

No. _____

In The
Supreme Court of the United States

—————◆—————
BRADLEY ROWLAND MARSHALL,

Petitioner,

v.

WASHINGTON STATE BAR ASSOCIATION,

Respondent.

—————◆—————
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

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PETITION FOR A WRIT OF CERTIORARI

—————◆—————
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QUESTIONS PRESENTED

Are lawyer disciplinary prosecutions automatically excluded from the reach of the automatic stay when the purpose of the prosecution is to collect, assess, recover a claim or harass a debtor in bankruptcy?

Are bankruptcy courts precluded under *Rooker-Feldman* from reviewing state court decisions as to the purpose of the disciplinary prosecution to determine if the action is void ab initio as a violation of the automatic stay?

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OPINIONS BELOW

The U.S. Bankruptcy Court issued its order on February 10, 2010; the U.S. District Court issued its order on July 8, 2010; the U.S. Court of Appeals for the Ninth Circuit issued its panel decision on August 17, 2011 and the U.S. Court of Appeals for Ninth Circuit issued its denial for Rehearing En Banc on October 25, 2011.



BASIS FOR JURISDICTION IN THIS COURT

This Court has jurisdiction under 28 U.S.C. § 1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . .



CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provisions involved include the Fourteenth Amendment, Article VI, Clause 2, and Article I, Section 8, Clause 4 to the United States Constitution, which provide as follows:

The Fourteenth Amendment:

Section 1, All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside, No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

Article VI, Clause 2:

Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding

Article I, Section 8, Clause 4:

Authorizes Congress to enact “uniform Laws on the subject of Bankruptcies throughout the United States.” Congress has adopted the Bankruptcy Reform Act of 1978, codified in Title 11 of the United States Code and amended in 2005 as the BAPCPA.



BACKGROUND

On May 21, 2009, while Bradley R. Marshall (petitioner) was under investigation for alleged unprofessional conduct, as a licensed attorney, he filed for Chapter 11 bankruptcy protection. On June 4, 2009, the bar and the court were duly notified by U.S. Mail and through the electronic filing system of petitioner's bankruptcy filing. By October 1, 2009, nearly five months after notice of the bankruptcy filing had been served on the court and association, the court, without seeking or obtaining relief from stay, or determining if the bar proceedings were conducted in bad faith to harass the petitioner, wrongfully revoked petitioner's law license.

Petitioner thereafter filed an adversary complaint in the bankruptcy court and sought injunctive, declaratory relief and, among other things, an order from the bankruptcy court that the disbarment order was invalid because it violated the automatic stay of 11 U.S.C. § 362. The bankruptcy court dismissed the complaint and held that collateral estoppel and *Rooker-Feldman* precluded the bankruptcy court from reviewing whether the state court proceedings violated the automatic stay. *Rooker v. Fidelity Trust*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486-87, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). This doctrine generally precludes federal courts (except the United States Supreme Court) from reviewing state court decisions. The district court affirmed the bankruptcy court's dismissal of petitioner's

case. It did so on the basis of the *Rooker-Feldman* doctrine.

The Ninth Circuit court affirmed the district court's dismissal. The panel held that the state and bankruptcy courts were not required to make a determination or conduct a review because both courts were merely answering a question of law. The panel relied on *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107 (9th Cir. 2005). However, there were no allegations of harassing bad faith in *Lockyer*.



STATEMENT

This case affords the Court the opportunity to clarify the circumstances in which the state has a duty to determine the reach of the automatic stay in bankruptcy before it rules on the merits; harassing bad faith conduct by a state regulatory agency nullifies the 362(b)(4) exception; a state court decision is void *ab initio* as a violation of the automatic stay; and a bankruptcy court is precluded from reviewing state court decisions under *Rooker-Feldman*.

Normally professional licensing proceedings are exempt under 11 U.S.C. § 362(b)(4). The record facts in the instant case amply demonstrate why an increasing number of circuits have held that bad faith state proceedings misuse the 362(b)(4) exception to frustrate the purpose of bankruptcy protection and wrongfully strip a debtor of his property. These circuits hold that bad faith nullifies application of the

362(b)(4) exception: *Official Unsecured Creditors Comm. v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305, 1316-17 (1st Cir. 1993); *Palmacci v. Umpierrez*, 121 F.3d 781, 788-89 (1st Cir. 1997); *In re Harris*, 279 B.R. 254, 262 (BAP 9th Cir. 2002); *In re Carp*, 340 F.3d 15, 21-22 (1st Cir. 2003); *N. Light Tech., Inc. v. N. Lights Club*, 236 F.3d 57, 64 (1st Cir. 2001); *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074 (9th Cir. 2000) (*en banc*); *Central Avenue News, Inc. v. City of Minot*, 651 F.2d 565 (8th Cir. 1981); *Eagle Books, Inc. v. Reinhard*, 418 F.Supp. 345, 351 (N.D. Ill. 1976); *In re Spookyworld, Inc.*, 346 F.3d 1, 9 (1st Cir. 2003); *In re Javens*, 107 F.3d 359 (6th Cir. 1997).

The bar, in its quest to disbar petitioner, engaged in malicious ethical violations and harassing bad faith conduct in one or more of the following ways: (1) appointing a hearing officer who together with disciplinary counsel, secretly arranged for the hearing officer to apply, interview and receive an offer for employment as a state bar prosecutor, while she served as an “impartial hearing officer” several months before being appointed to petitioner’s case; (2) arranging for the same hearing officer, together with disciplinary counsel, to secretly apply and interview for employment as a state bar prosecutor while she was serving as a hearing officer in petitioner’s case; (3) seeking to collect approximately \$108,000.00 in fines and restitution while petitioner was under bankruptcy protection; (4) participating in a scheme to bribe the hearing officer with a disciplinary counsel

job in exchange for the hearing officer's agreement to sign an order that made it possible for disciplinary counsel to amend the complaint against petitioner to add the three counts that led to his disbarment just 20 days before the hearing was scheduled to begin.

Upon learning of the disciplinary officials' conduct, petitioner and his counsel launched an investigation. However, disciplinary officials orchestrated a scheme to block the investigation by first arranging for the chief hearing officer (CHO) to appoint himself as hearing officer and then urging him to use his power to ensure petitioner did not learn and disclose their activities. The CHO denied petitioner's discovery requests; quashed subpoenas; issued, sua sponte, a protective order and directed the parties to not disclose to any third parties the conflicts of interest, ex parte communications and compounding ethical violations by state bar officials.

The chief hearing officer and prosecutors concealed that they were parties to a 2003 personal services contract. The undisclosed agreement required the CHO to honor a binding fiduciary duty of loyalty provision in favor of the state bar association; the agreement required the bar to hold harmless the CHO against any claims of misconduct, including any claim of wrongdoing filed by petitioner; the agreement required the bar association to make an annual undisclosed \$30,000.00 payment to the CHO; the agreement directed that all payments made should be paid to the CHO's law firm, where a portion of the payment was indirectly returned to the CHO's law

partner who just happened to be a state bar association Board of Governors member and the state bar association's President. The CHO refused to grant Marshall's request that he vacate the prosecutor's amended complaint, which the first hearing officer authorized at a time when she was having ongoing communications with prosecutors regarding employment.

The CHO collaborated with state bar association officials while he served as a bar committee member on matters directly related to the Marshall case all while he refused to cooperate in an investigation that would have uncovered his illegal conflicts of interest and ex parte communications. High ranking bar officials were aware of the wrongdoing but refused to report it when they knew the Rules of Lawyer Enforcement, the Rules of Judicial Conduct and the Rules of Professional Conduct required they do so and when multiple requests for information were made, that would have unearthed the gravity of the CHO's misconduct, they refused to provide the information, claiming that the bar association's bylaws disallowed such disclosure.

The CHO waited until petitioner utilized his one and only preemptory dismissal before he suddenly appointed himself, knowing that his extraordinary and concealed relationship with the bar created a constitutionally unacceptable reality of prejudice against petitioner. Indeed, at the same time prosecutors were seeking the recusal of one of two proposed hearing officers, following the first hearing officer's fiasco,

they arranged for the CHO to appoint himself in violation of this Court's long and storied legal precedence. *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). See *id.* at 2259-61 (citing *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986)); *Gibson v. Berryhill*, 411 U.S. 564 (1973); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 150 (1968); *In re Murchison*, 349 U.S. 133, 136 (1955); *Caperton v. Massey Coal Co. Inc. et al.*, 129 S.Ct. 2252 (2009).

Public policy holds that the automatic stay should not be a haven for wrongdoers. It is also true that the 362(b)(4) exception should not be a haven for the state to abuse its power by engaging in the kind of bad faith that undermines the purpose of the exception so that it becomes an illegitimate use of a state's police power when the forum is biased, as here; the state has acted in willful disregard of the law, as here; and the state abused its discretion, as here. The state court in the face of flagrant bad faith violations chose to ignore the conduct and passed on an opportunity to make a jurisdictional determination. Recorded evidence of bad faith here makes the state court decision inherently unreliable. Intrinsic in the law are the ideals that the government must respect and honor the rights of those to whom they have been charged to prosecute and those to whom they have been assigned to judge. Bar officials, like the state, which prosecutes a criminal defendant, must conduct itself within the bounds of the law and

with the public trust in mind so as to ensure a fair and just result and community confidence in the decision made. Every disciplinary counsel and every hearing officer must maintain the dignity appropriate to their office. The hearing officer is an arbiter and the prosecutor is the seeker of facts for the legal and just disposition of disciplinary charges. Both are highly visible symbols of government which the rule of law requires they uphold.

The state proceedings lacked a reasonable expectation that a valid conviction would result. How could it? Based on concealed conflicts of interest, hundreds of ex parte communications, and the flawed operation, control and structure of the disciplinary system there was no chance that Mr. Marshall would get a fair hearing. He had lost before the proceedings began. The Bar acted as a party to the proceedings, naming itself as "grievant"; acted as review committee, determining probable cause; acted as disciplinary counsel, prosecuting the Bar's grievance against the debtor, before its own grossly conflicted chief hearing officer who, as judge, presided over the hearing; passed upon the credibility of the witnesses, determining the inferences to be drawn from their testimony, and deducing therefrom the "facts" which he found. The functions of prosecutor, judge and jury were combined in one body. The Bar, as disciplinary board, acted as review tribunal, upholding the hearing officer's recommendation. Such a procedure, so contrary to traditional American jurisprudence, is fundamentally flawed and deprived the debtor of the

“fair” hearing to which due process of law entitled him. In *In re Schlesinger*, 404 Pa. 584, 172 A.2d 835 (1961).

The constitutional due process standards articulated by this Court and other lower courts, were denied petitioner and this substantially undermined the integrity and reputation of the disciplinary system. Marshall was unaware of the bad faith conduct while the litigation was ongoing and he did not learn of it until August of 2008, nearly a year after the initial hearing had ended and just days after his opening petition, in the Washington State Supreme Court was filed, seeking review of the decision to revoke his law license. In September and November 2008, petitioner filed two motions to supplement the record with unusually detailed documentation of bad faith conduct by prosecutors and hearing officers and filed a Motion for Dismissal or in the Alternative for a New Hearing. The motions were denied.

Petitioner now appeals to this court arguing that the state court proceedings violated 11 U.S.C. § 362(a) because they were conducted in bad faith and because the state court failed to make a jurisdictional determination before it rendered a decision on the merits; neither collateral estoppel nor the *Rooker-Feldman* doctrine precluded the bankruptcy court from conducting its mandatory fact-specific review of the state proceedings; even if some kind of review had been conducted by the state, bankruptcy court was required to conduct a fact-specific review.



REASONS FOR GRANTING THE WRIT

In *In re National Hospital and Institutional Builders Co.*, 658 F.2d 39, 43 (2d Cir. 1981), the court held that Congress intended bankruptcy courts to protect a debtor's property from bad faith state proceedings:

The Constitution authorizes Congress to establish uniform laws of bankruptcy, U.S. Const., Art. I, § 8, and it establishes that laws passed pursuant to the Constitution are the supreme law of the land, U.S. Const. Art. VI. Those grants of authority surely include the power to thwart bad faith frustration of federal bankruptcy policy.

In *In re Judith A. McMullen*, 386 F.3d 320 (1st Cir. 2004), the court held that a determination of whether a party has acted in bad faith constitutes a “quintessential issue of fact, which must be determined by the fact finder following an examination of the totality of the circumstances” and went on to hold that “[t]he bankruptcy court, not the district court or court of appeals, is the only tribunal equipped to make evidentiary findings on relevant factual matters such as whether the parties acted in bad faith.” See *Official Unsecured Creditors Comm. v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305, 1316-17 (1st Cir. 1993) (“The bankruptcy court, not the district court or court of appeals, is the only tribunal equipped to make evidentiary findings on relevant factual matters such as whether the parties acted in bad faith.”); *Palmacci v. Umpierrez*, 121 F.3d 781, 788-89 (1st Cir. 1997);

In re Harris, 279 B.R. 254, 262 (BAP 9th Cir. 2002); *In re Carp*, 340 F.3d 15, 21-22 (1st Cir. 2003); *N. Light Tech., Inc. v. N. Lights Club*, 236 F.3d 57, 64 (1st Cir. 2001) (undertaking “clear error” review of “bad faith” finding); *Central Avenue News, Inc. v. City of Minot*, 651 F.2d 565 (8th Cir. 1981); *Eagle Books, Inc. v. Reinhard*, 418 F.Supp. 345, 351 (N.D. Ill. 1976); *In re Javens*, 107 F.3d 359 (6th Cir. 1997); *In re Spookyworld, Inc.*, 346 F.3d 1, 9 (1st Cir. 2003).

The state court had an obligation to make a jurisdictional determination before it decided the case on the merits. Unless Congress has enacted a clear and unequivocal statute ousting the jurisdiction of state courts, state tribunals have an affirmative duty to consider and apply federal law, regardless of whether federal law is raised offensively or defensively. *Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820 (1990); *Testa v. Katt*, 330 U.S. 386 (1947). This means that the state court had a positive obligation and failed to decide whether the automatic stay cut off their jurisdiction to disbar Marshall until they conducted a jurisdictional hearing or sought and obtained relief from the bankruptcy court.

The state court’s failure to make a determination that the stay did not apply did not cut off the bankruptcy court’s authority and obligation to revisit that question or to sit, in essence, as a reviewing court. The bankruptcy and district courts incorrectly held that they lacked subject matter jurisdiction because the *Rooker-Feldman* doctrine precluded review by the bankruptcy court. However, the *Rooker-Feldman*

doctrine did not apply because a federal statute specifically grants bankruptcy courts the right to review state court judgments. The Ninth Circuit held that 28 U.S.C. § 1334(a) was such a jurisdiction-divesting statute in the *Gruntz* opinions, *In re Gruntz*, 166 F.3d 1020 (9th Cir.) (“*Gruntz I*”), *opinion amended and superseded on reh’g*, 177 F.3d 728 (9th Cir.) (“*Gruntz II*”), *reh’g en banc granted, opinion withdrawn*, 177 F.3d 729 (9th Cir. 1999), *opinion on reh’g*, 202 F.3d 724 (9th Cir. 2000) (“*Gruntz III*”), and *In re Dunbar*, 245 F.3d 1058 (9th Cir. 2001). The court in *In re Rainwater*, 233 B.R. 126 (Bankr. N.D. Ala. 1999), *vacated*, 254 B.R. 723 (N.D. Ala. 2000) reached the same conclusion.

Because the state’s order of disbarment was rendered in violation of the automatic stay then it was void at the time it was rendered. The question comes down to whether the state court should have first made a decision concerning the applicability of the stay in light of the bad faith state proceedings that led to the disbarment order. In 2001, the Ninth Circuit attempted to clarify its final holding in *In re Gruntz*, 202 F.3d 1074 (9th Cir. 2000) (*en banc*) (“*Gruntz III*”) with the panel decision in *In re Dunbar*, 245 F.3d 1058 (2001). In *Dunbar*, the debtor, a contractor, had done allegedly defective concrete work for certain homeowners. After the bankruptcy petition was filed, an action was commenced before California’s Contractors State License Board (the “CSLB”) seeking relief for the defective work. The CSLB had

ordered the debtor to pay restitution to the homeowners, to replace the concrete work at no expense to the homeowners, or to lose his license. The contractor objected that the CSLB proceeding was stayed under 11 U.S.C. § 362(a), but the state administrative law judge concluded that the action fell within the regulatory or police power exception to the stay established by 11 U.S.C. § 362(b)(4). The CSLB accepted that decision. The debtor then sought an injunction in the bankruptcy court to prevent the CSLB from enforcing its order on the ground that the order had been rendered in violation of the stay. The bankruptcy court denied the relief, holding that it was precluded from revisiting an issue that the state body had already addressed. The bankruptcy appellate panel reversed, however, holding that the state tribunal's decision as to the applicability of the stay was open to collateral review. *In re Dunbar*, 235 B.R. 965 (9th Cir. BAP 1999), *aff'd*, 245 F.3d 1058 (9th Cir. 2001).

The Ninth Circuit affirmed the bankruptcy appellate panel, and, in so doing, sought to clarify its holding in *Gruntz*. The Ninth Circuit held that no state tribunal, whether judicial or administrative, has final jurisdiction to decide whether the stay applies. Ultimate jurisdiction over that question is vested exclusively in the bankruptcy court where the case is pending. The Ninth Circuit purported to ground its holding on 28 U.S.C. § 1334(a), which gives bankruptcy courts exclusive jurisdiction over bankruptcy cases. According to *Dunbar*, then, if a state forum takes some action that allegedly violates the

stay, for example, engages in egregious bad faith conduct, that decision is always open to collateral review in the bankruptcy court, even if the state court has decided that the stay does not apply. The bankruptcy court's examination must be *de novo*. If the bankruptcy court determines independently that the stay does not apply, then it must give full faith and credit to the state tribunal's decision on the merits. If, however, the bankruptcy court determines independently that the stay does apply, then the bankruptcy court should enjoin the enforcement of the state forum's orders, vacate the state decision, or otherwise refuse to extend full faith and credit. *See In re Briting Fisheries, Inc.*, 300 B.R. 489 (9th Cir. BAP 2003) (relying on *Gruntz* and *Dunbar* in holding that the bankruptcy court has exclusive jurisdiction to interpret and enforce a Chapter 11 plan); *In re Motley*, 268 B.R. 237 (Bankr. C.D. Cal. 2001) (discussing *Dunbar* and *Gruntz*).

In *Dunbar* itself, the bankruptcy court had never reached the merits of the contention that the action before the CSLB had fallen within the police power and regulatory exception to the stay under 11 U.S.C. § 362(b)(4). The Ninth Circuit held that the bankruptcy court was not precluded from examining that issue, and, indeed, that it was required to do so. Accordingly, the Ninth Circuit remanded the case with instructions to undertake a collateral and *de novo* review of the question whether the stay had deprived the state administrative body of jurisdiction.

Among the cases discussed above, the decisions of the Ninth Circuit in *In re Gruntz*, 202 F.3d 1074 (9th Cir. 2000) (*en banc*) and its progeny, including *In re Dunbar*, 245 F.3d 1058 (9th Cir. 2001); *In re Benalcazar*, 283 B.R. 514 (Bankr. N.D. Ill. 2002); *In re Edwin A. Epstein, Jr. Operating Co., Inc.*, 314 B.R. 591 (Bankr. S.D. Tex. 2004), should compel this Court to clarify this most important area of the law. *Raymark Indus., Inc. v. Lai*, 973 F.2d 1125 (3d Cir. 1992) may also be construed as standing for the proposition that state courts have no jurisdiction, or only provisional jurisdiction, to decide whether the stay applies. The line of authority represented most recently by *In re Coho Resources, Inc.*, 345 F.3d 338 (5th Cir. 2003); *In re Singleton*, 230 B.R. 533 (6th Cir. BAP 1999); *In re Ivani*, 308 B.R. 132 (Bankr. E.D.N.Y. 2004); *In re Jones*, 271 B.R. 758 (Bankr. W.D.N.Y. 2002); *In re Siskin*, 258 B.R. 554 (Bankr. E.D.N.Y. 2001); *In re Glass*, 240 B.R. 782 (Bankr. M.D. Fla. 1999), and, more obliquely, by *In re Ferren*, 203 F.3d 559 (8th Cir. 2000), would seem to be better reasoned but again should serve as an impetus for a final explanation on the subject.

According to *Gruntz* and *Dunbar* the *Rooker-Feldman* doctrine does not apply when a state court judgment is void *ab initio* because the state court acted without any jurisdiction. In *Gruntz*, 202 F.3d at 1074, and in *Dunbar*, 245 F.3d at 1058, and, at least implicitly, in *In re McGhan*, 288 F.3d 1172 (9th Cir. 2002), the Ninth Circuit relied on this alleged exception. The Third Circuit did so in *Raymark Indus., Inc.*

v. Lai, 973 F.2d 1125 (3d Cir. 1992), as did the courts in *Benalcazar*, 283 B.R. at 514 and *Edwin A. Epstein, Jr. Operating Co.*, 314 B.R. at 591. The rationale of these holdings is that the stay is jurisdictional that federal courts have the ultimate authority to determine the applicability of the stay, and that a state court decision that violates the stay is void.



CONCLUSION

In order to preserve public confidence in state judicial systems inundated with bad faith conduct, this Court should grant certiorari and clarify the circumstances in which a bankruptcy court should review the actions of a state court which has refused to make a jurisdictional determination but yet has extended a 362(b)(4) exception in the face of bad faith conduct.

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRADLEY R. MARSHALL,

Appellant,

v.

WASHINGTON STATE BAR
ASSOCIATION; STATE OF
WASHINGTON; PAULA
LITTLEWOOD; JAMES M.
DANIELSON; TEENA
KILLIAN; SCOTT BUSBY;
CHRISTINE GRAY; ANNE
SEIDEL; ROBERT WELDEN;
JEFFERS DANIELSON SONN
AYLWARD P.S.,

Appellees.

No. 10-35684

D.C. No.

2:10-cv-00359-JCC

MEMORANDUM*

(Filed Aug. 17, 2011)

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted August 4, 2011**
Seattle, Washington

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: SCHROEDER and M. SMITH, Circuit Judges,
and BENITEZ, District Judge.***

Appellant Bradley Marshall appeals the district court's Order dated July 8, 2010, affirming the bankruptcy's court's dismissal of Marshall's civil rights claims against Appellees Washington State Bar Association and certain individuals and entities. The factual and procedural background that led to this action, including the events surrounding Marshall's disbarment by a unanimous Supreme Court of Washington, are described in detail in *In re Marshall*, 217 P.3d 291 (Wash. 2009) ("*Marshall II*")¹ and *In re Marshall*, 157 P.3d 859 (Wash. 2007) ("*Marshall I*") (imposing 18-month suspension). We recite the remaining facts only when necessary to resolve an issue raised on appeal. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

*** The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

¹ "Marshall attempted to squeeze his clients for additional fees despite the flat fee agreement. One of these clients was forced to obtain her own counsel to defend herself once [] Marshall filed a lawsuit and a lien against her. He tried to bully his clients into settling their claims, despite their express desire to proceed to trial. He declined to defend them from that point on, demanding they accept the settlement or pay him more money. Additionally, [] Marshall committed other violations supporting the Board's recommendation to disbar and has a history of violating the Rules of Professional Conduct." *Marshall II*, 217 P.3d at 310.

Marshall's arguments that the Supreme Court of Washington, the State of Washington, and the Washington State Bar Association violated the automatic bankruptcy stay, 11 U.S.C. § 362(a), are meritless. "Section 362(b)(4) provides that the filing of a bankruptcy petition does not operate as an automatic stay 'of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police or regulatory power.'" *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107 (9th Cir. 2005) (quoting 11 U.S.C. § 362(b)(4)). The proceedings of the Supreme Court of Washington and the Bar Association fell under the police and regulatory exception. *Wade v. State Bar of Arizona (In re Wade)*, 948 F.2d 1122, 1123 (9th Cir. 1991); *In re Schatz*, 497 P.2d 153, 155 (Wash. 1972) ("[T]he Washington State Bar Association acts as an arm of the Supreme Court in conducting proceedings under this section and, in that capacity, is an integral part of the judicial process."). Accordingly, there was no violation of the bankruptcy stay with the post-petition proceedings to disbar Marshall. See *Lockyer*, 398 F.3d at 1107 ("The theory of the exception is that bankruptcy should not be 'a haven for wrongdoers.'").

Marshall's myriad claims of constitutional violations arising from his disbarment must, as two prior courts have held, be dismissed. His claim that his state disbarment is void *ab initio* is a state judicial determination that lower federal courts are without power to review. See *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983) ("[R]eview of such

[final state court] judgments may be had only in [the United States Supreme] Court.”). Moreover, the conjectured constitutional “violations” Marshall asserts are simply attempts to relitigate due process arguments conclusively decided by the Supreme Court of Washington during his disbarment proceedings. *See Marshall II*, 217 P.3d at 298-300 (rejecting conflict of interest, bias, and absence of notice arguments). As the district court properly explained, all elements of res judicata under Washington law are satisfied. *See Hayes v. City of Seattle*, 934 P.2d 1179, 1181-82 (Wash. 1997).

Finally, the bankruptcy court’s and district court’s denials of leave to amend were appropriate. Adding additional members of the Bar Association or the Justices of the Supreme Court of Washington as defendants would be futile under *Rooker-Feldman* and the principles of absolute immunity, in addition to needlessly prolonging this vexatious and wasteful litigation.

We have considered Appellant’s remaining arguments on appeal and hold that they do not impact the foregoing analysis.

AFFIRMED.

THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRADLEY ROWLAND
MARSHALL,

Plaintiff,

v.

STATE OF WASHINGTON;
WASHINGTON STATE BAR
ASSOCIATION; JEFFERS
DANIELSON SONN &
AYLWARD P.S., *et al.*,

Defendants.

Case No.

C10-0359-JCC

ORDER

(Filed Jul. 8, 2010)

This bankruptcy appeal comes before the Court on Appellant's Brief (Dkt. No. 6), the Answering Brief of the Washington State Bar Association and Individual Defendants (Dkt. No. 10), and the Answering Brief of the State of Washington (Dkt. No. 11). Having considered the briefs, the relevant record, and the proceedings in the bankruptcy court, the Court finds oral argument unnecessary and hereby AFFIRMS the judgment of the bankruptcy court for the reasons herein.

I. BACKGROUND

The facts of this matter are complex, but they are not materially in dispute. The short summary below adequately states the facts essential to the Court's holding here.

Bradley Rowland Marshall was disbarred on October 1, 2009, in an order by the Washington Supreme Court.¹ He had been disciplined on several previous occasions. *See, e.g., In re Marshall*, 157 P.3d 859 (Wash. 2009) (“*Marshall I*”) (imposing 18-month suspension). On his last foray through the disciplinary system, Marshall was charged with attempting to “squeeze his clients for additional fees” and “bully his clients into settling their claims,” among numerous other charges. *In re Marshall*, 217 P.3d 291, 310 (Wash. 2009) (“*Marshall II*”). Following a hearing and the Disciplinary Board's recommendation of disbarment for twelve independent ethics violations, the Supreme Court found that several of those violations “standing alone . . . warrant disbarment,” and divested Marshall of his license to practice law. *Id.* at 309. In that proceeding, the state high court considered and rejected a host of due-process arguments that Marshall again raises here. The bulk of those claims deal with purported bias and conflict of interest on the part of the hearing officer that

¹ Marshall filed a motion for reconsideration of that decision, which was denied on December 23, 2009; a final judgment was entered on that date.

recommended his disbarment to the Bar Association, as well as the way in which Marshall received notice of the claims against him. The Washington Supreme Court found his due-process arguments to be meritless. *Id.* at 298-300.²

Marshall opposed disbarment both in the proceedings before the Disciplinary Board and in the Washington Supreme Court. While his disbarment proceedings were still pending in the state system, he launched several collateral federal lawsuits. First, he filed suit in this District under 42 U.S.C. § 1983, alleging violations of substantive due process, procedural due process, equal protection, his First Amendment rights, his right to counsel, and the duty of fair

² Specifically, the Washington Supreme Court considered and rejected Marshall's claim that his due process rights were violated when chief hearing officer James Danielson appointed himself hearing officer, because (1) all rulings made by the previous hearing officer, Killian, were vacated and she was recused when it was learned that she was applying for employment with the Bar Association; (2) Danielson's salary from the bar association did not bias him "any more than the salary paid to any judge that hears cases brought by the State of Washington," and (3) Marshall had failed to make a compelling argument that any of Danielson's rulings were the result of bias or prejudice. *Marshall II*, 217 P.3d at 298-99. The Washington Supreme Court also rejected his argument that the amended formal complaint against him was insufficient to put him on notice to defend himself against specific findings of fact. *Id.* at 299-300. In conclusion, the state high court found that "Mr. Marshall had every opportunity to anticipate, prepare, and present a defense. He was afforded due process. Accordingly, we deny Mr. Marshall's motion for dismissal or a new hearing as he has failed to show any due process violations." *Id.* at 300.

representation. *Marshall v. Wash. State Bar Ass'n*, Order (C08-0742-JLR, Dkt. No. 20 at 2) (“*Marshall III*”). On August 8, 2008, Judge Robart found that all of Marshall’s claims arose from the disciplinary proceedings that were then pending before the state high court, and that the federal court therefore had no subject matter jurisdiction to interfere. *Id.* at 3-5. His claim was dismissed.

About nine months later, on May 21, 2009 – one week after Marshall’s oral argument in the Washington Supreme Court in *Marshall II* – Marshall filed for bankruptcy. On October 27, 2009 (four weeks after the Washington Supreme Court’s decision), he filed an adversary complaint against the Washington State Bar Association and the State of Washington in the Bankruptcy Court, again claiming due-process and fair-representation violations in connection with his disbarment proceedings.³ (See 1st Am. Compl. 45-51 (Dkt. No. 11-6)) Marshall’s aim in the bankruptcy

³ Marshall alleged five claims for relief in the operative pleading document in this bankruptcy case. The first three all relate to procedural due process and arise under the Fourteenth Amendment and § 1983: (1) malicious prosecution; (2) failure to disclose conflicts of interest; (3) prosecutorial misconduct. The fourth is an equal protection violation allegation under § 1983, and the fifth is a claim for breach of the duty of fair representation against the Washington State Bar Association. (1st Am. Compl. 45-51 (Dkt. No. 11-6).) Marshall does not dispute that all of these claims were raised before the Washington Supreme Court. (See, e.g., Appellant’s Br. 22-23 (Dkt. No. 6 at 33-34) (acknowledging that appellant brought these matters to the attention of the Washington Supreme Court.)

proceeding may have been to avail himself of the automatic stay imposed under 11 U.S.C. § 362(a)(1) and (a)(3), and halt the Washington Supreme Court from issuing its final decision disbarring him; although he did not raise this issue in his complaint, it is the heart of this appeal and he moved for summary judgment on that ground. (See Appellant's Br. 1-2 (Dkt. No. 6 at 12-13).) The Washington Supreme Court issued its order notwithstanding the stay, and Marshall then requested that that court declare the Washington Supreme Court's disbarment order void *ab initio*. (See Dkt. No. 11-8.) He also filed motions to amend his complaint, seeking to add more defendants, including the Bar Association's Board of Governors and the Justices of the Washington Supreme Court, which the bankruptcy judge denied. (*Cf.* Appellant's Br. 2 (Dkt. No. 6 at 13).)

After several rounds of briefing, the Bankruptcy Court dismissed Marshall's adversary complaint. (Order and Judgment of Dismissal (Dkt. No. 1-3).) The Bankruptcy Court adopted its prior reasoning and found that the Washington Supreme Court's order of disbarment was not subject to the automatic stay in either § 362(a)(1) or § 362(a)(3), because § 362(b)(4) exempts governmental units exercising police power from the reach of the bankruptcy stay. (Order and Judgment of Dismissal (Dkt. No. 1-3).) The Bankruptcy Court reasoned that the Washington State Bar Association and its board members, officers, hearing officers, and staff are protected by that exemption while they are engaged in disciplinary proceedings.

(See Bankruptcy Ct. Case No. 09-1488-PHB, Dkt. No. 61, at 3-5 (transcript of 1/12/2010 hearing).) Because the Washington Supreme Court's order was not void, and because Marshall had previously attempted to litigate the same due-process and constitutional issues, the Bankruptcy Court found that all of the alleged § 1983 violations were barred by the *Rooker-Feldman* doctrine and by claim and issue preclusion. (Order and Judgment of Dismissal at 2 (Dkt. No. 1-3).) Marshall's adversary complaint was dismissed with prejudice. (*Id.*) This appeal followed.

II. STANDARD OF REVIEW

“On an appeal the district court . . . may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings.” FED. R. BANKR. P. 8013. Where, as here, “the only disputed questions are legal . . . de novo review applies to all questions before the court.” *In re Tippet*, 542 F.3d 684, 688 (9th Cir. 2008).

III. DISCUSSION

A. The Bankruptcy Stay

The gravamen of Plaintiffs appeal concerns the Washington Supreme Court's order disbaring him, which Plaintiff argues violated the automatic bankruptcy stay. It is undisputed that the Washington Supreme Court's decision, which conclusively divested him of his license to practice law, occurred about five months after he first filed for bankruptcy.

11 U.S.C. § 362(a)(1) and (a)(3) provide that a bankruptcy petition operates as a stay of any “judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before” the petition was filed, and any “act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” However, actions by governmental units enforcing their police and regulatory power are exempted from the automatic stay. 11 U.S.C. § 362(b)(4). This exception applies automatically; no party needed to file a motion. *See Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107 (9th Cir. 2005). The theory of the exception is that bankruptcy should not be “a haven for wrongdoers.” *Universal Life Church, Inc. v. United States (In re Universal Life Church)*, 128 F.3d 1294, 1297 (9th Cir.1997) (citations and internal quotation marks omitted).

In re Wade, 948 F.2d 1122 (9th Cir. 1991) is directly on point. In *Wade*, the Ninth Circuit held that the Arizona Bar Association was an instrumentality of the Arizona Supreme Court for the purpose of prosecuting attorney disciplinary proceedings, and that its actions were therefore exempted from the automatic stay. *In re Wade*, 948 F.2d at 1123; *see also Lockyer*, 398 F.3d at 1107 (noting that enforcement of state bar disciplinary rules is within the “police or regulatory powers” exception). This case is one step closer to the source of those powers than *Wade*; the only action that occurred after the stay went into effect was performed by the Washington Supreme

Court itself. The Washington Supreme Court was enforcing its police or regulatory powers when it entered its final order disbaring Marshall, and therefore its opinion did not violate the automatic stay and is not void. 11 U.S.C. § 362(b)(4).

Marshall spends much of his brief arguing that the Bar Association's Disciplinary Board, as a private entity, and the law firm that was vested with the authority to conduct his disciplinary hearing are not "instrumentalities" of the state that would be exempt from the stay under § 362(b)(4). (Appellant's Br. 12-17 (Dkt. No. 6 at 23-28).) He claims that this "mixed question of law and fact" required an evidentiary hearing. (*Id.* at 2 (Dkt. No. 6 at 13).) But Marshall does not explain how any actions by any other entity connected with his case would be affected by the automatic stay. All of the actions by the Bar Association, the Disciplinary Board, and Jeffers Danielson Sonn & Alyward, P.S. and its officers occurred well before Marshall filed for bankruptcy. The hearing at which chief hearing officer Danielson recommended disbarment – the primary locus of Marshall's due-process arguments – occurred two years earlier. (*Id.* at 1 (Dkt. No. 6 at 12).) Marshall cites no case for the proposition that a bankruptcy stay could retroactively invalidate actions taken years before he applied for bankruptcy, and courts have held that stay provisions apply only prospectively. *See, e.g., In re Avery Health Center, Inc.*, 8 B.R. 1016, 1020 (W.D.N.Y. 1981). If Marshall is arguing that the Washington Supreme Court's order was invalid because it *incorporates*

findings of fact and law made by either the hearing officer in his disbarment proceeding or the Bar Association itself, he cites no case for that proposition, either. The Court therefore need not reach Marshall's "instrumentality" arguments, because none of the actions he challenges would be affected by the stay.

Marshall finally seems to argue that the Washington Supreme Court's order disbarring him was made in bad faith frustration of federal bankruptcy policy. (Appellant's Br. 17-23 (Dkt. No. 6 at 28-35).) Appellant cites no case that would stand for this proposition, and no evidence in the record supports it. The Washington Supreme Court considered Plaintiff's due-process arguments about the fairness of his hearing, and rejected his claims. As discussed below, the Court will not second-guess that determination, and cannot find a due-process violation in the state high court's rejection of Appellant's due-process charges.

B. Due Process Claims

Having determined that the Washington Supreme Court's order was not void and did not violate the automatic stay, the Court now considers whether dismissal of Plaintiff's adversary complaint, which alleged due-process violations and breach of the duty of fair representation in his disciplinary proceedings, was proper. The Court finds that it was. The Court has no jurisdiction to consider Plaintiff's claims because they have been conclusively adjudicated and

decided by the Washington Supreme Court, and Plaintiff is barred from relitigating those questions under the *Rooker-Feldman* doctrine, and from litigating the claims he could have brought before that court by claim preclusion.

The *Rooker-Feldman* doctrine prevents a district court from reviewing or rejecting judgments by a state court. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The losing party in a state-court proceeding cannot collaterally attack the state-court decision by filing a lawsuit in federal court, and may not complain of injuries sustained in those state proceedings, either. *See id.* That is precisely what Marshall is requesting. He acknowledges that he brought his due-process claims to the Washington Supreme Court. (Appellant's Br. 22-23 (Dkt. No. 6 at 33-34). He says that he "expected a dispassionate, well reasoned decision consistent with the controlling case law in Washington" but instead believes that the "Washington State Supreme Court ignored controlling case law and wide reaching and sustained bad faith conduct within the disciplinary system and concluded that Mr. Danielson could participate in this case consistent with the requirements of due process." (*Id.*) In sum, he simply disagrees with the Washington court's interpretation of the law as it applies to his case. (*Id.*) But federal courts lack appellate authority over state-court decisions. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). This Court cannot modify or overturn the judgment of the Washington Supreme Court. Nor can the Court

consider whether the state high court committed independent due-process violations. *See Exxon Mobil*, 544 U.S. at 284. There could not be a more iconic case where *Rooker-Feldman* must apply.

To the extent that Appellant is alleging new claims that he failed to raise before the Washington Supreme Court, his effort is doomed by preclusion. “The doctrine of res judicata rests upon the ground that a matter which has been litigated, or on which there has been an opportunity to litigate, in a former action in a court of competent jurisdiction, should not be permitted to be litigated again.” *Marino Prop. Co. v. Port Comm’rs*, 644 P.2d 1181, 1184-85 (Wash. 1982) (quoting *Walsh v. Wolff*, 201 P.2d 215, 217 (Wash. 1949)).⁴ The threshold requirement of res judicata is whether the prior suit’s judgment was valid and final on the merits. *Hisle v. Todd Pac. Shipyards Corp.*, 93 P.3d 108, 114 (Wash. 2004). If it was, then dismissal on grounds of res judicata is appropriate where there the original judgment and the subsequent action are identical in four respects: (1) same subject matter; (2) same cause of action; (3) same persons and parties; and (4) same quality of the persons for or against whom the claim is made. *Hayes v. City of Seattle*, 934 P.2d 1179, 1181-82 (Wash. 1997).

⁴ Because judgment on Plaintiffs due process claims was rendered in state court, this Court must apply Washington’s res judicata principles. *Robi v. Five Platters, Inc.*, 838 F.2d 318, 322 (9th Cir. 1988); *see also Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 523 (1986).

The Washington Supreme Court's judgment was final and on the merits when it dismissed Appellant's claims of due process violations. The causes of action – procedural due process violations under § 1983 – are identical in this case and in *Marshall II*. Both the facts alleged, and Appellant's theory of the case, remain unchanged. Similarly, the subject matter of both cases is identical: in both, Plaintiff alleges that his disbarment hearings were procedurally flawed. Finally, the parties in the second suit are bound by the judgment in the first suit, and thus the "quality of persons" is the same in both cases. *See Ensley*, 222 P.3d 99, 106 (Wash. Ct. App. 2009). Any claim he could have brought before the Washington Supreme Court must have been brought there; Appellant cannot have another bite at the apple by filing this bankruptcy appeal.

Appellant's only argument against the application of *Rooker-Feldman* and claim preclusion to this case is that "[j]udgments issued without authority are void as a matter of law and can have no preclusive effect." (Appellant's Br. 25 (Dkt. No. 6 at 36).) But as explained above, the Washington Supreme Court's decision was not void. *Rooker-Feldman* and claim preclusion doctrines bar Appellant's attack on the due-process determinations made in the state high court's decision to disbar him.

C. Leave to Amend

The Bankruptcy Court did not err when it denied Marshall leave to amend. Marshall sought leave to amend twice: first, to add individual defendants, including the members of the Washington State Bar Association's Board of Governors; and second, to add as defendants the Justices of the Washington Supreme Court. (Bankruptcy Ct. Case No. 09-1488-PHB, Dkt. Nos. 6, 40). Either attempt would have been futile under the previously explicated *Rooker-Feldman* and preclusion analysis, as well as principles of immunity. *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991) (holding that a court does not abuse its discretion in denying leave to amend where amendment would be futile); *Clark v. State of Washington*, 366 F.2d 678, 681 (9th Cir. 1966) (Washington State Bar Association is entitled to quasi-judicial immunity); *see also Mireles v. Waco*, 502 U.S. 9, 9 (1991) (judges are generally immune from suit for damages).

IV. CONCLUSION

For the foregoing reasons, the judgment of the Bankruptcy Court is **AFFIRMED**.

DATED this 8th day of July, 2010.

/s/ John C. Coughenour
John C. Coughenour
UNITED STATES
DISTRICT JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re: BRADLEY R. MARSHALL, Debtor.	No. 09-14944
BRADLEY R. MARSHALL, Plaintiff, vs. WASHINGTON STATE BAR ASSOCIATION; STATE OF WASHINGTON; and JOHN DOES and JANE DOES 1-30. Defendants.	Adversary No. 09-1488 ORDER and JUDGMENT OF DISMISSAL (Entered on Docket Feb. 10, 2010)

On further reflection it appears that much of the colloquy following my tentative decision at hearing on 4 February 2010 was at cross purposes, mixing aspects of the alleged stay violation (11.U.S.C. § 362) with those pertaining to Marshall's due process and discrimination causes of action (42 U.S.C. 1983).

But Marshalls have alleged no action by Mr. Danielson or his law firm after the filing of their bankruptcy petition, and thus they have not alleged any claim against him or the firm for violation of the stay (and, after four iterations, they apparently cannot).

There remain the allegations of violations of § 1983. Marshalls have not argued, much less established, any basis for reconsideration of my ruling that any such causes of action are barred by the *Rooker-Feldman* doctrine and by claim and issue preclusion, whether or not in an action in the first instance Mr. Danielson and his firm would be entitled to quasi-judicial or 11th Amendment or other immunity.

Accordingly, for the reasons stated above and on the record on 12 January and 4 February 2010, FRBP 7052, **IT IS ORDERED:**

1. Plaintiffs' motions to declare the disbarment order void and for summary judgment are **DENIED**;

2. Defendants' motions to dismiss for failure to state a claim on which relief could be granted are **GRANTED, without leave to amend**;

3. All other pending motions are **DENIED** as moot; and

4. This adversary proceeding is **DISMISSED WITH PREJUDICE**.

/// - END OF ORDER - ///

/s/ P H Brandt
United States
Bankruptcy Judge
(Dated as of Entered
on Docket date above)

CERTIFICATE OF SERVICE:
I CERTIFY I SERVED COPIES
OF THE FOREGOING (VIA
U.S. MAIL, FACSIMILE, OR
ELECTRONICALLY) ON:

Bradley R. Marshall
Email: brad@churchlawconsultants.com

Mary Jo Heston
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Todd R. Bowers
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DATE: February 10, 2010

BY: /s/ Juanita C. Kandi

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRADLEY R. MARSHALL,

Appellant,

v.

WASHINGTON STATE BAR
ASSOCIATION; et al.,

Appellees.

No. 10-35684

D.C. No.

2:10-cv-00359-JCC

Western District of
Washington, Seattle

ORDER

(Filed Oct. 25, 2011)

Before: SCHROEDER and M. SMITH, Circuit Judges,
and BENITEZ, District Judge.*

Judges Schroeder and Smith have voted to deny the petition for rehearing en banc, and Judge Benitez has so recommended. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is denied.

* The Honorable Roger T. Benitez, District Judge for the U.S. District Court for Southern California, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRADLEY R. MARSHALL,

Appellant,

v.

WASHINGTON STATE BAR
ASSOCIATION; et al.,

Appellees.

No. 10-35684

D.C. No.

2:10-cv-00359-JCC

U.S. District Court
for Western
Washington, Seattle

MANDATE

(Filed Nov. 2, 2011)

The judgment of this Court, entered August 17, 2011, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

Synitha Walker
Deputy Clerk
