failure to state a claim upon which relief can be granted. A court may grant such a dismissal only where the plaintiff fails to present a

cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)).

III. DISCUSSION

Defendants contend that this Court lacks jurisdiction pursuant to the doctrine of derivative jurisdiction, judicial immunity bars Plaintiff's Claims 1 through 3, and Plaintiff's challenges to procedural rules fail to state a claim.[1]

A. Derivative Jurisdiction

Defendants argue that the state court from which this case was removed lacked jurisdiction over this action, and therefore this Court lacks subject matter jurisdiction. When a party removes a case to federal court under section 1442, as occurred here, the federal court's "jurisdiction is derivative of the state court's jurisdiction." *In re Elko Cty. Grand Jury*, 109 F.3d 554, 555 (9th Cir. 1997); see also *Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co.*, 258 U.S. 377, 382 (1922) ("The jurisdiction of the federal court on removal is, in a limited sense, derivative jurisdiction. If the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none...."). This is true "even if the matter could have been raised here originally." *Glass v. Nat'l R.R. Passenger Corp.*, 570 F. Supp. 2d 1180, 1182 (C.D. Cal. 2008); see also *Golden Eagle Ins. Corp. v. Allied Tech. Grp.*, 83 F. Supp. 2d 1132, 1134 (C.D. Cal. 1999) ("[W]here the state court lacked jurisdiction over the claim giving rise to the removal, 'the federal court acquires none, although in a like suit originally

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[1] Defendants do not argue that Plaintiff's Claims 4 through 10 are barred by judicial immunity.

brought in federal court it would have had jurisdiction.'") (citing *Minnesota v. United States*, 305 U.S. 382, 389 (1939)).

Plaintiff asserts Defendants have failed to explain why the Superior Court lacked jurisdiction over this action. See Opp. at 5.[2] But it is well-established that "[a]bsent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." See *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Lawsuits "against an agency of the United States or against an officer of the United States in his or her official capacity" are treated as lawsuits against the United States for purposes of the sovereign immunity analysis. *Balser v. Dep't of Just., Off. of U.S. Tr.*, 327 F.3d 903, 907 (9th Cir. 2003).

Plaintiff has not pointed to any waiver of sovereign immunity that would apply here, and the Court is not aware of one. The Court therefore concludes the Superior Court lacked jurisdiction over Plaintiff's claims against Judge Barash and Chief Judge Tighe. Accord *F.B.I. v. Superior Court of Cal.*, 507 F. Supp. 2d 1082, 1094 (N.D. Cal. 2007) (dismissing a claim originally brought in state court seeking to subpoena federal officers, on the basis that the state court lacked jurisdiction over a claim against the United States without a waiver of sovereign immunity). Because the Superior Court lacked jurisdiction, and this Court's jurisdiction is derivative of the Superior Court's, this Court is compelled to dismiss this action for lack of jurisdiction. See *Cox v. U.S. Dep't of Agric.*, 800 F.3d 1031, 1032 (9th Cir. 2015).

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[2] Page citations herein refer to the page numbers added by the CM/ECF system.

B. Judicial Immunity

Moreover, Judge Barash and Chief Judge Tighe are absolutely immune from suit, at least as to Claims 1, 2, and 3. Judges are immune from civil suits arising out of the exercise of their judicial functions. Judicial immunity shields a judge from *suit*, not just the assessment of damages. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). This shield extends to suits for equitable relief. *Mullis v. U.S. Bankr. Ct. for Dist. of Nevada*, 828 F.2d 1385, 1394 (9th Cir. 1987). "'[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.'" *Mireles*, 502 U.S. at 10 (citing *Bradley v. Fisher*, 13 Wall. 335, 347, 20 L.Ed. 646 (1872)). Immunity may be overcome in only two types of situations:

> First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. [citations] Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.... '[W]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.'

502 U.S. at 11-12.

Plaintiff does not deny that Judge Barash's actions taken while presiding over *Kleidman v. Hilton & Hyland* were taken in his judicial capacity, nor does Plaintiff contend Judge Barash acted in the complete absence of all jurisdiction. Rather, Plaintiff contends that judicial immunity does not bar his suit because he seeks only forward-looking equitable

relief, and the Ninth Circuit's case law has only established a bar to plaintiffs seeking backward-looking equitable relief.[3]

To the extent Plaintiff contends that Ninth Circuit law does not establish judicial immunity from a suit seeking a prospective injunction, Plaintiff is incorrect. Indeed, the Ninth Circuit has squarely held that judicial immunity barred the claims of a plaintiff who sought an injunction "prohibiting enforcement of any orders or judgments entered during [the plaintiff's bankruptcy] proceedings." *Mullis*, 828 F.2d at 1391. This was not *dicta*, as Plaintiff suggests. *See id.* at 1394 ("We hold that when a person who is alleged to have caused a deprivation of constitutional rights while acting under color of federal law can successfully assert judicial or quasi-judicial immunity from damages, that immunity also will bar declaratory and injunctive relief."). Rather, the injunctive relief sought in *Mullis* was similar to Plaintiff's request here to enjoin Judge Barash from presiding over *Kleidman v. Hilton & Hyland.* Plaintiff's contention that he seeks to have Judge Barash removed from his case, rather than to invalidate any of Judge Barash's prior rulings, is a distinction without a difference. Plaintiff's Claims 1, 2, and 3 are therefore barred by judicial immunity.

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[3] This contention is puzzling, since Plaintiff's FAC purports to seek "a judicial declaration that Judge Barash has violated Plaintiff's due process rights in that case, and a declaration that Judge Barash is not impartial, equanimous and dispassionate, but rather is hostile towards Plaintiff." See FAC ¶ 12; see also id. at ¶ 41(i) (seeking same). In other words, Plaintiff seeks a declaration that Judge Barash previously acted in an unconstitutional manner, relief that is unquestionably backward-looking

C. Leave to Amend as to Plaintiff's Other Claims

Defendants argue in the MTD that Plaintiff fails to state a claim as to Claims 4-10, and ask this Court to dismiss those claims with prejudice. Because the Court lacks subject matter jurisdiction over this action, the Court lacks jurisdiction to evaluate whether Plaintiff has stated a claim in the portion of his FAC that is not barred by judicial immunity.

IV. CONCLUSION

In light of the foregoing, Defendants' MTD is GRANTED. This action is DISMISSED for lack of subject matter jurisdiction. Dismissal is without prejudice, except as to Claims 1-3, which are dismissed with prejudice as they are barred by judicial immunity and amendment would be futile. The April 22, 2022 hearing on this matter is VACATED.

IT IS SO ORDERED.

Appendix D
United States Court of Appeals
for the Ninth Circuit

No. 22-55970

Peter Kleidman,
Plaintiff-Appellant
v.
Martin R. Barash, et al.,
Defendants-Appellees

Filed April 3, 2023, 2023

Before: Silverman, R. Nelson, Bumatay,
Circuit Judges

Portions of Appellant's Opening Brief

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§B. *Mullis* is not good law

...

§1. According to *Mullis*, Kleidman has no right to legal protection from Judge Barash's constitutional torts (thereby running contrary to *Merrill*, etc., 456 US 353 (1982))

Thus according to *Mullis*, Kleidman's remedies (as to Counts 1 – 3) are only an appeal or writ proceeding. But these proceedings are woefully inadequate, and so in actuality Kleidman has no right to a remedy whatsoever to protect himself from Judge Barash's personal feelings of animosity. The reason is that Judge Barash can easily keep his feelings of animosity from surfacing to the written record, and therefore Kleidman cannot prove the allegations against Judge Barash without testimony

from Judge Barash himself. For instance, the FAC alleges that Judge Barash's "intense feelings of animosity against [Kleidman]" render Judge Barash "no longer capable of ruling equanimously and dispassionately. ... [Judge Barash's] goal ... is to punish [Kleidman] and ensure that [Kleidman] loses. ... [¶¶] On discretionary matters, Judge Barash will not use his best efforts to apply legal principles to achieve a just result, but rather will invoke his personal feelings against [Kleidman] so as to impose his own personal will and rule against [Kleidman] to the maximum extent possible because of his feelings of animosity." #14:2-3. To prove these allegations, Kleidman needs a forum whereby he can present to the trier of fact Judge Barash as a witness, providing testimony on his own, personal feelings.

Obviously, Kleidman cannot question Judge Barash as a witness in appellate proceedings in an effort to convince the appellate court that Judge Barash violated Kleidman's due process rights by virtue of his animosity towards Kleidman in the proceedings below. *In re CJ Holding Co.*, 27 F.4th 1105, 1115 (5th Cir. 2022) ("'appellate court may not consider new evidence furnished for the first time on appeal'"); *Loubser v. Thacker*, 440 F.3d 439, 441-442 (7th Cir. 2006) ("one cannot present evidence to an appellate court"). Therefore, if Judge Barash is allowed to preside over *Kleidman v. Hilton & Hyland*, and he thereupon rules on a discretionary issue against Kleidman solely because of his feelings of animosity (as opposed to his earnest efforts to apply legal principles evenhandedly to achieve justice), then Kleidman has no recourse by way of appeal. In the appellate proceedings, Kleidman could not compel Judge Barash to testify to expose the unconstitutional manner in which Judge Barash decided the discretionary issue under appeal.

Therefore, even though Kleidman's right to due process would have been violated by Judge Barash in this scenario, Kleidman would have no right to a remedy to redress this violation in the appellate proceedings. Rather, the appellate court would simply review the written record to see whether the written record showed that Judge Barash abused his discretion. But in actuality, Judge Barash's constitutional torts would have been committed dehors the written record, because Judge Barash could easily, and almost certainly would, conceal his personal feelings of animosity from the written record. In sum, Kleidman could not redress Judge Barash's constitutional torts in the appellate proceedings, because such torts would surely be committed dehors the written record, and so Kleidman would have no way of proving them to the appellate court (because Kleidman could not call Judge Barash as a witness in the appellate proceedings).

In the same vein, Kleidman has no right to question Judge Barash as a witness in extraordinary writ proceedings under 28 USC § 1651. Even worse, the court hearing the petition under 28 USC § 1651 "may" issue the writ, but has the discretion to refrain from doing so. *Jama v. Immigration and Customs Enforcement*, 543 US 335, 346 (2005) ("'may' customarily connotes discretion"); *Valenzuela-Gonzalez v. US Dist. Court for D. of Az*, 915 F. 2d 1276, 1278 (9th Cir 1990) ("Under ... 28 U.S.C. § 1651(a), we ... have the power to issue, in our discretion, a writ of mandamus," emphasis added, footnote omitted), *US v. Harper*, 729 F.2d 1216, 1221 (9th Cir.1984); *Cheney v. U.S. Dist. Court for DC*, 542 US 367, 381 (2004). Thus Kleidman would have no bona fide right to a remedy in the writ proceedings, since the issuance of the writ would be

purely discretionary. *Roller v. Holly*, 176 US 398, 409 (1900) ("right ... to due process ... must rest upon a basis more substantial than ... discretion"), accord *Louis. & Nash. R. Co. v. Central Stock Yards Co.*, 212 US 132, 144 (1909).

Based on the foregoing, Kleidman would have rights to a remedy to redress Judge Barash's constitutional torts in neither appellate nor writ proceedings. Kleidman would have no right to bring forth Judge Barash as a witness in those proceedings, and therefore could not prove that Judge Barash's discretionary rulings were based on his animosity and hostility towards Kleidman. What's more there is no right to a remedy in the writ proceedings, since issuance of the writ is purely discretionary.

On the other hand, the right to due process implies the right to a ""remedy by suit, or action at law, whenever that right is invaded."" *Merrill Lynch, etc. v. Curran*, 456 US 353, 375, n. 54 (1982) (and cases cited). Therefore, *Mullis* conflicts with *Merrill*. According to *Mullis*, Kleidman's only recourse would be appellate or writ proceedings, neither of which provide a forum whereby Kleidman could call Judge Barash as a witness so that Kleidman could prove Judge Barash's constitutional torts. Thus according to *Mullis*, Kleidman has no bona fide right to a remedy. However, *Merrill* holds that Kleidman must have a legal remedy. Thus *Mullis* is bad law, because it ultimately conflicts with *Merrill*.

Appendix E
United States Court of Appeals
for the Ninth Circuit

No. 22-55970

Peter Kleidman,
Plaintiff-Appellant
v.
Martin R. Barash, et al.,
Defendants-Appellees

Filed April 28, 2023

Before: Silverman, R. Nelson, Bumatay,
Circuit Judges

Portions of Appellees' Motion for
Summary Affirmance

2. Absolute Judicial Immunity Bars Kleidman's Claims Against the Judicial Defendants

As this Court made clear long ago, judges and court clerks enjoy absolute immunity for "judicial acts taken within the jurisdiction of their courts." *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). The district court correctly concluded that this immunity shields a judge from suit, not just the assessment of damages. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). This also includes suits for equitable relief (and not just suits for damages). *Mullis v. U.S. Bankr. Ct. for the Dist. Of Nevada*, 828 F.2d 1385, 1397 (9th Cir. 1987).

The district court correctly noted that Kleidman does not deny that his complaints arise from actions Judge Barash took while presiding over his bankruptcy actions, nor does Kleidman contend that

Judge Barash acted in the complete absence of all jurisdiction. CR 21 at 4. To the contrary, Kleidman's allegations are clear that his claim is based on Judge Barash's conduct in presiding over *Kleidman v. Hilton & Hyland*.... CR 14 ¶¶ 1, 4:

> • ***Allegations Against Judge Barash.*** Judge Barash "developed intense feelings of animosity against Plaintiff, so much so that Judge Barash is no longer capable of ruling equanimously [sic] and dispassionately. Rather, his intense feelings enflame his emotions and his feelings of hostility distort his sense of justice, and impair his desire to do justice evenhandedly. His goal now is to punish Plaintiff and ensure that Plaintiff loses. In the course of the proceedings, he has manifested his hostility towards Plaintiff by (inter alia) raising his voice angrily at Plaintiff. He has also hurled excessively harsh, unfounded accusations at Plaintiff at hearings and a conference, without giving Plaintiff any warning." CR 14 ¶ 4.

...

Finally, Kleidman's contention that judicial immunity does not apply because he only seeks prospective relief (i.e., to have Judge Barash removed from his case) instead of damages or to invalidate Judge Barash's prior rulings is, as the district court noted, a distinction without a difference. CR 21 at 5. *Mullis* squarely holds that judicial immunity "will also bar declaratory and injunctive relief." 828 F.2d at 1391. Accordingly, summary affirmance is appropriate as to all claims against the Judicial Defendants.

Appendix F
United States Court of Appeals
for the Ninth Circuit

No. 22-55970

Peter Kleidman,
Plaintiff-Appellant
v.
Martin R. Barash, et al.,
Defendants-Appellees

Filed June 5, 2023

Before: Silverman, R. Nelson, Bumatay,
Circuit Judges

Portions of Appellant's Opposition to Motion for Summary Affirmance

§V. The issue of Judge Barash's judicial immunity should be fully briefed

...

§A. Kleidman presents legitimate arguments that *Mullis* (a non-unanimous decision) is bad law and intends to request en banc review and certiorari to overturn *Mullis* – there would be a benefit to full briefing to better set up the matter for further proceedings

§1. *Mullis* conflicts with the general principle that immunities for state and federal official should be coextensive

...

Senior Circuit Judge O'Scannlain's dissent validly argues that there is substantial authority supporting the proposition that immunity jurisprudence for state-court judges is aligned with immunity

jurisprudence for federal judges. OB follows Senior Circuit Judge O'Scannlain. ..., citing *Antoine v. Byers & Anderson, Inc.*, 508 US 429, 433, n. 5 (1993); *Lonneker Farms, Inc. v. Klobucher*, 804 F.2d 1096, 1097 (9th Cir. 1986).[4]

...

Other circuits likewise hold that the immunities afforded federal official should be coextensive with the immunities of state officials. *Gonzalez v. Hasty*, 802 F.3d 212, 221 (2nd Cir. 2015); *Barker v. Norman*, 651 F.2d 1107, 1122 (5th Cir. 1981); *Abella v. Rubino*, 63 F.3d 1063, 1065 (11th Cir. 1995); *Duffy v. Wolle*, 123 F.3d 1026, 1036-1037 (8th Cir, 1997); *Haynesworth v. Miller*, 820 F. 2d 1245, 1248, n. 1 (D.C. Cir. 1987); *Johnson v. McCuskey*, 72 Fed.Appx 475, 477 (7th Cir. 2003); *Dorman v. Higgins*, 821 F.2d 133, 139 (2nd Cir. 1987) (invoking *Pulliam* to hold that federal official did not enjoy immunity from claim for equitable relief); *Martinez v. Winner*, 771 F.2d 424, 436 (10th Cir. 1985) (same), but see *Peterson v. Timme*, 621 Fed.Appx 536, 542 (10th Cir. 2015) ("immunities provided ... in *Bivens* actions ... generally coextensive with those provided ... in § 1983 actions.... However, whether federal judges are entitled to absolute immunity from *Bivens* claims for injunctive relief appears to remain an open question in this circuit"); *Switzer v. Coan*, 261 F.3d 985, 990, n. 9 (10th Cir. 2001) ("it is unsettled" whether the lack of immunity for state-court judges in connection with claims for equitable relief also means there is a lack of such immunity for federal judges).

. According to *Scherer v. Flannagan*, 2002 WL 31180020 (D.Kan. Sept. 30, 2002), only the Sixth, Ninth, and Eleventh Circuits have decided that federal officials enjoy more immunity than do state

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[4] OB inadvertently omits the page number for *Lonneker*.

officials. *Id.*, *3, citing *Mullis*, *Bolin v. Story*, 225 F.3d 1234, 1241-1242 (11th Cir. 2000), *Newsome v. Merz*, 17 Fed.App'x 343, 345 (6th Cir. 2001). Of these three cases, only *Mullis* argues unequivocally that federal officials enjoy more immunity. *Bolin*, in contradistinction, recognized that "this issue is a closer one than it would seem at first blush. After considering both sides of the issue, ... the stronger argument favors the grant of absolute immunity to the defendant federal judges." *Bolin*, 1241-1242. Tellingly, *Bolin* never explains why it favors one side of the argument over the other. *Newsome v. Merz*, 17 Fed.App'x 343, 345 (6th Cir. 2001) is devoid of persuasive value because it blindly follows *Mullis* and *Bolin* See also *Kipen v. Lawson*, 57 Fed.Appx 691, 691 (6th Cir. 2003) (blindly following *Bolin*).

Bolin is the only out-of-Circuit, published opinion which seems to accept *Mullis'* argument, and, as mentioned above, it gives no reason for siding with *Mullis* as opposed to the conflicting points of view. *Bolin*, 1239-1242. Thus there is virtually no support for *Mullis'* position in the other Circuits.

§2. *Mullis* is bad law because it effectively makes the right to due process an empty promise whenever a judge can trample on constitutional rights dehors the record

There is a time-honored saw to the effect that no one is above the law, including government officials. *Sloan Shipyards Corp. v. U.S. Shipping Bd. Emergency Fleet Corp.*, 258 US 549, 566-567 (1922) (generally, "any person within the jurisdiction always is amenable to the law. ... An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts"); *Davis v. Passman*, 442 US 228, 246 (1979) ("'Our system of jurisprudence rests on the assumption that all individuals,

whatever their position in government, are subject to federal law: "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government... are creatures of the law, and are bound to obey it."'").

However, as argued extensively in the OB, *Mullis* holds that federal judges can trample on constitutional rights to due process with impunity, so long as they keep their constitutional torts out of the record. OB:22-24. So long as their constitutional torts are dehors the record, the aggrieved party has no way of redressing the injury through appellate proceedings or writ proceedings. The only way to redress the injury is with an original action whereby the torts can be exposed through the discovery process. ...

The federal courts cannot in good conscience simultaneously cling to irreconcilable principles, namely, on the one hand:

- litigants have the "cherished" right to fair trials, *Bridges v. California*, 314, US 252, 260 (1941);
- no one is above the law, ...;

and yet on the other hand:

- judges can trample on litigants' rights to fair trials with complete immunity, provided they keep their constitutional torts dehors the record.

Ultimately, the Supreme Court should decide what remedies are permitted when a party accuses a federal judge of violating a party's right to a fair trial. If the ultimate answer is that *Mullis* is correct in holding that the only possible remedies are appellate and writ proceedings, then the Supreme Court should further acknowledge that there is no enforceable right to a fair trial whenever the judicial

officer keeps his/her constitutional torts off the record (so as to evade appellate or writ review).

According to Kleidman, if the 'cherished' right to a fair trial is an enforceable right, and not merely an empty promise, then a party should be allowed to sue a judge on the grounds that the judge has deprived (or is threatening to deprive) the party of a fair trial. While monetary damages are off limits, equitable relief should be allowed so as to preserve, protect and secure the party's purportedly 'cherished' right to a fair trial.

Appendix G
United States Court of Appeals
for the Ninth Circuit

No. 22-55970

Peter Kleidman,
Plaintiff-Appellant
v.
Martin R. Barash, et al.,
Defendants-Appellees

Filed August 17, 2023

Before: Silverman, R. Nelson, Bumatay,
Circuit Judges

Portions of Appellant's Motion for Reconsideration

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§B. *Mullis* is bad law because its argument – that Congressional enactments of appellate and extraordinary review create judicial immunity – is meritless

As mentioned above, *Pulliam* held that state judges are not immune from actions for prospective equitable relief, and *Mullis* held that *Pulliam* does not apply to federal judges. ... Here is *Mullis*' justification:

> *Pulliam* ... is inapplicable to a *Bivens* action. There is no need to carve out an exception to judicial immunity to permit declaratory and injunctive relief against federal judicial officers. Should a federal judge ... violate a litigant's constitutional rights ..., Congress ... provided ... procedures for taking appeals ... and for petitioning for extraordinary writs. ... Through these procedures, a

> litigant ... receives full federal court review of allegations of deprivations of federal constitutional rights by federal judicial officers acting under color of federal law.

Id., 1394 (footnote omitted). Thus according to *Mullis*, Congress effectively enacted judicial immunity by enacting appellate and extraordinary review. Put another way, had Congress not enacted appellate or extraordinary review, then *Mullis*' grounds for finding *Pulliam* inapplicable would disappear. Therefore, using *Mullis*' own logic against itself, without these Congressional enactments, *Pulliam would* apply to federal judges.

Thus *Mullis* maintains that Congressional enactments of appellate and extraordinary review create judicial immunity. Put in these terms, *Mullis* makes no sense. Congressional enactments which open avenues to challenge, restrain and compel judicial conduct cannot reasonably be construed as conferring judicial immunity. Since nothing in the Congressional enactments of appellate and extraordinary review suggests a Congressional intent to provide judicial immunity, any judicial immunity enjoyed along with these Congressional enactments must likewise be enjoyed without these enactments. And consequently, *Mullis*' argument is invalid – *Mullis* is wrong in asserting that judicial immunity flows from the Congressional enactments of appellate and extraordinary review. These Congressional enactments do not create judicial immunity. The extent of judicial immunity for federal judges is independent of the Congressional enactments for appellate and extraordinary review, and therefore *Mullis*' reasoning is invalid.

Mullis' contention (at 1394) that "these procedures" provide "full" "review" is also baseless, because neither appellate nor extraordinary review

provide for discovery and the introduction of new evidence. Thus when the alleged constitutional violations are provable only with evidence dehors the record, "these procedures" (appellate and extraordinary review) provide no platform upon which the aggrieved litigant can build his/her case.

§C. *Mullis'* alternative arguments – based on "confusion" and "multiplicity of litigation" – are baseless

Mullis argues: "To allow an action for declaratory and injunctive relief against federal officials ... merely engenders unnecessary confusion and a multiplicity of litigation" *Mullis*, 1394. This statement is foundationless. *Mullis* cannot legitimately make sweeping factual statements about the states of minds of others – i.e., purported confusion – without admissible evidence. *Chicago Junction Case*, 264 US 258, 265 (1924) ("essential finding without supporting evidence is arbitrary action"). Likewise, *Mullis* makes a speculative, factual contention regarding purported "multiplicity of litigation," which, again, is devoid of evidentiary support. Moreover, even if there were a "multiplicity of litigation," it is not the province of the judiciary to choke off a statutory remedy because it disapproves of the extent of litigation that might flow therethrough. *Buckley v. Fitzsimmons*, 509 US 259, 268 (1993) ("'[W]e do not have a license to establish immunities ... in the interests of what we judge to be sound public policy' ... '[O]ur role is to interpret the intent of Congress ..., not to make a freewheeling policy choice'"); *Rehberg v. Paulk*, 566 US 356, 363 (2012) ("we do not have a license to create immunities based solely on our view of sound policy")....