IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

LINDA S. SERODY, RODERICK SWEETS, RONALD BERGMAN, TERRY TRINCLISTI, RICHARD TRINCLISTI, BERNIE COHEN-SCOTT, DONALD G. BROWN AND JULIA A. O'CONNELL	:	**Case No.: 2007 003385 F**
Plaintiffs,	:	
v.	:	
RALPH NADER,	:	
Defendant,	:	
and	:	
AMALGAMATED BANK, M&T BANK, and PNC BANK,	:	
Defendant Garnishees.	:	

DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

Pursuant to Superior Court Civil Rule 60(b), Defendant Ralph Nader respectfully moves the Court for relief from Plaintiffs' foreign judgment entered on May 16, 2007. Defendant is entitled to such relief based on newly discovered evidence; fraud and other misconduct of an adverse party; the denial of Defendant's right to due process; and due to the extraordinary circumstances under which the judgment was rendered. Accordingly, Defendant moves the Court to vacate the judgment pursuant to Rule 60(b)(2), 60(b)(3), 60(b)(4) and 60(b)(6).

In the alternative, Defendant moves the Court to stay enforcement of the judgment pursuant to Rule 62(b), and to accept Defendant's funds attached in these proceedings as security pursuant to Rule 62-I, pending the Court's resolution of

Defendant's claims against Plaintiffs' counsel, Reed Smith, LLP in the action entitled *Nader v. Democratic National Committee*, Case No. 2007 CA 007245 B, now pending in this Court.

In support of Defendant's Motion for Relief, Defendant submits the attached Affidavit of Oliver B. Hall, Esquire, and a memorandum of points and authorities setting forth the grounds for Defendant's claims, copies of which have been served upon Plaintiffs' counsel, Reed Smith, and Defendant Garnishees Amalgamated Bank, PNC Bank and M&T Bank.

Respectfully submitted,

/s/ Oliver B. Hall

Date: November 7, 2007

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MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

This motion for relief arises from extraordinary circumstances. On August 22, 2006, a divided Supreme Court of Pennsylvania affirmed an order directing Defendant Ralph Nader and his running mate Peter Miguel Camejo to pay $81,102.19 in litigation costs to Plaintiffs, who sued to challenge their nomination papers as candidates for President and Vice President in the 2004 General Election. *See In re Nomination Papers of Ralph Nader and Peter Miguel Camejo*, 905 A.2d 450 (Pa. 2006). This judgment appears to be unprecedented in American jurisprudence. Indeed, the single case the majority cited as precedent actually *reversed* a taxation of costs against a candidate. *See id.* (citing *In re Nominating Petition of Esther M. Lee*, 578 A.2d 1277 (Pa. 1990)). Plaintiffs therefore ask this Court to enforce the first judgment in American history that effectively penalizes a candidate for attempting to run for office, much as poll taxes once penalized voters for attempting to vote. *See Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (striking down poll tax of $1.50).

Mr. Nader seeks relief from this unprecedented judgment based upon newly discovered evidence of undisclosed ties between Plaintiffs' counsel, Reed Smith, LLP, and four out of five members of the Supreme Court of Pennsylvania majority who voted to affirm the judgment. Reed Smith's negligent or intentional concealment of these ties is misconduct that constitutes a fraud upon the court, requiring that the judgment be vacated. These undisclosed ties give rise to an unavoidable appearance of impropriety, which required disclosure and, at least in some instances, disqualification of the Justices. *See* PENNSYLVANIA CODE OF JUDICIAL CONDUCT Canon 2, 3(c) (2005) (requiring judges to avoid the appearance of impropriety and to disqualify themselves if their impartiality

might reasonably be questioned); *see also Reilly v. Southeastern Pennsylvania Transportation Authority*, 489 A.2d 1291, 1301 (Pa. 1985) (judges must disclose "any latent biases or personal interests which might possibly affect their judgment in the case").

The undisclosed ties giving rise to an appearance of impropriety in this case are as follows: 1) while this case was before the Supreme Court of Pennsylvania, Reed Smith began representing Chief Justice Ralph Cappy as his defense counsel in a state ethics investigation, thereby making the Chief Justice Reed Smith's client while he was presiding over these proceedings; 2) while this case was before the Supreme Court of Pennsylvania, Reed Smith and Plaintiffs' second law firm, Montgomery, McCracken, Walker and Rhoads, LLP, gave $10,000 in campaign contributions ($5,000 from each firm) to Justice Sandra Schultz Newman, who authored the majority opinion; 3) before Justice Ronald Castille joined the bench, Reed Smith's managing partner extended an open-ended offer of employment to him, which he accepted, and then served as of counsel at Reed Smith for almost three years immediately before joining the Supreme Court of Pennsylvania; 4) finally, Reed Smith, Reed Smith lawyers, and Montgomery, McCracken, Walker and Rhoads gave a combined total of at least $67,900 in campaign contributions to five out of six Justices who voted to award costs in Reed Smith's favor (four members of the majority and a Justice who concurred and dissented).

The appearance of impropriety arising from these relationships is manifest, and clearly raises reasonable questions as to the impartiality of the tribunal. In this case, moreover, the appearance of impropriety is compounded by Reed Smith's status not merely as Plaintiffs' counsel, but as the true party in interest seeking to collect litigation

costs in these proceedings. Reed Smith's concealment of the firm's close personal, professional and/or financial ties with five out of seven Justices presiding over proceedings in which the firm had a direct and significant financial interest therefore constitutes grounds for vacating the judgment. *See Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865 (1988) (judge's undisclosed relationship with interested party warrants vacatur); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986) (judge's indirect financial interest in litigation warrants vacatur); *Scott v. United States*, 559 A.2d 745 (D.C. 1989) (judge's undisclosed employment negotiations with counsel's employer warrants vacatur); *see also Summers v. Howard University*, 374 F.3d 1188 (D.C. Cir. 2004) (party's prejudicial concealment of evidence warrants vacatur); *Good Luck Nursing Home, Inc. v. Hariss*, 636 F.2d 572 (D.C. Cir. 1980) (party's failure to make key facts known warrants vacatur); *Olivarius v. Stanley J. Sarnoff Endowment*, 858 A.2d 457 (D.C. 2004) (attorney's improper influence on court warrants vacatur); *Miranda v. Contreras*, 754 A.2d 277 (D.C. 2000) (attorney's misrepresentation to opposing counsel is "extraordinary circumstance" that warrants vacatur).

Relief is also warranted in this case because Reed Smith's concealment of the firm's personal, professional and/or financial ties with five out of seven presiding Justices violated Mr. Nader's right to due process. *See In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process"); *Klapprott v. United States*, 335 U.S. 601, 615 (1949) ("Fair hearings are in accord with elemental concepts of justice"); *see also Liljeberg*, 486 U.S. at 865 n.12 ("to perform its high function in the best way, justice must satisfy the appearance of justice") (citations omitted).

Accordingly, Mr. Nader is entitled to relief from the judgment under Rule 60(b) or, in the alternative, to a stay of proceedings to enforce the judgment under Rule 62(b), so that the Court may rule on the merits of Mr. Nader's claims against Plaintiffs' counsel Reed Smith, LLP, filed in this Court on October 30, 2007. *See Nader v. Democratic National Committee*, 2007 CA 007245 B (D.C. Super. Oct. 30, 2007).

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. Procedural History

On August 9, 2004, Plaintiffs Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O'Connell filed a petition in the Commonwealth Court of Pennsylvania, which challenged the validity of the nomination papers that Defendant Ralph Nader and his running mate Peter Miguel Camejo submitted as candidates for President and Vice President in the 2004 General Election. *See In re Nomination Papers of Ralph Nader and Peter Miguel Camejo*, 905 A.2d 450, 453 (Pa. 2006). Pennsylvania's election code required the candidates to submit a petition with signatures equal in number to two percent of the number of the highest vote in the last statewide election. *See* 25 P.S. § 2911. In 2004, therefore, Mr. Nader and Mr. Camejo were required to submit 25,697 signatures. They submitted 51,273 signatures.

On October 13, 2004, the Commonwealth Court issued an opinion setting aside Mr. Nader's and Mr. Camejo's nomination papers. *See In re Nomination Papers of Nader*, 865 A.2d 8 (Pa. Commw. Ct. 2004). The Commonwealth Court invalidated approximately 30,500 signatures on technical grounds – for example, because qualified electors were not registered on the day they signed the petition (9,000 signatures

invalidated); because omitted data like dates or incomplete addresses was filled in after electors signed the petition (8,000 signatures invalidated); because the elector's current address did not match the elector's registered address (6,000 signatures invalidated); because information was incomplete (2,000 signatures invalidated); because of "affidavit problems" (2,000 signatures invalidated); and because of unspecified "other" defects (3,500 signatures invalidated). *Id.* The Commonwealth Court thus found only 18,818 signatures valid, and concluded that the nomination papers fell short of the 25,697 signatures required by state law. *Id.* The next day, on October 14, 2004, the Commonwealth Court issued an order directing Mr. Nader and Mr. Camejo to pay all costs arising from Plaintiffs' lawsuit challenging their nomination papers.

On October 19, 2004, the Supreme Court of Pennsylvania issued a *per curiam* order affirming the Commonwealth Court's disposition of the nomination papers without opinion. *See In re Nader*, 905 A.2d at 455. Only Justice Thomas Saylor, who dissented, issued a written opinion. *See In re Nomination of Nader*, 580 Pa. 134 (Pa. 2004) (Saylor, J. dissenting). Justice Saylor objected, *inter alia*, to the Commonwealth Court's invalidation of approximately 9,000 signatures from qualified electors, noting that Pennsylvania law does not require qualified electors to register to vote before signing a nomination petition. *See id.* For this reason alone, Justice Saylor argued, the nomination petition exceeded state law requirements, and Mr. Nader and Mr. Camejo qualified for Pennsylvania's 2004 general election ballot. *See id.*

On December 3, 2004, Plaintiffs' counsel, Reed Smith (joined by Gregory Harvey of Montgomery, McCracken, Walker and Rhoads and Brian A. Gordon, a solo practitioner) submitted a bill of costs to the Commonwealth Court in the amount of

$81,102.19. On January 14, 2005, the Commonwealth Court issued an order approving the bill without opinion. Mr. Nader and Mr. Camejo appealed this order to the Supreme Court of Pennsylvania, which assumed jurisdiction on October 13, 2005, and heard oral argument on March 1, 2006. On August 22, 2006, a divided Supreme Court of Pennsylvania affirmed. *See In re Nader*, 905 A.2d at 460. Justice Saylor and Justice Eakin dissented on the ground that Pennsylvania's Election Code does not authorize the state to tax costs against candidates who defend their nomination papers, but only against petitioners who challenge them. *See id.* (Saylor, J. dissenting and Eakin, J. concurring and dissenting). Justice Eakin concurred in part, on the ground that the court's Internal Operating Procedures may have provided authority for approximately half the costs assessed. *See id.* (Eakin, J. concurring and dissenting).

The Supreme Court of the United States denied Mr. Nader's and Mr. Camejo's petition for a writ of certiorari on January 8, 2007. *See In re Nomination Paper of Ralph Nader*, 127 S. Ct. 995 (Jan. 8, 2007). On April 23, 2007, the Pennsylvania Commonwealth Court entered its order of January 14, 2005 as a final judgment. Plaintiffs entered this foreign judgment in the Superior Court of the District of Columbia on May 16, 2007.

Because Reed Smith concealed the aforementioned ties to the Pennsylvania Supreme Court Justices, Mr. Nader and Mr. Camejo did not discover them until sometime after September 12, 2007, when an article about Chief Justice Ralph Cappy's retirement noted that Justice Ronald Castille had formerly served as of counsel at Reed Smith. *See* Gina Passarella, *Pa. Supreme Court Chief Justice to Step Down from Bench*, THE LEGAL INTELLIGENCER, Sep. 12, 2007. Mr. Camejo had already paid Reed Smith

$20,000 in settlement, unaware that the firm's judgment was tainted with an appearance of impropriety. Mr. Nader, having received notice of potential conflicts of interest involving Reed Smith, thereafter discovered the following facts that give rise to this motion for relief.

On October 30, 2007, Mr. Nader filed suit in this Court charging Reed Smith, *inter alia*, with conspiracy, abuse of process and malicious prosecution. The case is now pending. *See Nader v. Democratic National Committee*, 2007 CA 007245 B (D.C. Super. Oct. 30, 2007).

B. Undisclosed and Concealed Ties Between Reed Smith and Justices of the Pennsylvania Supreme Court

1. Reed Smith Represented Chief Justice Ralph Cappy as His Defense Counsel in an Ethics Investigation While He Presided over this Proceeding in which Reed Smith Has a Direct and Significant Financial Interest.

On August 15, 2005, a citizen filed a complaint against Pennsylvania Supreme Court Chief Justice Ralph Cappy before the state Judicial Conduct Board. The complaint requested the board to investigate whether Chief Justice Cappy violated the Pennsylvania Code of Judicial Conduct by advocating pay raises for government officials, including the judiciary, and by holding secret meetings with unidentified members of the state's executive and legislative branches. *See* Mark Scolforo, *Probe Asked of Justice Cappy's Role in Pay Raises*, ASSOCIATED PRESS, Aug. 15, 2005. Thereafter, Justice Cappy retained Reed Smith to defend him in the proceedings. On November 11, 2005, W. Thomas McGough, Jr., a partner in Reed Smith's Pittsburgh office, wrote a letter to the board "on behalf of my client, The Honorable Ralph J. Cappy," in which he presented Chief Justice Cappy's defense. *See* Exhibit A, Reed Smith Justice Cappy Letter. The

Pennsylvania Supreme Court assumed jurisdiction over the present case on October 13, 2005. Chief Justice Cappy was therefore presiding over these proceedings, in which Reed Smith had a direct and significant financial interest as the true party in interest, while Reed Smith was defending Chief Justice Cappy in another proceeding of a highly sensitive nature. Reed Smith neither disclosed that the firm was representing Chief Justice Cappy, nor moved for his disqualification at any time during these proceedings before Chief Justice Cappy voted to affirm the unprecedented $81,102.19 judgment in Reed Smith's favor.

2. Reed Smith and Plaintiffs' Second Law Firm Gave Justice Sandra Schultz Newman $10,000 in Campaign Contributions While She Presided over this Proceeding in which Reed Smith Has a Direct and Significant Financial Interest.

In the first week of November 2005, while this case was before the Pennsylvania Supreme Court, Reed Smith and Plaintiffs' second law firm, Montgomery, McCracken, Walker and Rhoads, gave Justice Sandra Schultz Newman $10,000 in campaign contributions ($5,000 from each firm). *See* Asher Hawkins, *Report: Newman Aided by Late $320K*, THE LEGAL INTELLIGENCER, Dec. 12, 2005. The contributions were part of a large influx of cash, all contributed during the first week of November 2005, which was widely credited with enabling Justice Newman to "narrowly escape[] being voted off the bench." *Id.* Reed Smith and Montgomery, McCracken, Walker and Rhoads contributed the $10,000 after the Pennsylvania Supreme Court assumed jurisdiction over the present case on October 13, 2005, less than six months before oral argument on March 1, 2006, and less than a year before Justice Newman wrote the majority opinion awarding judgment in Reed Smith's favor, announced on August 22, 2006. Reed Smith and Attorney Harvey of Montgomery, McCracken, Walker and Rhoads neither disclosed that

the firms had given $10,000 in campaign contributions to Justice Newman, nor moved for her disqualification at any time during these proceedings before Justice Newman voted to affirm the unprecedented $81,102.19 judgment in Reed Smith's favor.

3. Reed Smith Extended a Long-Standing, Open-Ended Offer of Employment to Justice Ronald Castille, which He Accepted and Served as of Counsel at Reed Smith for Almost Three Years Immediately Before Joining the Court.

In 1991, William Meehan, a partner in Reed Smith's Philadelphia office and the city's Republican Party leader, wanted to recruit then-District Attorney Ronald Castille to run as the party's candidate for mayor of Philadelphia. After a year-long courtship, "the moment of truth" reportedly came for Justice Castille "around a conference table at the law offices of Reed Smith," where he told Mr. Meehan and several advisors, "I'll go for it." *See* S.A. Paolantonio, *Castille Seen as Both Hero and Villain in Republican Drama*, PHILADELPHIA INQUIRER, Feb. 17, 1991. Immediately thereafter, Justice Castille was reported to be negotiating with Reed Smith for a job after he resigned as District Attorney to run for mayor – a deal some criticized as a kickback. *See* Cynthia Burton, *A Firm Offer for Castille?*, PHILADELPHIA DAILY NEWS, Feb. 22, 1991. The deal, reportedly, was that Justice Castille agreed to resign from his $79,000-a-year job as District Attorney to run for mayor only after Reed Smith guaranteed him a $130,000-a-year job at the firm if he lost the primary election. *See* Katharine Seelye, *Castille Keeps Cool in Court Run*, PHILADELPHIA INQUIRER, April 30, 1993. Justice Castille did lose the primary, and he accepted Reed Smith's offer in March 1991.

In a press release dated March 15, 1991, Reed Smith announced that Justice Castille had joined the firm as counsel in its Philadelphia office. The press release stated:

> Reed Smith's association with Castille began when Castille first ran for the position of Philadelphia district attorney in 1985. At that time, Reed Smith asked him to join the firm, and that interest has continued through his two terms as district attorney. When Castille was elected as district attorney, [managing partner David C.] Auten and others at Reed Smith asked Castille to *contact them if he was interested in a position with the firm at any time in the future*. *See* Exhibit B, Reed Smith Justice Castille Press Release (emphasis added).

Mr. Auten characterized Reed Smith's 1985 offer as "dormant" until Justice Castille accepted it in 1991. *See* Cynthia Burton, *A Firm Offer for Castille?*, PHILADELPHIA DAILY NEWS, Feb. 22, 1991. Reed Smith thus extended an open-ended offer of employment to Justice Castille, which endured for seven years until Justice Castille accepted it in 1991. Justice Castille then served of counsel at Reed Smith for nearly three years immediately before joining the Pennsylvania Supreme Court in January 1994. Nevertheless, Reed Smith neither disclosed the firm's long-standing political and professional ties with Justice Castille, nor moved for his disqualification at any time during these proceedings before Justice Castille voted to affirm the unprecedented $81,102.19 judgment in Reed Smith's favor.

4. Reed Smith, Reed Smith Lawyers and Plaintiffs' Second Law Firm Gave a Combined Total of at Least $67,900 in Campaign Contributions to Five Out of Six Justices Who Voted to Award Costs in Reed Smith's Favor.

Reed Smith, Reed Smith lawyers and Plaintiffs' second law firm, Montgomery, McCracken, Walker and Rhoads gave a combined total of at least $67,900 in campaign contributions to five out of six Justices who voted to award costs in Reed Smith's favor. At least $58,900 of this total came from Reed Smith and its lawyers. By contrast, neither firm nor any lawyers associated with them gave campaign contributions to the lone dissenter, Justice Thomas Saylor. Despite the unavoidable appearance of impropriety arising from such contributions, which is compounded in this case by Reed Smith's status

not merely as Plaintiffs' counsel, but as the true party in interest seeking to collect litigation costs in these proceedings, neither Reed Smith nor Attorney Harvey of Montgomery, McCracken, Walker and Rhoads disclosed that the firms had given a combined total of at least $67,900 in campaign contributions to five out of seven presiding Justices of the Pennsylvania Supreme Court, nor moved for their disqualification at any time during these proceedings before the Justices voted to affirm the unprecedented $81,102.19 judgment in Reed Smith's favor.

C. Facts Indicating Widespread Recognition that the Ties Between Reed Smith and the Pennsylvania Supreme Court Justices Create an Appearance of Impropriety

Pennsylvania's legal and lay communities widely recognize that undisclosed ties between judges and parties who come before them in court create an appearance of impropriety. *See, e.g.*, H.G. Bissinger and Daniel R. Biddle, *Politics in Justice: Fuel for Suspicion*, PHILADELPHIA INQUIRER, Jan. 28, 1986 (relating lawyers' reactions to such undisclosed ties, including, "That's outrageous"); Daniel R. Biddle, *Fear Contributes to Lawyer Donations*, PHILADELPHIA INQUIRER, May 15, 1983 (quoting lawyers who say they and "any other lawyer in town" feel their interests will suffer in court if they do not contribute to judges' campaigns, and that, "For the Supreme Court…if you give less than [$1,000] you look like you're a chintz"); Daniel R. Biddle, *Above the Law*, PHILADELPHIA INQUIRER, May 15, 1983 ("Incredible! How can they accept that? Talk about a conflict of interest! I mean, I'm a lawyer. Think of how it appears to clients: Three of the judges got thousands of campaign dollars from the people we're against!").

As Attorney General, Governor Edward G. Rendell also criticized lawyers and judges who fail to disclose such ties. *See* Bissinger and Biddle, *Politics in Justice*

(quoting Rendell, "What goes on is influence peddling…from lawyers who have close relationships with judges and may have helped in their political campaigns"). Prominent members of the legal community agree. *See* H.G. Bissinger and Daniel R. Biddle, *How Political Interests Stand in the Way of Change*, PHILADELPHIA INQUIRER, Jan. 31, 1986 (quoting former chancellor of the Philadelphia Bar Association, Bennett G. Picker, "Specifically, the problem arises with judges and judge candidates campaigning among lawyers who may appear before some of these judges at a later date"); Asher Hawkins, *Retention Campaign Funding Increasing, Drawing Concern*, THE LEGAL INTELLIGENCER, Dec. 22, 2005 (quoting Lynn Marks, executive director of Pennsylvanians for Modern Courts, "The perception is always there – even if it has no basis in reality – that there might be preference in court given to the contributors").

Finally, many Pennsylvania judges recognize the appearance of impropriety arising from judges' undisclosed ties with parties who appear before them in court. The trial judge in this very case, for example, recently acknowledged that campaign contributions specifically can give rise to the appearance of impropriety. *See* Marc Levy, *James Gardner Colins Stepping Down from Commonwealth Court*, ASSOCIATED PRESS, Oct. 3, 2007. Many more judges agree. *See* Bissinger and Biddle, *Politics in Justice* (Common Pleas Court Judge Albert F. Sabo: "They should pass a law that no lawyer can contribute to a judge," because "even subconsciously, you're going to feel you owe [the contributor] a favor"); *id.* (Superior Court President Judge Edmund B. Spaeth Jr.: "Suppose you're before the court and you know your opponent's lawyer has made a contribution. That shouldn't be. It's inconsistent with the appearance of impartiality"); *id.* (Common Pleas Court Judge Victor J. DiNubile Jr.: "You're asking [for contributions

from] people that come before you [in court], and it may not look proper"); *id.* (Common Pleas Court President Judge Edward J. Bradley: "The whole situation is a troublesome one"); *id.* (Commonwealth Court Judge James Gardner Colins: "When the public reads this, their eyebrows are going to be arched"); Biddle, *Above the Law* (former Pennsylvania Supreme Court Justice James McDermott: "You have a point…someone could feel uncomfortable with that").

Despite this widespread criticism, some Pennsylvania law firms, including Reed Smith, now contribute to both judicial candidates in a single election, thereby guaranteeing that the firm will have supported the winner's campaign. *See* Peter Jackson, *Some Law Firms Give Money to Both Supreme Court Candidates*, ASSOCIATED PRESS, Nov. 1, 2003 (noting that Reed Smith donated $5,000 to Justice Max Baer in 2003 and $7,000 to his opponent).

D. Facts Indicating that Plaintiffs' Unprecedented Judgment Relies on a False Factual Conclusion that the Record Contradicts

This litigation took place in a highly charged political atmosphere, which made national headlines as part of a nationwide effort by the Democratic Party to use litigation to bankrupt Mr. Nader's 2004 presidential campaign in order "to keep him from becoming a factor in [the] election." Katharine Q. Seelye, *Democrats' Legal Challenges Impede Nader*, N.Y. TIMES, Aug. 19, 2004; *see Nader v. Democratic National Committee*, 2007 CA 007245 B (D.C. Super. Oct. 30, 2007) (complaint filed alleging abuse of process, malicious prosecution and related claims). Commonwealth Court President Judge James Gardner Colins, who was elected to the bench as a Democrat, presided over the proceedings.

Judge Colins found that 49,499 out of 51,273 signatures on the Nader-Camejo nomination petition were either valid, or invalid on technical grounds. *See In re Nomination Papers of Nader*, 865 A.2d 8 (Pa. Commw. Ct. 2004). Judge Colins counted another 1,087 signatures as duplicates. *See id.* Finally, Judge Colins counted 687 signatures, or 1.3 percent of the total, as "forgeries." *See id.* This category denoted fake names, apparently resulting from sabotage or mischief by signers, that campaign staff did not detect in a review conducted prior to submitting the petition, and which they voluntarily withdrew immediately upon discovery, in a good faith effort to lessen the Commonwealth Court's burden. *See In re Nader*, 580 Pa. 134, _ n.13 (Saylor, J., dissenting).

After summarizing these findings, which confirm that 98.7 percent of the signatures on the Nader-Camejo nomination petition were free from any allegation of fraud, Judge Colins nevertheless concluded that the petition was "the most deceitful and fraudulent exercise ever perpetrated upon this Court," and that the petition included "thousands of names that were created at random." *In re Nader*, 865 A.2d 8. According to Judge Colins' own findings, however, this conclusion is a mathematical impossibility. *See id.* Judge Colins counted 49,499 signatures either as valid, or invalid on technical grounds, and another 1,087 as duplicates. *See id.* Judge Colins therefore found that 50,586 signatures out of 51,273 were free from any allegation of fraud – making it numerically impossible that the petition included "thousands" of fraudulent signatures. *See id.*

Pennsylvania Supreme Court Justice Saylor, who was the only Justice to address the merits of Judge Colins' findings, accordingly found that the record does not support

Judge Colins' conclusion. *See In re Nader*, 580 Pa. at _ n.13. In fact, Justice Saylor specifically noted that the record contains "no evidence" to support Judge Colins' allegations. *Id.* The majority, by contrast, issued a *per curiam* order affirming without opinion, and subsequently adopted Judge Colins' false conclusion without analysis, and relied on this falsehood as justification for affirming the unprecedented $81,102.19 judgment in Reed Smith's favor. *See id*; *In re Nader*, 905 A.2d 450.

ARGUMENT

A foreign judgment properly filed in the Superior Court of the District of Columbia "shall…be subject to the same procedures, defenses or proceedings for reopening, vacating or staying as a judgment of the Superior Court." D.C. Code § 15-352 (2006). The proper procedure for vacating a foreign judgment, therefore, is to file a motion pursuant to Rule 60(b). *See Threatt v. Winston*, 907 A.2d 780, 787-88 (D.C. App. 2006). Upon such motion, the Court is authorized to examine issues of fact as necessary to determine whether relief is warranted. *See id.* at 790; *Jones v. Hersh*, 845 A.2d 541, 545 (D.C. 2004); *Leichtman v. Koons*, 527 A.2d 745, 748 (D.C. 1987). In addition, federal court decisions interpreting the identical federal Rule 60 are "persuasive authority in interpreting the local rule." *Id.* at 784 n.8 (citations omitted).

I. Plaintiffs' Judgment Must Be Vacated.

A. Plaintiffs' judgment must be vacated based on newly discovered evidence.

The newly discovered evidence in this case creates an appearance of impropriety that requires vacatur by this Court. Vacatur based on newly discovered evidence is required if the evidence is in fact newly discovered after trial; if its recent discovery was

not due to a lack of diligence by the movant; and if the evidence is not merely cumulative or impeaching, but would probably produce a different result if a new trial were granted. *See Oxendine v. Merrell Dow Pharmaceuticals*, 563 A.2d 330, 334 (D.C. App. 1989) (citations omitted). The newly discovered evidence in this case – that Reed Smith had undisclosed ties to five out of six Justices who voted to award costs in the firm's favor – clearly meets that standard.

The newly discovered evidence in this case was in fact discovered after trial, on or about September 12, 2007, when Mr. Nader first learned of Reed Smith's undisclosed ties to the Justices. These undisclosed ties consequently placed the Justices in a position that violated the Canons of Judicial Conduct, as well as the Pennsylvania Supreme Court's prior decisions governing disclosure. *See* PENNSYLVANIA CODE OF JUDICIAL CONDUCT Canon 2, 3(c) (2005) (requiring judges to avoid the appearance of impropriety and to disqualify themselves if their impartiality might reasonably be questioned); *Reilly*, 489 A.2d at 1301 (judges must disclose "any latent biases or personal interests which might possibly affect their judgment in the case"). Any neglect in this case is therefore chargeable not to Mr. Nader, but to Reed Smith or the Justices themselves. *See Reilly*, 489 A.2d at 1300 (impartiality of judiciary is presumed); *see also Liljeberg*, 486 U.S. at 867 (judge's silence deprived party of basis for making a timely motion for a new trial); *United States v. Microsoft*, 253 F.3d 34, 112 (D.C. Cir. 2001) (judge's secrecy prevented the parties from objecting to his improprieties or seeking his removal); *see also United States v. Heldt*, 668 F.2d 1238, 1271 (D.D.C. 1981) (judge must disqualify from any case in which appearance of impropriety is "sufficient to permit the average citizen reasonably to question [the] judge's impartiality").

Had Reed Smith's ties to the Justices been disclosed as required by law and applicable ethical standards, the disclosure most certainly would have produced a different result. First, Mr. Nader would have had the opportunity to move for the Justices' disqualification. *See Commonwealth v. Whitmore*, 912 A.2d 827 (Pa. 2006) (proper procedure when question is raised as to judge's impartiality is to file petition for disqualification); *Commonwealth v. Druce*, 848 A.2d 104 (Pa. 2004) (same); *Reilly*, 489 A.2d 1299 (same). Second, even if that motion were denied, the issue nevertheless would have been preserved for appeal. *Reilly*, 489 A.2d at 1300. Third, a strong likelihood exists that, upon disclosure of these, one or more of the Justices would have disqualified themselves, consistent with the canons of judicial conduct and the Pennsylvania Supreme Court's prior decisions. *See id*; PENNSYLVANIA CODE OF JUDICIAL CONDUCT Canon 2, 3(c).

Accordingly, pursuant to Rule 60(b)(2), this Court should vacate the judgment based on newly discovered evidence that would produce a different result if a new trial were granted.

B. Plaintiffs' judgment must be vacated based on fraud, misrepresentation, or other misconduct of an adverse party amounting to a fraud upon the court.

The question presented by a motion to vacate is whether "there is a greater risk of unfairness in upholding the judgment…than there is in allowing a new judge to take a fresh look at the issues." *Liljeberg*, 486 U.S. at 868. This case does not present a close question. Mr. Nader, through no fault of his own, was totally unaware of the information necessitating post-judgment relief until September 12, 2007. Reed Smith, by contrast, knew or should have known of its undisclosed ties with the Justices of the Pennsylvania

Supreme Court while this case was before that court – particularly the fact that Chief Justice Ralph Cappy was a client in an ongoing ethics investigation. As a matter of fairness and equity, therefore, the motion for relief should be granted. *See Miranda*, 754 A.2d 277 (vacatur warranted because "counsel should not be able to reap the windfall of his or her misrepresentation to fellow counsel").

The manifest impropriety arising from these undisclosed ties is compounded, moreover, by Reed Smith's status not merely as Plaintiffs' counsel in this case, but as the true party in interest seeking to collect litigation costs. Reed Smith's negligent or intentional concealment of these ties therefore constitutes misconduct that warrants vacatur. *See Summers*, 374 F.3d 1188 (party's prejudicial concealment of evidence warrants vacatur); *Good Luck Nursing Home, Inc.*, 636 F.2d 572 (party's failure to make key facts known warrants vacatur); *Miranda*, 754 A.2d 277 (attorney's misrepresentation to opposing counsel warrants vacatur).

Reed Smith's misconduct also warrants vacatur because it rises to the level of a fraud upon the court. *See Olivarius*, 858 A.2d at 465 n.4 ("Because attorneys are officers of the court, their dishonest participation in the concealment of evidence or other wrongdoing may transform a "garden-variety" fraud claim into a claim of fraud upon the court"). Reed Smith concealed facts forming a basis for the Justices' disqualification, which directly impinges the integrity of the court and its ability to function impartially. *See id.* at 465 ("Fraud on the court . . . is fraud which is directed to the judicial machinery itself"). Moreover, the concealment of these ties actually prevented Mr. Nader from making a motion for the Justices' disqualification. *See id.* at 465-66 Vacatur is thus

warranted on the alternative ground that Reed Smith's misconduct constituted a fraud upon the court. *See id.*

Accordingly, pursuant to Rule 60(b)(3), this Court should vacate the judgment due to fraud, misrepresentation or other misconduct of an adverse party amounting to a fraud upon the court.

C. Plaintiffs' judgment must be vacated because it was obtained in violation of due process.

The appearance of impropriety in this case also requires vacatur, because it is so pervasive that it "taints the entire proceeding" and therefore violates due process. *Scott v. United States*, 559 A.2d at 752 (citation omitted); *see Aetna*, 475 U.S. at 825 ("We are not required to decide whether in fact [the judge] was influenced," because "justice must satisfy the appearance of justice"); *In re Murchison*, 349 U.S. at 136 ("A fair trial in a fair tribunal is a basic requirement of due process"); *Klapprott*, 335 U.S. at 615 ("Fair hearings are in accord with elemental concepts of justice"). Accordingly, Plaintiffs' judgment is not entitled to full faith and credit from this Court, because "*due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process.*" *Griffin v. Griffin*, 327 U.S. 220, 228-29 (1946) (emphasis added).

This case fails to satisfy the "appearance of justice" because the majority opinion affirming the judgment relies on a false factual conclusion and cites no legal precedent to support the court's taxation of costs against a candidate. *Aetna*, 475 U.S. at 825; *see In re Nader*, 905 A.2d 450 (citing one case as precedent, in which costs taxed against a candidate were actually *reversed*). The record therefore permits an inference of improper influence. *See Aetna*, 475 U.S. at 822 (conflicted judge "quite possibly made new law;

the court's opinion does not suggest that its conclusion was compelled by earlier decisions"). The fact that Justice Saylor dissented, and was free from any appearance of impropriety, further supports this inference, and warrants vacatur. *See In re Nader*, 580 Pa. at _ n.13 (Saylor, J., dissenting) (the record contains "no evidence" to support majority's conclusions); *see also Liljeberg*, 486 U.S. 847 (vacating judgment where judge failed to disclose relationship with interested party); *Aetna*, 475 U.S. 813 (vacating judgment where judge participated as plaintiff in similar litigation); *Microsoft*, 253 F.3d 34 (vacating sentencing decision where judge secretly disparaged defendant prior to sentencing); *Scott*, 559 A.2d 745 (vacating judgment where judge was negotiating for employment with one of the parties).

Accordingly, pursuant to Rule 60(b)(4), this Court should vacate the judgment as void and unenforceable, because it was rendered in violation of due process.

D. Plaintiffs' judgment must be vacated due to the extraordinary circumstances under which it was obtained.

Under "extraordinary circumstances," the Court may vacate a judgment where necessary to accomplish justice. *Liljeberg*, 486 U.S. at 863, citing *Klapprott*, 335 U.S. at 614-615. Such extraordinary circumstances are present here: the judgment is tainted with a pervasive appearance of impropriety; was secured by misconduct amounting to a fraud upon the court; and lacks a reasonable basis in law and fact. Moreover, the party in interest gave five out of six Justices who voted to affirm the judgment in whole or in part a combined total of at least $67,900 in campaign contributions, which the party concealed rather than prompting the Justices to disclose. Reed Smith's representation of one Justice at the very time this matter was pending before the Pennsylvania Supreme Court, and the firm's open-ended offer of employment to another Justice, comprise two unacceptable

and undisclosed relationships between the litigant and the court that destroy any semblance of due process.

Accordingly, pursuant to Rule 60(b)(6), this Court should vacate the judgment as unenforceable due to the extraordinary circumstances under which it was obtained.

II. In the Alternative, the Court Should Stay Enforcement of Plaintiffs' Judgment Pending Resolution of Defendant's Claims.

A. Plaintiffs' judgment should be stayed pending resolution of Defendant's claims against Plaintiffs' counsel Reed Smith, which is the true party in interest in these proceedings.

Where a plaintiff seeks enforcement of a foreign judgment in this Court by means of attachment and condemnation proceedings, and the defendant does not defend against the judgment, but asserts claims against the plaintiff, proper procedure is to stay entry of final judgment for plaintiff "until determination of [defendant's] counterclaim when adjustment of the rights of the parties may be made." *Graham Associates v. Fell*, 192 A.2d 129 (D.C. 1963) (trial court erred by entering final judgment and awarding execution by condemnation of attached funds where defendant asserted counterclaims). Accordingly, in the alternative to vacating the judgment under Rule 60(b), the Court should stay proceedings to enforce the judgment pursuant to Rule 62, pending the Court's resolution of Mr. Nader's claims raised in the complaint filed with this Court on October 30, 2007. *See Nader v. Democratic National Committee*, C.A. No. 2007 CA 007245 B.

Respectfully submitted,

/s/ Oliver B. Hall

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IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

LINDA S. SERODY, RODERICK SWEETS, RONALD BERGMAN, TERRY TRINCLISTI, RICHARD TRINCLISTI, BERNIE COHEN-SCOTT, DONALD G. BROWN AND JULIA A. O'CONNELL	:	**Case No.: 2007 003385 F**
Plaintiffs,	:	
v.	:	
RALPH NADER,	:	
Defendant,	:	
and	:	
AMALGAMATED BANK, M&T BANK, and PNC BANK,	:	
Defendant Garnishees.	:	

ORDER

And now, this __ day of September, 2007, Defendant Ralph Nader's Motion for Relief from Judgment is granted, and Plaintiffs' foreign judgment filed in this Court on May 16, 2007, is hereby vacated. So ordered.

_____

The Honorable Judge Judith Bartnoff
District of Columbia Superior Court

cc: Daniel I. Booker, Esq.
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