

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Larry Klayman v. Hamilton Fox, III; Larry Klayman v. Esther Lim

No. 19-7099, 19-7100, United States Court of Appeals for the District of Columbia Circuit (October 6, 2020)

SUMMARY

****Key Legal Topics:**** Absolute immunity for disciplinary counsel; Younger abstention in attorney discipline proceedings; failure to state a claim against bar association; untimely recusal motion.

****Holdings:**** The D.C. Circuit affirmed dismissal of attorney Larry Klayman's damages claims, holding that D.C. Office of Disciplinary Counsel employees are absolutely immune from suit for actions within their official duties, even if allegedly meritless or in bad faith. The court also upheld Younger abstention from injunctive relief regarding ongoing disciplinary proceedings, finding no bad faith or extraordinary circumstances, and dismissed as moot claims where proceedings had concluded. Klayman failed to state a claim against the D.C. Bar, which had no duty to intervene, and his post-judgment recusal motion was untimely and meritless.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	HENDERSON; MILLETT; PILLARD
JURISDICTION	Federal
DECIDED	October 6, 2020
DOCKET	19-7099, 19-7100
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court dismissal of claims
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	unpublished
PARTIES	Larry Elliott Klayman v. Esther Lim, Hamilton P. Fox, III, et al.

TOPICS

civil procedure

appellate procedure

standard of review

federalism

government liability

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether individual ODC officials are absolutely immune from suit for damages arising from their official actions.
2. Whether the district court should abstain under *Younger v. Harris* from adjudicating claims for injunctive relief against ongoing disciplinary proceedings.
3. Whether Klayman failed to state a claim against the D.C. Bar and its President.
4. Whether the district court erred in denying Klayman's post-dismissal motion for recusal.

HOLDINGS

1. D.C. officials charged with disciplining individuals engaged in the unauthorized practice of law are entitled to absolute immunity for damages claims arising from their official actions, regardless of whether the charges were meritless or brought in bad faith.
2. *Younger* abstention was appropriate because there was no showing of bad faith, harassment, or extraordinary circumstance; the Judicial Watch matter became moot after the D.C. Court of Appeals resolved it, so the claim for injunctive relief in that matter was dismissed as moot.
3. Klayman failed to state a claim because he pointed to nothing suggesting that the D.C. Bar defendants had any duty to act on his complaints or intercede on his behalf, and ODC attorneys are not accountable to the D.C. Bar or its President.
4. The motion for recusal was untimely and meritless; past political activity alone rarely requires recusal.

KEY QUOTATIONS

“D.C. officials charged with disciplining individuals engaged in the unauthorized practice of law are ‘entitled to the protection of absolute immunity.’” (at 2-3)

“Klayman has made no ‘substantial,’ nonconclusory allegations that the Disciplinary Counsel defendants have pursued the matters ‘with[out] any expectation of’ sustaining the charges against him.” (at 3)

“The facts Klayman alleged—that he and the ODC defendants had diametrically opposed political affiliations, that he had several heated exchanges with some of the defendants, and that the Florida and Pennsylvania bars independently decided not to pursue the Sataki matter—do not amount to ‘extraordinary circumstances’ justifying federal intervention.” (at 4)

“Klayman’s motion for recusal is untimely and meritless.” (at 4-5)

“Even had the motion been timely filed, on its merits ‘[t]he fact of past political activity alone will rarely require recusal, and we conclude it does not do so here.’” (at 5)

FACTUAL BACKGROUND

Attorney Larry Klayman challenged three professional disciplinary proceedings initiated by the D.C. Office of Disciplinary Counsel (ODC): the Judicial Watch matter, the Sataki matter, and the Bundy matter. In *Klayman v. Fox*, he sued ODC and four employees challenging prosecution of the Judicial Watch and Sataki matters. In *Klayman v. Lim*, he sued the same defendants plus the D.C. Bar and its President challenging prosecution of the Bundy matter and the Bar's failure to stop selective prosecution. The district court dismissed all claims.

PROCEDURAL HISTORY

The district court dismissed all claims in two separate orders: *Klayman v. Fox*, 2019 WL 2396538 (D.D.C. June 5, 2019) and *Klayman v. Lim*, 2019 WL 2396539 (D.D.C. June 5, 2019). Klayman appealed.

DISPOSITION

affirmed

CASES CITED

- *Simons v. Bellinger*, 643 F.2d 774 (D.C. Cir. 1980)
- *In re Banks*, 805 A.2d 990 (D.C. 2002)
- *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)
- *Younger v. Harris*, 401 U.S. 37 (1971)
- *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)
- *JMM Corp. v. District of Columbia*, 378 F.3d 1117 (D.C. Cir. 2004)
- *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013)
- *Dombrowski v. Pfister*, 380 U.S. 479 (1965)
- *In re Bundy*, 852 F.3d 945 (9th Cir. 2017)
- *Wood v. Several Unknown Metro. Police Officers*, 835 F.2d 340 (D.C. Cir. 1987)
- *SEC v. Loving Spirit Found. Inc.*, 392 F.3d 486 (D.C. Cir. 2004)
- *United States v. Barrett*, 111 F.3d 947 (D.C. Cir. 1997)
- *Higginbotham v. Oklahoma ex rel. Okla. Transp. Comm'n*, 328 F.3d 638 (10th Cir. 2003)