UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA

No. 09-01856 (HHK)

T. CARLTON RICHARDSON, *Plaintiff*	**DISTRICT OF COLUMBIA, *ET AL.*,** *Defendants*

MOTION FOR DEFAULT JUDGMENT & REQUEST FOR HEARING
(A F.R.Civ.P 55(b)(2) Proceeding)

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PREFACE

This cause of action arises out of the unconstitutionality and unconstitutional application of D.C. Code §11-2503 (b) and D.C. Bar XI regulations governing the reciprocal discipline of attorneys under the regulatory aegis of the defendant D.C. Court of Appeals which resulted in the interim and final revocation of the plaintiff's license to practice law without notice or an evidentiary hearing in violation of his due process rights under the 5th and 6th Amendments of the U.S. Constitution as well as the D.C. Administrative Procedures Act [cf. D.C. Code §2-509] and relevant provisions of the D.C. Code, D.C Bar Rules, and D.C. Board on Professional Responsibility Rules governing the investigation of complaints for misconduct arising within and without the jurisdictional boundaries of the D.C. courts. Service was effectuated by the plaintiff upon the **D. C. Government's** regulatory division, the **D.C. Court of Appeals** and a Judge thereof, defendant **Ruiz**, its agencies the defendants **D.C. Bar**, **D.C. Board on Professional Responsibility**, **D.C. Bar Counsel,** and its employees, **Branda**, **Shipp**, and **Shiskevish** on October 1st or 2nd, 2009, and no answer or response as been filed to date, more than 20 days, entitling plaintiff to a default judgment by the court [Civ. R. 55(b)(2)].

An evidentiary hearing is necessary not only to determine the amount of damages, but also, to determine if the district court can give full faith and credit to the reciprocal disciplinary interim orders and final judgment of the D.C. Court of Appeals in Richardson's case rendered under the unconstitutional D.C. statutes and bar rules as averred by the plaintiff (Id.[1]). Therefore, the plaintiff request an evidentiary hearing and in support therefore states:

1.0 FACTUAL BACKGROUND

Richardson was subject of reciprocal discipline by the D.C. Court of Appeals [DCCA] suffering temporary suspension for 1-year, 10 months from June 27, 1995 (amended March 12,

[1] "If, in order to enable the court to enter judgment or *to carry it into effect*, it is necessary to take an account or to determine the amount of damages or *to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.*

1996[2]) to April 17, 1997, and final suspension on April 17, 1997 for 3-years (with an *enhancement* for violating a registration requirement for attorney's temporarily suspended for the period of temporary suspension, 1-year, 10 months) subject to reinstatement upon a showing of fitness. Reciprocal discipline was based upon an August 1992 uncontested resignation order of the Florida Supreme Court granting Richardson's petition to resign while under disciplinary investigation for charging an unreasonable fee as a trustee and attorney for a Florida private trust. The resignation order stated:

> The uncontested petition to resign with conditions in lieu of disciplinary proceedings, with leave to seek readmission after three (3) years, is granted effective immediately. Judgment for costs ... entered against respondent ... . Not final until time expires to file a motion for rehearing, and if filed, determined. *The filing of a motion for rehearing shall not alter the effective date of this resignation* [*The Florida Bar v. T. Carlton Richardson,* No. 80,073 (08/27/1992)].

While there was no codified Bar disciplinary rule governing such resignations as misconduct, it was the position of D.C. Bar Counsel (an agency of the DCCA) later adopted by the DCCA, that a resignation while under disciplinary investigation constituted "discipline" by the Florida Supreme Court thereby triggering the automatic temporary suspension provisions of D.C. Bar Rule XI, §11(d)[3] being challenged here as unconstitutional by Richardson.[4] Temporary

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[2]On January 23, 1996 Bar counsel submitted to the DCCA a certified copy of the disbarment order of the U.S. Circuit Court for D.C. based upon Richardson's Florida resignation while under investigation for misconduct (*Richardson/Bar Counsel,* Bar Docket No. 24-96) for a "fresh" order of temporary suspension or to amend the reciprocal disciplinary proceedings based upon the same Florida resignation order that precipitated the June 1995 summary suspension (*Richardson/Bar Counsel,* Bar Docket No. 180-94) in order to add this reciprocal disciplinary judgment. The DCCA dismissed Bar Docket No. 24-96 [*In re Richardson,* A.2d 692:427 (D.C. 1997), op. cit 1020 n.5].

[3] That Bar Rule provides, *inter alia:* "*Temporary suspension and show cause order.* Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of [the DCCA] has bee suspended or disbarred by a disciplining court outside the District of Columbia or by another court in the District of Columbia, the [DCCA] *shall forthwith enter an order suspending the attorney form he practice of law in the District of Columbia* pending final disposition of any reciprocal disciplinary proceeding ***." D.C. Bar Rule XI, §11(d) mandating temporary suspension under such circumstances was enacted by the DCCA in 1989 under the Congressional authority granted it under D.C. Code §11-2503(b).

suspension, *sua sponte* and summary in nature, was imposed on June 27, 1995 without written notice or an evidentiary hearing based upon the presentation in May 1995 by D.C. Bar Counsel to the DCCA of a verified copy of the Florida resignation order.

Thereafter on July 6, 1995, Richardson sought refuge in the D.C. Federal district court after the interim suspension, filing a complaint challenging as violative of due process, and therefore unconstitutional, the temporary suspension and the reciprocal disciplinary 'notice' procedures used in reciprocal disciplinary matters before the DCCA and its Board of Professional Responsibility (Board). By order and bench opinion,[5] the district court dismissed

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[4] In June 1995, Bar Counsel's position was stated thusly to Richardson after submission of the Florida resignation order to the DCCA for temporary suspension in May 1995: "As per our discussions, enclosed please find copies of all correspondence from the complainant's attorney regarding the above reference matters ['Richardson/Bar Counsel, Bar Docket No. 180-94']. We understand that you are disturbed regarding our notice made to the Court and proposed order. As explained during our telephone conversation last week, those filings are required pursuant to Rule XI, Section 11(b) and (d). You are free to file with the court whatever papers you wish to oppose the notice and proposed order of interim suspension. However, *it is the position of this office that your resignation in the face of disciplinary charges in Florida is discipline. See, e.g., In re Pierson,* 624 A.2d 1229 (D.C. 1993); *In re Reiner,* 617 A.2d 984 (D.C. 1992)," Letter, Donna M. DeSilva, Assistant Bar Counsel to Richardson, "Re: Richardson/Bar Counsel, Bar Docket No. 180-94" (06/06/1995). Enclosures consisted of two letters and their enclosures: (1) Letter (08/17/1992), David P. Rankin, Esq. ("complainant's attorney"=Attorney for Overton Trust beneficiaries and other co-trustees in Florida lawsuit for refund of trustee/attorney fees and breach of fiduciary responsibilities) to Betty [=Elizabeth] Branda, Office of Bar Counsel (OBC) re "T. Carlton Richardson" (with 53 pages of attachments) and (2) Letter (05/17/1994), Rankin to Branda re "T. Carlton Richardson" (with 78 pages of attachments). *Excursus:* At this point in time (June 6, 1995), Richardson was unaware that those letters formed the basis for a formally *undocketed* investigation (opened as *Richardson/Rankin,* Bar Docket No. 511-92) because it lacked probable cause as an ethical complaint (a determination by defendant Branda in August 1992), but was later merged into Bar Docket No. 180-94 *(Richardson/Bar Counsel)* with approval of the DCCA's Board on Professional Responsibility's (Board) 'contact member' prior to opening *Richardson/Bar Counsel* in 1994. Under D.C. Bar Rules, no investigation of an ethnical complaint can be conducted without notice and opportunity being given to the accused attorney to respond to Bar Counsel [*"Bar Counsel...Powers and duties,"* D.C. Bar Rule XI, §6(a)(2) and (3), Bar Counsel is to "investigate all matters involving alleged misconduct by an attorney ... which may come to the attention of Bar Counsel ... from any source whatsoever[, *e]xcept* in matters requiring dismissal in matters requiring dismissal because the complaint is clearly unfounded or its face or falls outside the disciplinary jurisdiction of the (DCCA), *no disposition shall be recommended or undertaken by Bar Counsel until the accused attorney shall have been afforded an opportunity to respond to the allegations***(u)pon prior approval of a Contact Member... "*].

[5] See, App. "A", Compl.: *T. Carlton Richardson v. D.C. Court of Appeals,* C.A. No. 94-1272 (D.C.D.C., Hogan, J, 07/28/1995, filed 08/01/1995) [*Richardson 1995*].

Richardson's request for injunctive relief based upon the *Rooker-Feldman* doctrine[6] and abstained under *Younger*[7] from deciding Richardson's challenge to the constitutionality of the reciprocal disciplinary bar rules and its procedures that he alleged violated due process.[8]

Following imposition of temporary suspension (June 27, 1995) and Richardson's *first* abortive excursion into the federal courts (July 6 - August 1, 1995), the Board rendered a decision[9] that Richardson be reciprocally disciplined based upon submissions by D.C. Bar Counsel and Richardson on the issue. The Board recommended at 3-year suspension plus the period served under temporary suspension (1-year, 10 months) as an enhancement for Richardson's late filing of the required registration statement by suspended attorneys. No written notice of misconduct charges were served upon Richardson, nor was Richardson accorded an evidentiary hearing or oral argument before the Board on the Florida resignation reciprocal disciplinary misconduct or late filing of the registration statement charges.

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[6]The *Rooker-Feldman* doctrine holds that under U.S.C. § 281:57, the only federal court with jurisdiction to review State or DC court judgments is the Supreme Court [*Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, U.S. 544:280, *283*, S.Ct. 125:1517 (2005) (discussing *D.C. Court of Appeals v. Feldman*, U.S. 460:462, *482*, S.Ct. 103:1303, *1314-1315* (1983), and *Rooker v. Fidelity. Trust Co.*, U.S. 263: 413, *414-416*, S.Ct. 44:149, *149-150* (1923)]. The doctrine requires a party seeking review of a state court judgment or presenting a claim that a State judicial proceeding has violated their constitutional rights to pursue relief through the state court system and ultimately to the Supreme Court. *Rooker* expressly requires that the State court judgment be rendered by a State court with subject matter and personal jurisdiction [*Id.*, U.S. 263:*415*, S.Ct. 44:*150*]. The Supreme Court in *Rooker* "noted preliminarily that the state court had acted *within its jurisdiction*" [*Rooker*, U.S. 263:*415*, S.Ct. 44:*150; Exxon Mobil Corp.*, U.S. 544:280, S.Ct. 125:*1522*]. And *Feldman* expressly excepts from the jurisdictional bar, final judgments in situations where the constitutionality of a court rule is involved [*Id.*, U.S. 460:*486*, S.Ct. 203:*1316-1317*].

[7]*Younger v. Harris*, U.S. 401:37, S.Ct. 91:746 (1971)

[8] *Richardson (1995) supra.*

[9] 'Contact member' of the Board that approved the merger of Bar Doc. #511-92 (*Richardson/Rankin)* and Bar Doc. #180-94 (*Richardson/Bar Counsel*), whose identity to this date has never been revealed to Richardson, participated in those deliberations, which constituted a conflict of interest and denied Richardson due process since the Board, having such a tainted member, was *per se* biased. A fundamental due process guarantee to parties in controversy is an unbiased decisionmaker [Cf. *Gibson v. Berryhill*, U.S. 411:564, S.Ct. 93:1689 (1973) (Abstention improper where bias decisionmaker involved)]

On April 17, 1997 the DCCA adopted the Board's decision and imposed the recommended reciprocal discipline (3-year suspension with reinstatement upon proof of fitness) and late registration penalty (1-years 10 months suspension, June 1995-April 1997) after consideration of the submissions by D.C. Bar Counsel and Richardson, and conducting oral argument. Using judicial notice procedures, the DCCA found that, while Richardson was suspended "without a hearing,"[10] an evidentiary hearing was not required in D.C. reciprocal disciplinary proceedings (1) *per se* and (2) because Richardson "waived" any right to a revocation hearing of his D.C. law license before the DCCA by resigning the Florida Bar and surrendering his Florida law license while under disciplinary investigation which were dismissed when he resigned (see Florida resignation order), thereby foregoing his due process rights in the Florida disciplinary proceedings.[11] In other words, Richardson's voluntary relinquishment of his due process rights related to his Florida law license constituted *constructive* relinquishment of his due process rights in any *prospective* reciprocal disciplinary proceedings before the DCCA related to his D.C. law license.

Richardson now returns to the federal court to reassert his constitutional rights and prosecute other federal civil rights and common law torts that were abstained from[12] and dismissed improperly under the *Rooker-Feldman* doctrine (as applied and amplified in *Exxon Mobil*) in 1995. At this juncture Richardson seeks a default judgment for on the questions of

[10] "On June 27, 1995 (the D.C. Court of Appeals) ordered Richardson's temporary suspension, *without hearing*, pending final disposition of the proceeding," *In re Richardson*, A.2d 692:417, *429* (1997) (*emphasis* supplied)

[11] Id., *passim*

[12] A party remitted to State courts by an abstention order of a Federal district court has the right to return to the district court, after obtaining the authoritative State court ruling for which the district court abstained, for a determination of her/is federal claims [*England v. La. State Bd. of Med. Exam'rs*, U.S. 375:411, *415-417*, S.Ct. 84:461 (1964); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, U.S. 544:280, *291*, S.Ct. 125:1517 (2005)]. See, also: *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, *40* S. Ct. 29:192 (1909). *Harrison v. NAACP*, U. S. 360:167, *177*, S.Ct. 79:1025 (1973); *Accord: Louisiana P. & L. Co. v. Thibodaux*, U.S. 360:25, *29*, S.Ct. 79:1070 (1959); *Lassiter v. Northampton County Board of Elections*, U. S. 360:45, S.Ct. 79:985 (1959); NAACP *v. Button*, U. S. 371:415, S.Ct. 83:328 (1963)].

liability for failure of the defendants to file a response to the complaint in a timely fashion and for damages, the latter determination to be made by a jury.

2.0 QUESTIONS PRESENTED

3.1 Whether D.C. Bar Rule XI, §11(d) denies due process under the 5th Amendment generally guaranteeing notice, opportunity to be heard and other fair trial procedures including the 6th Amendment's guarantee of a right to confront testimonial and documentary evidence supporting charges of misconduct, where the Bar Rule authorizes the summary deprivation of plaintiff Richardson's license to practice law without notice of any misconduct charges, and an opportunity to be heard in opposition to the charges and to confront the hearsay and documentary evidence against him?

3.2 Whether the D.C. Court of Appeals can temporarily (as it did in June 1995 and March 1996) and finally (as it did in April 1997) suspend plaintiff Richardson's license to practice law without following its enabling statutory requirements set forth in D.C. Code §11-503(b) to commence a disciplinary proceeding against plaintiff, namely: (a) filing a verified complaint, (b) service of the complaint upon the plaintiff, and (c) setting of a hearing date, without violating plaintiff Richardson's 5th and 6th Amendments rights to due process and confrontation?

3.3 Is there a genuine issue of material fact as to the due process violation alleged and its unconstitutionality where the D.C. Court of Appeals stated, "On June 27, 1995 (the D.C. Court of Appeals) ordered Richardson's temporary suspension, *without hearing*, pending final disposition of the proceeding" [*In re Richardson*, A.2d 692:417, *429* (1997) (*emphasis* supplied)], had based those reciprocal disciplinary proceedings on a non-codified or case law rule of attorney conduct (i.e. resignation of a license to practice law while disciplinary

proceedings are pending with or without an admission of misconduct constitutes 'discipline' for purposes of reciprocal disciplinary proceedings before the DCCA), and had prosecuted Richardson in those reciprocal disciplinary proceedings by judicial and 'official' notice procedures involving a biased factfinding decisionmaker that violated due process [*Garner v. Louisiana*, U.S. 368:157, S.Ct. 82:248 (1961) (Judicial notice procedures unconstitutional)]?

3.0 STANDARDS OF CLAIMS ADJUDICATION

3.1 Improper revocation of a license to practice law as alleged here implicates due process or fair hearing violations in the investigatory and adjudicatory phases of revocation under the U.S. Constitution directly (e.g. 5th Amd. due process clause, 6th Amd. confrontation clause, 4th Amd. prohibition against unreasonable search and seizure), the Civil Rights Act (U.S.C. §42:1983[a]), or both. Claims that allege a violation of procedural due process are evaluated under a two-part analysis: "First, the court must determine whether the interest at stake is a *protected liberty* or *property right* under the [14th or 5th] Amendment. Only after identifying such a right [does the court] continue to consider whether the deprivation of that interest contravened notions of due process,"[13] which involves determining what process is due.

Thus, when analyzing Richardson's claims, there are three distinct questions that the district court must resolve: (1) whether plaintiff is entitled to due process; (2) what process is due, and (3) when. That is, to what procedural devices must the plaintiff have access in order to protect his interest against the deprivation worked by the DCCA under its reciprocal disciplinary

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[a] U.S.C. § 42:1983 provides that:

> every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Federal Constitution and its laws, is liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

[13] Cf. *Thomas v. Cohen*, F.3d 304:563, *576* (6th Cir. 2002)

statute and rule, and must that access be afforded *before* the DCCA's deprivation, or is it sufficient under the circumstances that such access be available post-deprivation?

3.2 Where U.S.C. §42:1983 is the basis of a due process or fair hearing violation, the Civil Rights Act protects against the deprivation "of any rights, privileges, or immunities secured by the Constitution and laws" as a result "of any statute, ordinance, regulation, custom, or usage, of any State." To prevail, a plaintiff must show that the: (1) plaintiff was deprived of rights secured by the U.S. Constitution or laws of the United States; and (2) deprivation was caused by a person acting under color of state law.[14] A *pro se* civil rights complaint is to be liberally construed and not dismissed *unless* it appears certain that the plaintiff can prove "no set of facts" which would entitle plaintiff to relief.[15]

After the U.S. Civil War of the mid-1800s, Congress enacted U.S.C. §42:1983 to insure that the federal courts would have jurisdiction of constitutional claims against State officials.[16] Originally it was a protective measure against government sponsored terrorism, oppression and deprivation of the constitutional rights—'life, liberty, property'--of newly freed Africanic slaves [Richardson's forebears] and even today, the evil that the legislation seeks to remedy for all Americans is state-sponsored infringement of federally protected constitutional rights. It is designed to remedy wrongs committed by government agents and employees against private citizens, for the law protects the people from situations when the government abuses its power or authority.

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[14] *Hornsby v. Allen*, F.2d 326:605, *612* (5th Cir., 1964); *Tenny v. Brandhove*, U.S. 341:367, S.Ct. 71:783 (1951); *Screws v. United States*, U.S. 325:91, S.Ct. 65:1031 (1945); *Upsher v. Grosse Pointe Pub. Sch. Sys.*, F.3d 285:448, *452* (6th Cir. 2002), *cert. den.*, citing *Flagg Bros. v. Brooks*, U.S. 436:149, *155-157*, S.Ct. 98:1729 (1978)

[15] *Haines v. Kerner*, U.S. 404:519, *520-521*, S.Ct. 92:594, *595-596* (1972)

[16] *Butz v. Economou*, U.S. 438:478, *502-503*, S.Ct. 98:2894, *2909-2909* (1978)

In general, civil rights actions against bar enforcement officials are not barred because the alleged unconstitutional conduct arises out of their enforcement activities for the "very purpose of §[42:]1983 was to interpose the federal courts between the States and the people, as guardian of the people's federal rights -- to protect the people from unconstitutional action be it executive, legislative, or *judicial."*[17] In *Supreme Court of Virginia v. Consumer's Union of U.S.,*[18] the U.S. Supreme Court held that State judges are not absolutely immune from suit, other than damage suits, when sued as enforcers of court rules. However, judges are not immune from prospective injunctive relief against them in their judicial or adjudicative capacities nor are State judges immune as to *State* due process claims under any circumstances.[19] Additionally, a district court has jurisdiction of an attorney's civil rights suit alleging that the State's disciplinary procedure did not comport with the attorney's rights to due process.[20]

In civil rights cases, a government agency is not vicariously liable for wrongs perpetrated by its employees.[21] It is subject to liability under U.S.C. §42:1983 only if the action that is alleged to be unconstitutional or in violation of federal laws implements or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by the State governmental body. Moreover, an official seeking absolute immunity bears the burden of showing that such immunity is justified.[22]

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[17] *Sup. Ct. of Va. v. Consumer's Union of U.S.,* U.S. 446:719, *735n.14,* S.Ct. 100:1967, *1976n. 14* (1980)

[18] Id.

[19] *Pulliam v. Allen,* U.S. 466:522, *541-542,* S.Ct. 104:1970, *1908-1981* (1984)

[20] *Goodrich v. Supreme Court of South Dakota,* F.2d 511:316, *317* (8th Cir., 1975); See also, *Freidman v. Supreme Court of Virginia,* F.2d 822:423 (4th Cir., 1987) (Civil rights action by attorney to invalidate bar rule, *held* bar rule violated privileges and immunities clause)

[21] *Monell v. Dept. of Social Services,* U.S. 436:658, S.Ct. 98:2018 (1978)

[22] *Buckley v. Fitzsimmons,* U.S. 509:259, S.Ct. 113:2606, *2611* (1993); Accord: *Simons v. Bellinger,* F.2d 643:774, *777-779* (D.C. Cir., 1980); *Briggs v. Goodwin,* U.S. App. D.C. 186: 179, F.2d 569:10 (App. D.C. Cir., 1977), *cert. den.*

In *Pembaur v. City of Cincinnati*,[23] the Supreme Court held that a government agency's (a municipality in this instance) liability under §42:1983 attaches only where a governmental body or persons who are responsible for establishing final policy with respect to the subject in question makes a deliberate choice to follow a course of action from among various alternatives. Inaction by a public agency is insufficient participation in a subordinate's misconduct to make the agency liable in a suit under U.S.C. § 42:1983, unless the policymaking level at the agency has deliberately decided to take no action against, and thus in effect, to condone or ratify the misconduct, and so adopt it as the agency's unofficial policy.[24]

When determining whether absolute immunity is appropriate, the role of the district court is not to make a freewheeling policy choice, but to interpret the intent of Congress by identifying a common-law tradition of absolute immunity for a given *function* and considering whether such immunity is consistent with the history and purpose of U.S.C. §42:1983.[25] Likewise, in determining whether particular actions of government officials fit within qualified or absolute immunity, the proper approach is a *functional* approach, which looks to the *nature of the function* performed, not the *identity of the actor* who performed it.[26] Thus, the burden of proof is upon the government agency or official to demonstrate an entitlement to absolute or qualified immunity; and if qualified immunity exist, that there was no 'clearly established' due process right in existence at the time of the alleged unconstitutional conduct.[27]

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[23] U.S. 475:469, S.Ct. 106:1292 (1986)

[24] Cf. *City of Canton v. Harris,* U.S. 489:378, S.Ct. 109:1197 (1989) (failure to train police regarding need to provide medical care to prisoner); *Lenard v. Argento*, F.2d 699:874 (7th Cir.1983) (indifference to beating of prisoner while in police custody); *Harris v. Harvey*, F.2d 605:330, (7th Cir. 1979), *cert. den.* (*Held*: An allegedly *racially motivated campaign* by a county judge to discredit and damage a city police lieutenant, which was perpetrated under color of state law, constituted a denial of equal protection of laws and was cognizable under the Civil Rights Act)

[25] *Buckley,* U.S. 509:259, S.Ct. 113:*2613*

[26] Id.

[27] *Harlow v. Fitzgerald*, U.S. 457:800, *818*, S.Ct. 102:2727, *2738* (1982)

Finally, when a court performs investigative and prosecutorial functions, it loses any claim to absolute immunity.[28] It has been held that where there were nonjudicial functions performed by a court in investigating and prosecuting an attorney for contempt which causes a constitutional injury, when the court performs its *adjudicatory* functions that would normally be absolutely immune, a *qualified* immunity attaches to those *adjudicatory* functions as well.[29]

3.3 "Congress enacted §[42:]1983 ... to provide an *independent avenue for protection* of federal constitutional rights"[30] and to insure that the federal courts would have jurisdiction of constitutional claims against State officials.[31] Consequently, challenges to a State court's proceedings based upon the *violation* of due process or 'fair trial procedures' or other constitutional rights brought in a district court by definition does not seek appellate review, thus the *Rooker-Feldman* doctrine as expounded in *Exxon Mobil* of jurisdictional preclusion is inapplicable.[32] There is an "independent" cause of action for the *violation* of any constitutional

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[28] Id.

[29] *Lopez v. Vanderwater*, F.2d 620:1129 (7th Cir., 1980) (In adjudicating the defendant's guilt for contempt, a judge was liable in a civil rights action who performed investigatory and prosecutory functions that caused a denial of a defendant's constitutional right to a trial by jury, right to counsel, and right to an impartial tribunal)

[30] *Pulliam,* U.S. at 466:*539*, S.Ct. at 104:*1979*

[31] *Butz*, U.S. 438:78, S.Ct. 98:2894, *2910* ["No [hu]man in this country is so high that [s/]he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of law, and are bound to obey it."]

[32] The *Rooker-Feldman* doctrine holds that under U.S.C. § 28:157, the only federal court with jurisdiction to review State or DC court judgments is the Supreme Court [*Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, U.S. 544:280, *283*, S.Ct. 125:1517 (2005) (discussing *D.C. Court of Appeals v. Feldman*, U.S. 460:462, *482*, S.Ct. 103:1303, *1314-1315* (1983), and *Rooker v. Fidelity. Trust Co.*, U.S. 263: 413, *414-416*, S.Ct. 44:149, *149-150* (1923)]. The doctrine requires a party seeking review of a state court judgment or presenting a claim that a State judicial proceeding has violated their constitutional rights to pursue relief through the state court system and ultimately to the Supreme Court. *Rooker* expressly requires that the State court judgment be rendered by a State court with subject matter and personal jurisdiction [*Id.*, U.S. 263:*415*, S.Ct. 44:*150*]. The Supreme Court in *Rooker* "noted preliminarily that the state court had acted *within its jurisdiction*" [*Rooker,* U.S. 263:*415*, S.Ct. 44:*150; Exxon Mobil Corp.*, U.S. 544:280, S.Ct. 125:*1522*]. And *Feldman* expressly excepts from the jurisdictional bar, final judgments in situations where the constitutionality of a court rule is involved [*Id.*, U.S. 460:*486,* S.Ct. 203:*1316-1317*].

due process or 'fair trial procedure.'[33] It is plainly within the federal question [U.S.C. § 28:1331] and civil rights [U.S.C. §42:1983] jurisdiction of the federal courts.

A court has no authority to deprive a person of life, liberty or property without complying with constitutional mandates for due process or fair trial procedures since they are essential jurisdictional prerequisites and noncompliance voids any judgment rendered.[34] Moreover, a federal district court has subject-matter jurisdiction in civil rights action by a suspended attorney who had been denied reinstatement against judicial regulators alleging various constitutional defects in procedural rules under which the judicial regulators considers petitions for reinstatement of suspended attorneys.[35]

4.0 DENIAL OF DUE PROCESS OR FAIR PROCEDURES

All of plaintiff Richardson's claims radiate from one central or core claim: that the D.C. Court of Appeals' reciprocal disciplinary system, its statutory and regulatory structure that provides for *sua sponte* and summary interim suspension of an accused attorney's law license pending final disposition of any misconduct charges against the attorney without a written notice and evidentiary hearing under judicial notice procedures, violates due process and any resultant reciprocal discipline imposed is therefore void *ab initio* in D.C. and cannot be given 'full faith and credit' in any other jurisdiction, State or Federal.[36] In plaintiff's reciprocal discipline, there

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[33] *Johnson v. Zerbst,* U.S. 304:458, *467-468,* S.Ct. 58:1019, *1024-1025* (1938)
[34] Id.
[35] *Pulliam*
[36] Article IV, Section 1 of the U.S. Constitution states: "*Full faith and credit* shall be given in each State to the public acts, records and judicial proceedings of every other state." Thus, a judgment in a lawsuit or a criminal conviction rendered in one State "shall" be recognized and enforced in any other state, so long as the original judgment was reached by due process of law [cf. *World-Wide Volkswagen Corp. v. Woodson,* U.S. 444:286, *291,* S.Ct. 100:559, *564* (1980)]. To be valid and enforceable, a judgment must be supported by three elements: (1) the court must have jurisdiction of the parties; (2) the court must have jurisdiction of the subject matter; and (3) the court or tribunal must have the power of authority to render the particular judgment. If the requirements for validity are not met, a judgment may be subject to avoidance [*Peduto v. City of North Wildwood,* F.Supp 696:1004 (D.C. NJ), *aff'd* F.2d 878:725 (3rd Cir., 1989)]. Where jurisdictional objections are lodged by a party, a federal court cannot proceed immediately

were due process violations during the investigatory phase (1992-1995) preceding Richardson's summary interim suspension in 1995 and during the adjudicatory phase (1995-1997) imposing interim and final reciprocal discipline that commenced on June 27, 1995 and continues to date.

In summary those due process violations consisted of:

> (1) A failure to notify the plaintiff in 1992 when the reciprocal disciplinary complaint was first presented to the DCCA's bar prosecutors by an 'attorney complainant'[37] thereby denying Richardson an opportunity to respond to the misconduct charges;[38]
> (2) The concealment and nondisclosure from Richardson of the original 1992 complaint and the underlying investigation spanning some two years (1992-1994), and its merger with a second fully disclosed reciprocal disciplinary investigation arising out of the same factual scenario opened in 1994[39] (commencing in 1992, partly ending in 2003, and all subsequent times that Richardson has unsuccessfully sought relief in the federal courts, 1995 to date), and from the DCCA at the time interim suspensions were sought in 1995 and 1996 and this federal district court at the time Richardson sought injunctive, declaratory and compensatory relief when his law license was summarily revoked in 1995;
> (3) The participation by the Board's 'contact member' in the merger of the 1992 and 1994 investigations and in the deliberations of the Board that resulted in a recommendation that Richardson be reciprocally disciplined based upon his Florida Bar resignation while under disciplinary investigation;
> (4) The prosecution of reciprocal discipline based upon a case law Bar Rule instead of a codified and legislated Bar Rule of the DCCA for resigning the Florida Bar while under disciplinary investigation without an admission of misconduct; and
> (6) The concealment and nondisclosure of investigatory records and activities from Richardson violated due process rights secured to him under the reciprocal bar

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to the merits questions and disregard the jurisdictional objections [*Steel Co. v. Citizens for a Better Environment*, U.S. 523:83, *93,* S.Ct. 118: 1003, *1012* (1998)]. In *Steel Co.*, the Supreme Court held that the "*first and fundamental question is that of jurisdiction*, first of the [reviewing] court [itself], and *then of the court from which the record comes*. This question the court is bound to ask and answer *for itself*, even when not otherwise suggested, and without respect to the relation of the parties to it. ... The *requirement that jurisdiction be established as a threshold matter* 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and *without exception*'" [Id., U.S. 523: *94-95,* S.Ct. 118:*1012*].

[37] *Richardson/Bar Counsel*, Bar Doc. #180-94 raises out of "correspondence from the complainant's attorney", see, Letter, DeSilva (Asst. Bar Counsel) to Richardson, "Re: Richardson/Bar Counsel, Bar Docket No. 180-94" (06/06/1995), *supra.*

[38] The 1992 ethical complaint was brought by a Florida attorney representing the plaintiffs in a Florida lawsuit filed against Richardson alleging fiduciary mis- and malfeasance (including refund of fiduciary compensation received by Richardson).

[39] The 1994 complaint was brought by bar prosecutors themselves based ostensibly on Richardson's 1992 resignation of the Florida Bar precipitated by the Florida Bar's disciplinary investigation into the lawsuit brought before the Florida Bar in 1990 by the same 1992 D.C. bar complainant

disciplinary rules, the 5th (due process generally) and 6th (right to confrontation) Amendments, U.S. Const.

And specifically during the adjudicatory phase commenced in 1995, these due process violations occurred because:

> (1) Judicial or 'official' notice procedures were used by the DCCA and its Board to impose reciprocal discipline and to enhance the discipline imposed under a case law rule as opposed to a codified bar rule for Richardson's alleged late filing of a registration statement required of suspended and disbarred attorneys;
> (2) Richardson received disparate treatment in violation of the 13th Amendment's Equal Protection Clause by having his interim and final suspensions imposed without notice and hearing, a due process right that an attorney who committed a disciplinary offense in the District of Columbia (i.e. 'domiciliary discipline') would receive, even if the circumstances of misconduct requires emergency action, as well as any other license holder in the District of Columbia regardless of the nature of the license held; and
> (3) Concealment and nondisclosure of investigatory records and activities in proceedings before the DCCA (acting in its judicial capacity) and this district court from 1995 to date (2009) -- which constituted, not only a fraud upon those courts,[40] but an obstruction of

[40] "Fraud upon the court, as distinguished from fraud upon an adverse party is limited to fraud which *seriously affects the integrity of the normal process of adjudication*" [*Gleason v. Jandrucko*, F.2d 860:556, *558* (2nd Cir. 1988) citing *Kupferman v. Consol. Research & Mfg. Corp.*, F.2d 459:1072, *1078* (2d Cir. 1972); See also, *Bulloch v. United States*, F.2d 763:1115, *1121* (10th Cir., 1985)]. It embraces "only 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 cannot perform in the usual manner its impartial task of adjudicating cases*" [*Hadges v. Yonkers Racking Corp.*, F.3d 48:1320, *1325* (2nd Cir. 1995) quoting *Kupferman, supra;* See also, *Kenner v. CI.R.*, F.3d 387:689 (7th Cir., 1968), *Moore's Fed. Prac.* 1:512 (2nd Ed., 1967); *United States v. Buck*, F.3d 281:1336, *1342* (10th Cir., 2002) (Fraud on the court is a fraud "where the impartial functions of the court have been directly corrupted"); *Fierro v. Johnson*, F.3d 197:147, *154* (5th Cir., 1999) ("*[A]n unconscionable plan or scheme* which is designed to *improperly influence* the court in its discretion"); *Simon v. Navor*, F.3d 116:1, *6* (1st Cir., 1997) ('*[A]n unconscionable scheme calculated to interfere with* judicial system's ability to impartially adjudicate a matter')]. "A decision produced by fraud upon the Court is not in essence a decision at all, and never becomes final" [*Kenner*]. *Excursus:* Bar prosecutors represent the government and are duty bound to assist in obtaining justice, not merely winning a case. Here the bar prosecutors, not only concealed evidence, which is *per se* an obstruction of justice and a criminal offense under D.C. and Federal law, they involved the Board "contact member," knowingly or unknowingly, in the scheme to merge investigations, a 1992 undisclosed investigation with a 1994 disclosed investigation, and to submit a document (the Florida resignation order) which on its face shows no misconduct by Richardson and then argue to the DCCA that the Florida resignation order was the "functional equivalent" of suspension knowing full well that there was no D.C. Bar Rule that would discipline an attorney for resigning another bar while under disciplinary investigation. Moreover, bar prosecutors knew that the only voice that the DCCA would hear under the summary judicial notice procedures temporarily suspending Richardson's law license was those of its 'trusted' bar prosecutors! What is more unconscionable and egregious, is that bar prosecutors accomplished their aim not only in the DCCA, but also in this district court, corrupting two court proceedings, and the administrative proceedings before the DCCA's Board.

justice—denied Richardson his due process rights to an informed and unbiased tribunal in both the reciprocal disciplinary and federal court civil proceedings.

4.1 OVERVIEW OF RELEVANT JURISPRUDENCE

Due process of law

> refers to certain fundamental rights which that system of jurisprudence, of which ours is derivative, has always recognized. If any of these are disregarded in the proceedings by which a person is condemned to the loss of life, liberty, or property, then the deprivation has not been by "due process of law."

The Due Process Clauses of the 5th and 14th Amendments of the U. S. Constitution, applicable to Federal and State jurisdictions respectively, provide *inter alia* that "[n]o state shall ... deprive any person of life, liberty, or property, without due process of law... ."

The fundamental norm of Due Process Clause jurisprudence requires that *before* the government can constitutionally deprive a person of the protected liberty or property interest, it must afford him notice and hearing.[41] "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner'."[42] Justice Jackson, writing for the Court in *Mullane v. Central Hanover Bank & Trust Co.,*[43] stated that:

> Many controversies have raged about the cryptic and abstract words of the Due Process Clause, but there can be no doubt that, *at a minimum, they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.*[44]

Furthermore, the Supreme Court

> decisions have emphasized time and again, th[at the] Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged. Thus, it has become a truism that "*some* form of hearing" is required before the owner is finally deprived of a protected property interest. [*Board of Regents v. Roth,* U.S. 408:564, *670-671, n. 8,*

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[41] *Mathews v. Eldridge*, U.S. 424:319, *334-335,* S.Ct. 96:893 (1976)
[42] *Mathews*, U.S. 424:*333* (quoting *Armstrong v. Manzo*, U.S. 380:*545, 552*, S.Ct. 85:1187 (1965)
[43] U. S. 339:306, S.Ct. 70:652 (1950)
[44] U.S. 339:*313*

> S.Ct. 92:2701 (1972) (*emphasis* in original)]. And that is why the Court has stressed that, when a "statutory scheme makes liability an important factor in the State's determination . . . , the State may not, consistent with due process, eliminate consideration of that factor in its prior hearing" [*Bell v. Burson,* U. S. 402:535, *541,* S.Ct. 91:1586 (1971)].

"To put it as plainly as possible, the State *may not* finally destroy a property interest without *first* giving the putative owner an opportunity to present his claim of entitlement."[45]

And those procedures which have been held by the Supreme Court to satisfy the Due Process Clause have "included notice of the action sought," along with the opportunity to effectively be heard.[46] "[T]hat a hearing closely approximating a judicial trial is necessary" has never been the standard.[47] The concept of due process generally demands fewer procedural safeguards at informal administrative proceedings than during formal judicial hearings.[48]

However, there is a procedural floor below which even informal proceedings cannot go. This is especially true where the informal process results in a final dismissal of the plaintiff's claim.[49] In *United States v. James Daniel Good Real Property,*[50] the Supreme Court considered

> whether, in the absence of exigent circumstances, the Due Process Clause of the Fifth Amendment prohibits the government in a civil forfeiture case from seizing real property without first affording the owner notice and an opportunity to be heard.

The Court expressly held "that it does"![51]

Consistently in various contexts, the Supreme "Court ... has held that *some form of hearing* is required before an individual is finally deprived of a property interest."[52] Therefore,

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[45] *Logan v. Zimmerman Brush Co.,* U.S. 455:422, *434,* S.Ct. 102:1148 (1982)
[46] *Mathews,* U.S. 424:*334*
[47] *Mathews*, U.S. 424:*333*
[48] *Brock v. Roadway Express, Inc.,* U.S. 481:252, *266,* S.Ct. 107:1740 (1987); *Hannah v. Larche*, U.S. 363:420, *450-45,* S.Ct. 80:1502 (1960)
[49] *Brock*, U.S. 481:*264* (finding due process minimally requires notice of the substance of allegations and an opportunity to respond); *Logan*, U.S. 455:*437* (holding that automatic dismissal of claims where agency failed to take timely action within statutory period violates due process)
[50] U.S. 510:43, S. Ct. 114:492 (1993)
[51] Id., U.S. 510:*46*

Richardson contends that the DCCA was obligated to give him notice of the DCCA's intent to suspend his license to practice law and afford him the opportunity to respond to the evidence upon which the DCCA proposed to base the suspension and to be heard on the proper resolution of the questions *before* suspension is effectuated. And this was not done.

Every Supreme Court due process case has recognized, either explicitly or implicitly, that, because

> *minimum [procedural] requirements [are] a matter of federal law*, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action. *** While the legislature may elect not to confer a property interest,. . . . *it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards*. . . . [T]he adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms.[53]

"Indeed, any other conclusion would allow the State to destroy at will virtually any state-created property interest."[54]

Likewise, the Supreme Court has made clear that "[i]t is by now well established that "'due process' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."[55] In other words, "due process is flexible and calls for such procedural protections as the particular situation demands."[56] The Supreme Court established in *Mathews,* and even before that decision, that identification of the specific dictates of due process generally requires consideration of three (3) distinct factors:

- FIRST, the private interests that will be affected by the official action;

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[52] *Mathews,* U.S. 424:*333*
[53] *Logan,* U.S. 455:422, *422* (citations and internal quotation marks omitted)
[54] Id.
[55] *Gilbert v. Homar,* U.S. 520:924, *930,* S.Ct. 117:1807(1997) (quoting *Cafeteria and Restaurant Workers v. McElroy,* U.S. 367:886, *895,* S.Ct. 81:1734 (1961)
[56] *Morrissey v. Brewer,* U.S. 408:471, *481,* S.Ct. 92:2593 (1972)

- SECOND, the risk of an erroneous deprivation of such interest of the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and
- THIRD, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.[57]

It has been a settled principle of due process law relative to attorneys, at least as far back as 1868, some 141-years, that written notice and an evidentiary hearing should precede revocation of a license to practice law. Furthermore, there exist between the parties no genuine material issue of fact, thus it is undisputed that Richardson received no written notice and evidentiary hearing when his license was temporarily in 1995/1996 and finally in 1997 revoked over the period of some 3-years plus 22 months (1-year, 10-months) for late filing of a registration statement required of suspended or disbarred attorneys. And that revocation continues to date (2009), some 14-years later. Therefore, there is a substantial likelihood of success on the merits of Richardson's core claim.

4.2 PROTECTED LIBERTY & PROPERTY INTERESTS IN LAW LICENSE

Plaintiff Richardson asserts that by suspending his license to practice law without notice or hearing in reciprocal disciplinary proceedings, with the resultant interference with his rights to earn a living in his chosen profession, the D.C. Court of Appeals deprived him of "liberty, or property, without due process of law," in violation of the 5th Amendment of the United States Constitution. Other rights under the "Bill of Rights" – the first 10 Amendments to the Constitution, constitute "due process rights" also, as relevant here: the 6th Amendment's confrontation clause. Therefore, plaintiff Richardson's assertion of the denial of due process is

[57] *Mathews*, U.S. 424:*335* (citing *Goldberg v. Kelly*, U.S. 397:254, *263-271*, S.Ct. 90:1011 (1970)

two-fold: (1) that the plaintiff has a constitutionally protected liberty and property rights in his law license and (2) that those rights were violated.[58]

"[I]t is well established that the freedom to choose and pursue a career, to engage in any of the common occupations of life, qualifies as a liberty interest which may not be arbitrarily denied by the State."[59] "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and opportunity to be heard are essential"[60] and failure to provide such notice and hearing violates the 5th Amendment's Due Process Clause.[61]

An attorney is not "relegated to a *watered-down version* of constitutional rights."[62] "The fundamental requisite of due process of law is the opportunity to be heard."[63] This applies no less to lawyers.[64] "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense – a right to his day in court – are basic in our system of jurisprudence."[65]

Richardson has a "property" interest in his license to practice law.[66] As a lawyer, Richardson also has a "liberty" interest in "engag[ing] in [one] of the common occupations of

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[58] Cf. *Nat'l Council of Resistance of Iran (NCRI) v. Department of State*, F.3d 251:192 (D.C. Cir. 2001)
[59] *R.S.S.W., Inc. v. City of Keego Harbor*, F. Supp.2d 18:738 (E.D. Mich. 1998) (internal quotes and citations omitted). *See also Parate v. Isibor*, F.2d 868:821 (6th Cir. 1989); *Sanderson v. Village of Greenhills*, F.2d 726:284, *286-287* (6th Cir. 1984)
[60] *Paul v. Davis*, U.S. 424:693, *708,* S.Ct. 96:1155 (1976) quoting *Wisconsin v. Constantineau,* U.S. 400:433, *434,* S.Ct. 91:507 (1971)
[61] *NCRI*
[62] *Garrity v. New Jersey*, U.S. 385:493, S.Ct. 87:616 (1967)
[63] *Grannis v. Ordean*, U.S. 234:385, *394,* S.Ct. 34:779 (1914)
[64] *Ex parte Garland*, U.S. (Wall. 4:) 71:333, *378*, L.Ed. 18:366 (1866)
[65] *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, U.S. 147:626, *671,* S.Ct. 105:2265 (1985) (Brennan, J., concurring in part, dissenting in part), quoting *In re Oliver,* U.S. 333:257, 273, S.Ct. 68:499 (1948). See also, *In re Ruffalo*, U.S. 390:544, *550*, S.Ct. 88:1222, *1225* (1968), *mod. on other grds*, U.S. 392:919, S. Ct. 88: 2257 (1968), quoting *Randall v. Brigham*, U.S. (Wall. 7:) 74:523, *540,* L. Ed. 19:285 (1868) ["(N)otice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence (sic)."]
[66] *Barry v. Barchi*, U.S. 443:55, *64,* S.Ct. 99:2642 (1979)

life."[67] And Richardson has a heightened "liberty" interest where, as is the circumstance here, his "good name, reputation, honor, or integrity is at stake *because of what the government is doing to him.*"[68]

5.0 NATURE OF DUE PROCESS VIOLATIONS

5.1 UNCONSTITUTIONALITY OF ENABLING STATUTE & RULE GOVERNING RECIPROCAL DISCIPLINE (5TH & 6TH AMDS. U.S. CONST.)

(a) DEPRIVATION WITHOUT WRITTEN NOTICE AND EVIDENTIARY HEARING

(1) To the extent that D.C. Code §11-503(b) [eff. July 29, 1970] which sets out the "procedure for censure, *suspension* or disbarment" provides that "[a]fter the filing of the written charges, *the court may suspend the person charged* from practice at its bar *pending the hearing thereof[,]"* it is unconstitutional *per se* under the due process and confrontation clauses of the 5th and 6th Amendments, U.S. Constitution, respectively. And likewise D.C. Bar Rule XI, §11(d)'s [eff. September 1, 1989] *proviso* that

> *[u]pon receipt of a certified copy of an order* demonstrating that an attorney subject to the disciplinary jurisdiction of [the D.C.] Court [of Appeals] has been suspended or disbarred by a disciplining court outside ... or in the District of Columbia, the Court *shall forthwith enter an order suspending the attorney from the practice of law* ... pending final disposition of any reciprocal disciplinary procedures[,]

is unconstitutional *per se* under the 5th (due process generally) and 6th (right to confront testimonial and documentary evidence) Amendments. Reason being that the DCCA's authority to summarily suspend an accused attorney without notice and hearing upon presentation of a

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[67] *Bd. of Regents of State Colleges v. Roth*, U.S. 408:564, *572*, S.Ct. 92:2701 (1972), quoting *Meyer v. Nebraska*, U.S. 262:390, *399*, S.Ct. 43:625 (1923)
[68] *Paul*, U.S. 424:*708*

verified copy of a foreign court's disciplinary order suspending or disbarring a D.C. attorney is derived from D.C. Code §11-2503(b)'s *proviso*,[69] which is itself unconstitutional.

Because the enabling statute [D.C. Code §11-2503(b)'s *proviso*] and the operative reciprocal disciplinary rule [D.C. Bar Rule XI, §11(d)] permits suspension without notice or a hearing, the DCCA has "no constitutional authority for" enacting either D.C. Code §11-2503(b) or D.C. Bar Rule XI, §11(d)'s *provisos* permitting suspension or similar deprivation of an attorney's license to practice law without a prior hearing.[70]

Laughlin v. Wheat[71] declared unconstitutional a procedure – i.e. permitting interim suspension after service of a written notice and setting of a hearing date -- under a D.C. statute governing attorney disciplinary matters virtually identical to the present D.C. Code §11-2503(b). Such summary suspension was called by the *Laughlin* court,

> a legislative decree, by which the *mere filing of accusations against an attorney operates automatically to suspend him from practice without hearing or judgment.* This is contrary to one of the cardinal principles of the administration of justice, that *no man can be condemned or divested of his right until he has had the opportunity of being heard.* *** While ...a court has jurisdiction even in an informal hearing in a proper case to strike the name of an attorney from its rolls, we know of no case in state or federal court in which it was held *it could be done without affording the attorney reasonable notice and an opportunity to be heard in his defense.* ... We are therefore of the opinion that the *statute of the District should be so construed as to require both notice and a hearing before suspension* even though the notice and the hearing be informal and speedy."[72]

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[69] *In re Richardson,* A.2[d] 692:*430* [D.C. Code §11-2503(b) provides "clear authority for temporary suspension under D.C. Bar Rule XI, §11(d) pending final disposition of the reciprocal disciplinary proceedings"].

[70] *Wong Yan Sung v. McGrath,* U.S. 339:33, *49*, S.C. 70:445, *454, mod. on other grds.,* U.S. 339:908, S.Ct. 70:564 (1950) ("The constitutional requirement of *procedural due process of law* derives from the same source as Congress' power to legislate and, where applicable, permeates every *valid enactment* of that body"); Accord: *Laughlin v. Wheat,* F.2d 95:101 (D.C. Cir., App. D.C., 1937)

[71] F.2d 95:101 (D.C. Cir., App. D.C., 1937)

[72] *Laughlin,* F2d 95:*102*

And is one of numerous D.C. Court of Appeals' cases beginning in the late 1800s holding that an *evidentiary* hearing must be accorded *prior to* attorney license revocations whether initiated *via* domiciliary or reciprocal disciplinary procedures.[73]

Moreover, pre-suspension hearings are guaranteed under the 5th Amendment's Due Process Clause as interpreted by the U.S. Supreme Court in *Goss v. Lopez*,[74] *Bell v. Burson*[75] [government "must afford notice and opportunity for a hearing appropriate to the nature of the case *before* the termination becomes effective" (*Emphasis* in original)], *Fuentes v. Shevin*,[76] *Davis v. Scherer*,[77] *Barry v. Barchi*,[78] and *Gilbert v. Homar*.[79] Consequently declaratory and injunctive relief is compelled to prevent continuing unconstitutional law license revocations by the DCCA in reciprocal disciplinary matters and to remedy past unconstitutional deprivation of law licenses by the DCCA over the last 20 years (1989-2009).

In addition to the a declaration regarding the unconstitutionality of D.C. statutory and reciprocal disciplinary rule *provisos* authorizing suspension without a prior hearing and

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[73] *United States ex rel Wederburn v. Bliss*, App.D.C. 12:285, *493* (1898) ["Nor is there controversy as to *what, in general, would constitute due process of law* in (bar disciplinary) cases ... . Specific *charges*, due *notice* of such charges, an opportunity to make specific *answer* to them, an opportunity to *cross-examine* the witnesses in support of them, an opportunity to *adduce testimony in contradiction* of them, an opportunity for *argument* upon the testimony and upon the law and the facts, -- and *all this before the proper tribunal,* competent to render judgment, and which does, in fact, render judgment -- this undoubtedly *constitutes due process of law under ordinary circumstances* to its fullest extent ..."]; *Garfield v. United States ex rel Spaulding*, App. D.C. 32:153, *158* (1908); *Phillips v. Ballinger*, App. D.C. 37:46, *51-52* (1911); *Goldsmith v. U. S. Bd. of Tax Appeals*, U.S. 270:227, *123*, S.Ct. 46:214, *217-218* (1929) [Citing authoritatively: *Bliss, Garfield,* and *Phillips* for due process requirements is bar disciplinary matters; *Kivitz v. Sec. & Exch. Comm'n*, F.2d 475:956, *962* (D.C.Cir., 1973); *In re Cummings*, A.2d 466:1124 (D.C., 1983)

[74] U.S. 419:565, S.Ct. 95:729 (1975)

[75] U.S. 402:535, *542*, S.Ct. 91:1586, *1591* (1971)

[76] U.S. 407:67, S.Ct. 92:1983 (1972)

[77] U.S. 468:183, S.Ct. 104:3012 (1984) [See dissenting opinion for a comprehensive summary of U.S. Supreme Court cases on the right to a pre-termination hearing since 1925]

[78] U.S. 433:55, S.Ct. 99:2642 (1979) [Interim suspension is unconstitutional for lack of prompt post-suspension hearing.];

[79] U.S. 520:924, S.Ct. 117:1807 (1997) [Interim suspension with summary probable cause proceedings permissible, remanded to determine the promptness of post-suspension hearing]

invalidity of disciplinary proceedings conducted and decisions rendered, the district court cannot accord 'full faith and credit' to these enactments and deprivation decisions thereunder after July 29, 1970, the effective date for D.C. Code §11-2503(b), since they were promulgated in violation of the due process and confrontation clauses, 5th and 6th Amendments respectively.

(2) Specifically in this action, plaintiff Richardson assails the validity of the underlying judgment rendered by the D.C. Court of Appeals, *In re Richardson,* A.2d 692:427 (D.C. 1997), in the *quasi*-criminal reciprocal disciplinary proceedings which revoked plaintiff's license to practice law temporarily in June 1995 and March 1996 and finally in April 1997. Richardson argues that the judgment was rendered in violation of his due process rights to adequate notice and an evidentiary hearing prior to interim and final license revocation under the 5th (due process clause) and 6th (confrontation clause) Amendments and D.C. statutes governing administrative proceedings generally and bar disciplinary proceedings, specifically, as well as the statute governing proof in judicial proceedings,[80] and therefore cannot be given full faith and credit in D.C. or any other jurisdiction, State or Federal.[81]

Richardson further contends that the 1997 D.C. reciprocal disciplinary judgment is *void* on due process grounds. Under controlling U.S. Supreme Court decisions, orders rendered without jurisdiction, or that violated constitutional due process, are void orders, and remain void, and continue to be void even when affirmed by appellate court decisions.[82] A void judgment is

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[80] D.C. Code §§ 11-2503(b) (2001) [governing prerequisites exercise of disciplinary jurisdiction], §2-509 (2001)) [governing right to an evidentiary hearing in "contested cases" before governmental agencies], and 14-101(a) (2001) [requiring all evidence be proved under oath]

[81] *World-Wide Volkswagen Corp. v. Woodson*, U.S. 444:286, *291*, S.Ct. 100:559, *564* (1980)

[82] *Jordon v. Gilligan*, F.2d 500:701, *710* (6th Cir. 1974)("a void judgment is no judgment at all and is without legal effect."); *Lubben v. Selective Service System Local Bd. No. 27*, F.2d 453:645 (1st Cir. 1972) ("a court must vacate any judgment entered in *excess of its jurisdiction*"); *United States v. Holtzman*, F.2d 762:720 (9th Cir. 1985)

not entitled to the respect accorded a valid adjudication. All proceedings founded on the void judgment are themselves regarded as invalid.[83]

Furthermore, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.[84] Such a judgment is attended by none of the consequences of a valid adjudication. "It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... *All proceedings founded on the void judgment are themselves regarded as invalid.*"[85] An illegal order is forever void. Moreover, an order that exceeds the jurisdiction of the court, is void, or voidable, and *can be attacked in any proceeding in any court where the validity of the judgment comes into issue.*[86]

Justice Black writing for the majority in *Wong Yan Sung v. McGrath*[87] stated:

> But the difficulty with any argument premised on the proposition that [a deprivation] statute does not require a hearing is that, *without such hearing, there would be no constitutional authority for [deprivation].* The constitutional requirement of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every *valid enactment* of that body.[88]

In other words, Congress has no legislative power or authority to provide for the deprivation of a law license in the District of Columbia without adequate notice and an evidentiary hearing prior to deprivation and congressional delegation of such authority by statute in D.C. Code §11-2503(b) to the DCCA was a nullity (*Laughlin*). Therefore, the DCCA lacks legislative power to enact D.C. Bar Rule XI, §11(d) or any other disciplinary rule governing domiciliary or reciprocal disciplinary procedures which does not accord an accused attorney due process, notice, hearing,

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[83] Am Jur, Judgments §§ 30A:43, 44, 45
[84] Id.
[85] Am. Jur., Judgments § 30A:44, 45
[86] See, *Rose v. Himely,* U.S. (Cranch 4:) 8:441, L.Ed 2:608 (1808); *Pennoyer v. Neff,* U.S. 95:714, L.Ed. 24:565 (1878); *Thompson v. Whitman,* U.S. (Wall 18:) 85:457, L.Ed. 21:897(1873); *Windsor v. McVeigh,* U.S. 93:274, L.Ed. 23:914 (1876); *McDonald v. Mabee,* U.S. 243:90, S.Ct. 37:343 (1917)]
[87] U.S. 339:33, *49,* S.Ct. 70:445, *454, mod. on other grds.,* S.Ct. 70:564, U.S. 339: 908 (1950)
[88] Id., U.S. 339:33, *49,* S.Ct. 70:445,*454*

right to confrontation, at minimum, and other fair trial procedures (e.g. 4th Amd. prohibition against unreasonable searches and seizures; 8th Amd. prohibition against disproportionate punishment, etc.) prior to license deprivation (including any enhancement thereof).

(b) DEPRIVATION USING JUDICIAL NOTICE PROCEDURES

To recap: The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the "liberty" and "property" concepts of the Fifth Amendment.[89] Furthermore, it is well settled that attorneys facing bar discipline proceedings are entitled to due process protections.[90] Moreover, in order to protect the due process rights to property and liberty under circumstances of government adverse action, the U.S. Supreme Court has required that the individual subject to property deprivation be accorded a right to confront the testimony and documentary evidence presented by the government as basis for the deprivation.

Under D.C. Code §14-101(a) (2001), "[a]ll evidence *shall* be given under oath according to the forms of the common law." In *Greene v. McElroy*,[91] the Supreme Court opined:

> *Certain principles have remained relatively immutable in our jurisprudence.* One of these is that, where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, *the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.* While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient

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[89] *Dent v. West Virginia,* U. S. 129:114, S.Ct. 9:231 (1899); *Schware v. Board of Bar Examiners,* U. S. 353:232, S.Ct. 77:752 (1957); *Peters v. Hobby,* U. S. 349:331, *352,* S.Ct. 75:790 (1955) (concurring opinion); *cf. Slochower v. Board of Education,* U. S. 350:551 S.Ct. 76:637 (1956); *Truax v. Raich,* U. S. 239:33, *41* S.Ct. 36:7 (1915); *Allgeyer v. Louisiana,* U. S. 165:578, *589-590,* S.Ct. 17:427 (1897); *Powell v. Pennsylvania,* U. S. 127:678, *684,* S.Ct. 8:992 (1888)

[90] *Ruffalo*

[91] U.S. 360:474, S.Ct. 79:1400 (1959)

> roots. [Footnote omitted] They find expression in the Sixth Amendment, which provides that, in all criminal cases, *the accused shall enjoy the right "to be confronted with the witnesses against him."* This Court has been zealous to protect these rights from erosion.[92]

The right of confrontation applies not only in criminal cases,[93] but also in all types of cases where administrative and regulatory actions were under scrutiny.[94] Professor Wigmore, commenting on the importance of cross-examination, states:

> For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test has found increasing strength in lengthening experience.[95]

While it is obvious that Richardson's law license is a protected interest under the Due Process Clause, since Richardson received no written notice or pre- or post-suspension hearing the other two inquires – nature and timing of the required hearing -- unnecessary. That being the case, denial of due process must be presumed, unless the district court concludes that the judicial notice procedures employed by the DCCA to impose Richardson's law license deprivation were the 'functional equivalent' of the procedural due process protection that Richardson was entitled to receive. Such procedures are not.

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[92] Id., U.S. 360:*496-497*

[93] *E.g., Mattox v. United States,* U. S. 156:237, *242-244,* S.Ct. 13:50 (1895); *Kirby v. United States,* U. S. 174 :47, S.Ct. 19:574 (1899); *Motes v. United States,* U. S. 178:458, *474,* S.Ct. 20:993 (1900); *In re Oliver,* U. S. 333:257, 273, S.Ct. 68:499 (1948)

[94] *E.g., Southern R. Co. v. Virginia,* U. S. 290:190, S.Ct. 54:148 (1933); *Ohio Bell Telephone Co. v. Public Utilities Commission,* U. S. 301:292, S.Ct. 57:724 (1932); *Morgan v. United States,* U. S. 304:1, *19,* S.Ct. 58:999 (1938); *Carter v. Kubler,* U. S. 320:243, S.Ct. 64:1 (1943); *Reilly v. Pinkus,* U. S. 338:269, S.Ct. 70:110 (1949); Nor has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-Fascist Refugee Committee v. McGrath,* U. S. 341:123, *168-169,* S.Ct. 71:624 (1951); (concurring opinion); *Greene,* U.S. 360:*97,* S.Ct. 79:1400.

[95] Wigmore on Evidence §5:1367 (3d ed. 1940)

Plaintiff contends that the district court cannot determine that the DCCA's judicial notice procedures are adequate to satisfy the fundamental demands of due process. For in *Garner v. Louisiana,*[96] the Supreme Court has already held that judicial notice procedures denies due process, therefore the DCCA's use of judicial notice procedures (and its Board use of 'official' notice procedures) in Richardson's reciprocal disciplinary process were unconstitutional.

Writing for a unanimous Court in *Garner,* Chief Justice Warren, opined:

> To ... allow the prosecution to do through argument ... what it is required by due process to do at the trial, ... would be "to turn the doctrine [of judicial notice] into a *pretext for dispensing with a trial*". ... Furthermore, unless an accused is informed at the trial of the facts of which the court is taking judicial notice, not only does he not know upon what evidence he is being convicted, but, in addition, he is *deprived of any opportunity to challenge the deductions drawn* from such notice *or to dispute the notoriety or truth of the facts allegedly relied upon.* Moreover, there is no way by which an appellate court may review the facts and law of a case and intelligently decide whether the findings of the lower court are supported by the evidence where the evidence is unknown. Such an assumption would be a *denial of due process.*[97]

Therefore, judicial or 'official' notice procedures cannot be used *in lieu* of the normal due process requirements of an adequate notice and an evidentiary hearing wherein Richardson could confront the testimonial and documentary evidence that supported the DCCA's intention to temporarily and finally revoke his license to practice law in the District of Columbia.

Richardson contends [1] that by suspending him based upon notice procedures, at different stages: *executive* (bar counsel's *ex parte* submission of certified copies of foreign disciplinary judgments to the DCCA under Bar R. XI, §11(d) for entry *sua sponte* of a temporary suspension order), *official* (D.C. Board on Professional Responsibility's basing its report and recommendation of reciprocal discipline on submissions by Bar Counsel and the accused, now temporarily suspended attorney), and *judicial* (DCCA's entertaining argument as to whether final

[96] U.S. 368:157, S.Ct. 82:248 (1961)
[97] Id., U.S. 368:*173*, S.Ct. 82:*256-257*

reciprocal discipline should be imposed, and if so, what punishment, based upon its Board's report and recommendation and the submissions relating to the Board's decision by Bar Counsel and the accused attorney, now temporarily suspended) and [2] by denying him certain due process investigatory rights and access to bar disciplinary investigative records and records that were (and are being) suppressed (i.e, undisclosed or concealed) by bar prosecutors, denied Richardson "liberty" and "property" without "due process of law" in contravention of the Fifth Amendment. The *property* is Richardson's license to practice law and the *liberty* is Richardson's freedom to practice his chosen profession.

It must be admitted by defendants that the revocation of Richardson license to practice law caused Richardson to close his law practice in D.C. and seriously affected, if not destroyed, Richardson's ability to obtain employment in the legal field. Clearly under these circumstances, Richardson's due process right to confrontation derived from the integration of the 5th Amd.'s right to due process and the 6th Amd.'s confrontation right were denied when he was suspended temporarily and finally under notice procedures employed in the reciprocal disciplinary proceedings.

5.2 DISPARATE TREATMENT (14TH AMD. *VIA* 5TH AMD.)

(a) DISCIPLING ATTORNEYS IN DOMICILIARY AND EMERGENCY SITUATIONS UNDER D.C. BAR RULES [D.C. CODE §11-2503(B); D.C. BAR RULE XI, §3(C)]

The Equal Protection Clause of the 14th Amendment (made applicable to the D.C. residents *via* the 5th Amd. due process clause) requires that those similarly situated should be treated alike. Plaintiff Richardson contends that he represents a class of thousands of attorneys who since 1989 have been summarily suspended under the D.C. Bar Rules governing reciprocal discipline for alleged misconduct without notice and hearing, which is "different[t] from others

similarly situated [attorneys subject to domiciliary disciplinary proceedings, whether regular or emergency] and that there [was] no rational basis for the difference in treatment."[98]

In June 1995, Richardson had his license to practice law summarily suspended by the D.C. Court of Appeals (DCCA) for petitioning to resign the Florida Bar while under disciplinary investigation, which the Florida Supreme Court granted in August 1992. Richardson contends that the suspension violated his due process right to notice (i.e. no written charges where presented him and the D.C. Bar Rules has no ethical rule governing resignation of another Bar, whether Federal or State, while under disciplinary investigation[99]) and an evidentiary hearing. While the DCCA has sole statutory authority to regulate the practice of law, including licensing and disciplining attorneys for misconduct [cf. D.C. Code §11-2503(b)], it must conform its practices to the constraints of the due process clause (5th Amd.) of the U.S. Constitution[100] and the D.C. Administrative Procedures Act [D.C. Code § 2-509 (2001 ed.)] , both of which mandate

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[98] *Village of Willowbrook v. Olech*, U.S. 528:562, *564*, S.Ct. 120:1073 (2000); Cf. *Futernick v. Sumpter Twp.*, F.3d 78:1051, *1056* (6th Cir. 1996) (Selective enforcement claims can be brought by members of a protected class who allege that the government discriminated against them based on class membership under a law or regulation)

[99] In *Zauderer v. Ofc. of Disciplinary Counsel, S.Ct. of Ohio,* U.S. 471:626, *666,* S.Ct. 105:2265, *2289* (1985), the Supreme Court stated regarding the unconstitutionality of vague bar regulations, "where the State has not otherwise *proscribed the conduct in reasonably clear terms, the Due Process Clause forbids punishment* of the attorney for that conduct." Due process "insists that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he [/she] may act accordingly [*Grayned v. City of Rockford,* U.S. 408:104, *108-109,* S.Ct. 92:2294, *2298-2299* (1972)] These guarantees fully apply to attorney disciplinary proceedings [*Ruffalo*]. *Excursus:* Plaintiff had to prior warning by either the expressed language of the D.C. Bar R. XI, §11(d) or by its judicial interpretation that the DCCA considered resignation while under disciplinary investigation, with or without a finding or admission of misconduct, as the 'functional equivalent' of a suspension and therefore would apply the summary suspension Bar rule challenged here to plaintiff for the misconduct of petitioning to resign the Florida Bar. For Richardson the misconduct could not be in anywise connected to charging an unreasonable fee or violating fiduciary responsibility standards governing trustees in general, since to evidentiary hearing was held before the Florida or D.C. Bar disciplinary officials.

[100] Supreme Court decisions have consistently held that "[s]ome kind of hearing is required at some time *before* a State may finally deprive a person of a property interest" [*Parratt v. Taylor,* U.S. 451:527, S.Ct. 101:1908 (1981)]. Except in an emergency situation, and plaintiff's situation was not, the hearing must occur *before* the deprivation [Id.]. No such pre- or post-suspension hearing was accorded the plaintiff.

notice and hearing. Otherwise, the DCCA has no power to revoke Richardson's law license (*Wong Yan Sung).*

Under D.C. Code §11-2503(b), in order to suspend an attorney, the DCCA must bring verified charges against the attorney, personally serve the attorney if possible (or serve constructively by mail or publication), and set the matter for hearing. In circumstances where a D.C. Bar member is misappropriating client's funds or causing some other 'substantial public harm,' the Bar rules permit modified summary suspension upon filing of a verified statement by the DCCA's Board. Under such circumstances and pending a hearing of the summary suspension, the accused attorney can continue to practice law as to matters existing at the time of suspension, cannot take new matters, and is supervised as to services rendered on the existing matters and fees collected [D.C. Bar R. XI, §3(c)].

Reciprocal disciplinary cases are not excepted from the requirements of D.C. Code §11-2503(b) for suspending a D.C. Bar member. However, plaintiff was summarily suspended without notice and hearing and therefore treated differently from Bar members who are charged with disciplinary infractions within the District of Columbia, even those who are misappropriating client funds or causing other substantial harm [D.C. Bar Rule XI, §3(c)]. Even in emergency situations, a hearing is mandated to occur within 30-days [Id.]. This disparate treatment violates the plaintiff's equal protection rights, pure and simple, for summary suspension with notice and hearing is imposed based solely upon the locale of the misconduct, whether domiciliary or foreign (outside jurisdiction of DCCA).

(b) DISCIPLINING OTHER LICENSE HOLDERS UNDER D.C. ADMINISTRATIVE PROCEDURES ACT [D.C. CODE §2-509 (2001 ED.)]

Bar disciplinary proceedings are "contested cases" under the D.C. Administrative Procedures Act[101] and a responding attorney is entitled to the due process protections of the 5th Amendment.[102] Furthermore, a hearing must be provided to a party in "contested cases" involving license revocations after reasonable notice, in administrative hearings under the auspices of D.C. government agencies and any provision in an agency's rules of procedure that are different is "supercede[d]."[103] D.C. Bar rules are not excepted; to the contrary, the Equal Protection Clause commands that its rules would comport with due process since any other person holding a license granted by a D.C. governmental agency has that due process right.

Moreover, the "procedural requirements which apply in attorney disciplinary proceedings are analogous to those of other 'contested cases'."[104] In "contested cases," an "opportunity *shall* be afforded all parties to present evidence and argument with respect there to" [D.C. Code §2-509 (2001)]. Finally, because bar disciplinary proceedings are *quasi*-criminal,[105] a hearing is required at any stage wherein there are anticipated factual determinations or modifications and significant conclusions of law, especially on issues that have constitutional dimensions.

Therefore, a person with a driver's license is required to be notified of and is provided a hearing on any proposed revocation or suspension under D.C.'s Administrative Procedures Act; however, an attorney who is subjected to reciprocal discipline in D.C. can have her/his law license revoked temporarily and finally without notice or hearing. Again that is disparate

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[101] D.C. Code § 2-509(a) of the D.C. Administrative Procedures Act governing contested cases provides: "In any contested case, all parties thereto *shall be given reasonable notice of the afforded hearing* by ... the agency *** and opportunity *shall* be afforded all parties to *present evidence* and argument with respect thereto."

[102] *Woods v. D.C. Nurses' Examining Bd.*, A.2d 436:369 (D.C. 1981)

[103] D.C. Code (2001) §§2-501; 2-509

[104] *In re Williams*, A.2d 464:115, *119* (D.C., 1983) citing *In re Thorup*, A.2d 432:1221, *1225* (D.C., 1981)

[105] *Ruffalo*

treatment and violates an attorney's equal protection right to the same due process protections as other license holders in the District of Columbia.

6.0 CONCLUSION & RELIEF REQUESTED

Without written notice and an evidentiary hearing, the defendant D.C. Court of Appeals (DCCA) suspended Richardson's license to practice law in the District of Columbia temporarily in June 1995, anew in March 1996, and finally in April 1997 (for 3-years with reinstatement upon proof of fitness, enhanced by a 1-year 10-month suspension for failing to file a timely registration statement), pursuant to *provisos* in D.C. Code §11-1503(b) and D.C. Bar Rule XI, §11(d) under judicial and official notice procedures that violated his due process rights founded in the 5th (due process generally) and 6th (right to confrontation) Amendments.

Under well-settled due process principles, Richardson was entitled to notice of the misconduct charges and an evidentiary hearing prior to the suspension, which was not accorded him. Thus, the D.C. Code and Bar Rules governing reciprocal discipline are unconstitutional on their face and as applied and plaintiff is entitled to damages to be determined by a jury in these default judgment proceedings.

7.0 VERIFICATION

This certifies under penalty of perjury that any factual statement made are true to the best of the movant Richardson's knowledge, information, and belief.

T. CARLTON RICHARDSON
Movant *Pro Se*

8.0 CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was delivered by U.S. Mail (1st Class) to:

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