No. 22-CV-0523

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MARK Z. JACOBSON, PH.D.,

APPELLANT,

v.

CHRISTOPHER T. M. CLACK, PH.D., ET AL.

APPELLEES

ON APPEAL FROM DECISIONS OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PETITION FOR REHEARING EN BANC

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ABBREVIATIONS

In this Petition, appellant, Prof. Mark Z. Jacobson, is referred to as Prof. Jacobson. Appellees National Academy of Sciences and Dr. Christopher T.M. Clack are referred to as NAS and Dr. Clack, respectively. The 2015 paper published in the Proceedings of the National Academy of Sciences (PNAS) by Prof. Jacobson and colleagues is referred to as the Jacobson Paper. The four co-authors of the Jacobson Paper are sometimes referred to jointly as the Jacobson Authors. The 2017 paper published in PNAS by Dr. Clack and 20 co-authors is referred to as the Clack Paper. The 21 co-authors of the Clack Paper are sometimes referred to jointly as the Clack Authors.

A	=	Appendix
App. R.	=	D.C. Appellate Rule
FOIA	=	Freedom of Information Act
JA	=	Joint appendix
JBr.	=	Brief for appellant Prof. Jacobson
JRBr.	=	Reply brief for appellant Prof. Jacobson
NAS	=	National Academy of Sciences
R.	=	D.C. Rule

STATEMENT PURSUANT TO D.C. APP. R. 35(b)(1)

On February 15, 2024, this court issued a Panel Opinion ("Opinion") affirming a trial court order for Prof. Jacobson to pay attorney's fees and costs pursuant to D.C. Code § 16-5504(a) after he voluntarily dismissed a defamation suit before a ruling on special motions to dismiss the suit. Prof. Jacobson respectfully requests a rehearing en banc of the appeal pursuant to App. R. 35(b)(1) to maintain uniformity of decisions and address exceptional issues. He submits that no case supports the Opinion, and the weight of authority of eight cases (five from this court, two from the Supreme Court, and one from the D.C. Circuit) conflict with it. *Doe v. Burke*, 133 A.3d 569 (D.C. 2016); *Khan v. Orbis Bus. Intel. Ltd.,* 292 A.3d 244 (D.C. 2023); *Am. Studies Ass'n v. Bronner*, 259 A.3d 728 (D.C. 2021); *Settlemire v. D.C. Office of Emp. Appeals,* 898 A.2d 902 (D.C. 2006); *Fraternal Order of Police, Metro. Labor Comm. v. District of Columbia*, 113 A.3d 195 (D.C. 2015); *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res*., 532 U.S. 598 (2001); *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419 (2016); *Abbas v. Foreign Policy Group, LLC*, 783 F.3d 1328 (D.C. Cir 2015).

To support its analysis, the Opinion casts doubt on the use of many of these cases. But in so doing, it uses a provably incorrect definition of "minimize*"* in *Burke*; disregards clear statements in *Khan*, *Bronner*, and *Abbas* consistent with *Burke*; ignores the definition of "prevails, in part" from *Settlemire*; ignores

Buckhannon and *CRST* entirely; ignores the history of the case it relies on, *Frankel v. District of Columbia*, 110 A.3d 553 (D.C. 2015); and incorrectly states why Prof. Jacobson dismissed his case. No case, not even *Frankel*, supports the catalyst theory in non-FOIA contexts. As a result, the fee awards should be reversed.

Issues of exceptional importance are: (1) Must one who files then dismisses a defamation claim before a ruling, risk fees under § 16-5504(a)? (2) Does defamation arise *only* from an "ad hominem" or related statement, as the Opinion holds, or can it arise from an ordinary false fact, published maliciously, that causes professional damage and ridicule? (3) Does D.C. now prohibit considering as defamatory, damaging false facts published with malice, in science papers, as the Opinion holds?

STATEMENT OF THE CASE

On June 27, 2017, Dr. Clack and 20 coauthors published a critique in PNAS (JA 173-191), with alleged false facts and scientific disagreements, of a 2015 PNAS paper by the Jacobson Authors. Before publication, Prof. Jacobson asked PNAS to correct the false facts, including one Dr. Clack admitted he knew the truth about 16 months earlier (JBr. 45-48), and misleading comments. On May 5, 2017, NAS admitted by email (JA 171; JRBr. 14-16) a PNAS Board member had suppressed all requested corrections to the Clack Paper for two months. PNAS never corrected any relevant false fact (JBr. 28-29) but allowed Prof. Jacobson to publish a short rebuttal, in which he addressed both false facts and misleading comments. (JA 306-308).

With no other possible purpose but to damage Prof. Jacobson's credibility worldwide, the Clack Authors then issued two press releases of their critique that led to global headlines describing Prof. Jacobson's work with the terms: "errors," "lie," "scam," "fantasy," "flawed," "smacked down," and "debunked." (JA 48-49). These words made Prof. Jacobson, a computer modeler-by-profession appear stupid and deserving to be laughed at (ridiculous); famous for sloppy research (infamous) and subject to hate online (odious). (JBr. 38-40). After NAS and Dr. Clack refused again to remove the false facts (not science disagreements) (JA 47-48), Prof. Jacobson sued for defamation and other causes on September 29, 2017. Defendants then filed special motions to dismiss pursuant to the D.C. Anti-SLAPP Act. Before a decision on the motions and two days after a February 20, 2018 hearing, Prof. Jacobson voluntarily dismissed without prejudice pursuant to R. 41(a)(1)(A)(i), for these reasons published online the same day (February 22, 2018) (JA 962):

> 9. Q. Why did you dismiss the lawsuit on February 22, 2018?
>
> A. It became clear, just like in the Mann case, which has been going on for 6 years, that it is possible there could be no end to this case for years, and both the time and cost would be enormous. Even if the motions for dismissal were defeated, the other side would appeal, and that alone would take 6-12 months if not more. Even if I won the appeal, that would be only the beginning. It would mean time-consuming discovery and depositions, followed by a trial. The result of the trial would likely be appealed, etc., etc.
>
> Second, a main purpose of the lawsuit has been to correct defamation by correcting the scientific record through removing

> false facts that damaged my coauthors and my reputations. While I have not succeeded in having the scientific record in the C17 article corrected, I have brought the false claims to light so that at least some people reading C17 will be aware of the factually inaccurate statements.
>
> As such, after weighing the pros and cons, I find that I have no more reason to fight this battle. I believe it is better use of my time continuing to help solving pressing climate and air pollution problems.

Indeed, the *Mann* case took 12 years to reach trial (2012 CAB 008263). The new information explaining why "[i]t became clear" (JA 962) was that Prof. Jacobson's attorney told him the day of the hearing that, if he won, "the other side would appeal" (*Id*.) rather than face trial. Because D.C. courts were clogged, it could be 6+ years before finality, as with *Mann*. Thus, the courts could not "correct defamation," which was "[a] main purpose of the lawsuit" (*Id*.), in a timely manner, and his own fees over 6+ years would be "enormous." *Id*. Following dismissal, Dr. Clack and NAS moved for fees under §16-5504(a). The court awarded $75,000 and $428,722.92, respectively. Prof. Jacobson appealed.

ARGUMENT

I. The Panel Opinion Conflicts with Previous Holdings

The Opinion conflicts with § 16-5504(a) and eight cases of this court, the Supreme Court, and the D.C. Circuit. Via § 16-5504(a), fees may be awarded, only if a defendant "prevails, in whole or in part" on a motion to dismiss. All eight cases confirm "prevails" in § 16-5504(a) means "wins relief." The defendants here never

won relief; thus, fees are prohibited. The first case, *Burke*, is on point, resolving whether fees are allowed after a voluntary dismissal but before a ruling. *Burke*, 133 A.3d at 575 n.7, first states D.C. courts follow the American Rule. The Opinion finds § 16-5504(a) is an exception. But *Burke* 133 A.3d at 578-9, holds the opposite:

> The fee-shifting provision is plain on the face of the Anti–SLAPP statute. Had Ms. Burke wished to minimize her potential exposure to a fee award, she could have dismissed her lawsuit at any time rather than continue after [Zujua] rejected her settlement offer.

As proven in two ways, *Burke* unequivocally states a voluntary dismissal, before a decision, results in **zero** exposure to a fee award. First, the definition of "minimize" from seven dictionaries, is to reduce to the smallest possible amount:

(1) "to reduce to the smallest possible amount or degree" (Dictionary.com);

(2) "to reduce to the smallest possible amount, extent, size, or degree" (American Heritage Dictionary);

(3) "to reduce (esp. something unwanted or unpleasant) to the smallest possible amount, extent, or degree (Oxford English Dictionary);

(4) "to reduce something, especially something bad, to the lowest possible level" (Oxford Learner's Dictionary);

(5) "to reduce something to the least possible level or amount" (Cambridge Dict.);

(6) "to make (something bad or not wanted) as small as possible" (Britannica); and

(7) "to reduce to the smallest possible extent, size, or degree (Free Dictionary).

With respect to a fee award, the smallest possible exposure is zero.

The Opinion states (at 17): "minimizing exposure to a fee award is not the same thing as avoiding it altogether." This definition of "minimize*"* is incorrect, because "minimize*"* does not mean just "reduce"; it means "reduce to the smallest possible amount," which is zero in the present context. Contrary to the Opinion, "minimizing exposure" means "avoiding it altogether." Any other interpretation requires the definition of "minimize*"* to be changed to something it is not.

It is proven in a second way that "minimize" in *Burke* means "reduce to zero." Suppose *Burke* had used "reduce," not "minimize": "Had Ms. Burke wished to reduce her potential exposure to a fee award, she could have dismissed her lawsuit at any time…" **This statement does not work under the Opinion**, since under it (at 7), "fee awards are authorized" any time a plaintiff voluntarily dismisses after a special motion to dismiss is filed (and the motion would have been granted "but-for the…dismissal"). Applying the construction under the Opinion, it is impossible for a plaintiff to "reduce" exposure to a fee award (as opposed to reduce the amount of fees) once a motion to dismiss is filed. So, if the Opinion applied to Ms. Burke, "her exposure to a fee award" could not decrease at all by "dismissing her lawsuit at any time" after being served a motion to dismiss and seeing "the fee-shifting provision…plain on the face of the Anti-SLAPP statute," as *Burke* states (at 578). The only way "minimize*"* works in *Burke* is if *Burke* contradicts the Opinion and

"minimize exposure*"* means "reduce exposure to zero."

The clear holding in *Burke* is solidified not once but three times in *Khan* alone. In *Khan*, this court affirmed awards to defendants under § 16-5504(a) after they won a special motion to dismiss. *Khan,* 392 A.3d at 258, 262, 256, holds that fees are prohibited unless a special motion to dismiss is granted, consistent with *Burke*:

> As fee-shifting provisions go, § 16-5504(a) is **unexceptional** and, in fact, is comparatively modest, as it **does not provide for awards to defendants in all cases in which they prevail**, but **only** in those cases in which the court (**in granting a special motion to dismiss**) finds that the plaintiffs' claims were unsubstantiated and legally insufficient.
>
> Section 16-5504(a), by contrast, applies **only after the court has determined that the entire litigation must end** because the plaintiff is not likely to succeed on the merits of the lawsuit.
>
> Section § 16-5504(a) authorizes fee awards to defendants **only** when the court has determined, **in granting a special motion to dismiss**, that the plaintiff is unable to show the claim is likely to succeed on the merits.

(Emphasis added). *Khan* holds a defendant must **win a special motion to dismiss to prevail**, regardless of whether in whole or in part. It is not possible to be clearer. In fact, fees are not available "in all cases in which [defendants] prevail," but **only** "in granting a…motion…" after finding a lawsuit will likely fail. This holding diametrically opposes the catalyst-theory holding in the Opinion. Here, defendants won no motion to dismiss or finding the lawsuit would fail," as *Khan* requires.

The Opinion casts doubt on *Khan* by stating (at 16) that *Khan* is not binding

because it did not decide a case involving a voluntary dismissal:

> So their broad pronouncements, while generally correct, are not universal truths and are not binding in all future unforeseen and unconsidered scenarios like the one before us today.

But *Khan* is precisely on point since it addresses if fees are allowed under the same conditions as a voluntary dismissal – when no ruling occurs on a motion to dismiss. *Khan* holds three times no fees are allowed (the American Rule stands) in that case.

The Opinion (at 16) also suggests that a scenario like here, with a voluntary dismissal before a ruling, is an "unforeseen" scenario. But this scenario is not unforeseen. *Burke* discusses this precise scenario (a voluntary dismissal before a ruling), and *Khan* quotes *Burke* extensively and holds (at 256, 258), consistent with *Burke*, that the **only** way fees may be awarded under § 16-5504(a) is "in **granting** a special motion to dismiss." Thus, *Khan* is dispositive. Also, for the instant case to be "unforeseen," one must believe the *Khan* panel was unaware of R. 41(a)(1)(A)(i).

Third, in *Am. Studies Ass'n v. Bronner*, 259 A.3d at 729, this court once again supports the American Rule under § 16-5504(a) **unless** one wins a motion to dismiss:

> If the trial court grants the motion, it may award the costs of litigation, including reasonable attorney fees, to the movant.[4]
> [4] § 16-5504(a).

Bronner sets forth no other basis for a movant to obtain fees under § 16-5504(a).

Fourth, *Abbas*, 783 F.3d at 1337 n.5, holds § 16–5504(a) "does not purport to make attorney's fees available to parties who obtain dismissal by other means"

aside from "granting or denying a special motion to dismiss." (JBr. 20-22). The Opinion says (at 16) *Abbas* is not binding. But *Abbas* addresses all dismissals under § 16–5504(a), which include voluntary ones, and holds, like the other cases here, **fee awards do not apply after any dismissal aside from a court-ordered one**.

Fifth, the Opinion (at 14) asserts *Settlemire* does not define "prevails, in whole or in part." But *Settlemire* does, by defining both "prevails" and "cannot prevail." The term "prevails, in part" is constrained mathematically between "prevails" and "cannot prevail" because the definition of "in part" is "to some extent, though not entirely" (Dictionary.com). From *Settlemire*, **"prevails" means to win relief**: "[A] party…'prevails' by winning the relief that it seeks." "Cannot prevail" means: "none of the relief sought" is "available." *Settlemire*, 898 A.2d at 907:

> …the term "prevailing party" is understood to mean a party "who has been awarded some relief by the court"…("[A] party…'prevails' by winning the relief that it seeks.");… Since none of the relief that Settlemire sought is available to him, he cannot prevail, and attorney's fees are not available to him either.

So *Settlemire* defines "prevails, in whole or in part" as "winning all or part of the relief sought," just like in *Burke*, *Khan*, *Bronner*, and *Abbas*.

The Opinion (at 14) then states *Settlemire* was not meant as a "hard-and-fast rule" and did not address § 16-5504(a). But *Settlemire* relies on the Supreme Court decision in *Buckhannon*, which the Opinion ignores. ***Buckhannon* applies to all fee-shifting clauses**. In fact, to allow the catalyst theory to apply to federal FOIA

cases, Congress had to override *Buckhannon*. *Frankel,* 110 A.3d at 557-558. This is the **only** reason the catalyst theory applies today in D.C. FOIA cases. *Id.*

Both *Buckhannon,* 532 U.S. at 604-605, and *CRST,* 578 U.S. at 422, hold that, for a party to win fees and costs under a fee-shifting clause, the party must **both**

> (1) obtain a "material alteration of the legal relationship of the parties"
> (2) that is "judicially sanctioned."

NAS and Dr. Clack met neither criterion. Prof. Jacobson's dismissal without prejudice (1) did **not** materially alter the parties' legal relationship since he could re-file, and (2) was **not** judicially sanctioned since it needed no court order. (JBr. 16-18). Since § 16–5504(a) uses "prevails, in whole or in part," which *Settlemire* defines, citing *Buckhannon*, *Buckhannon*'s criteria apply to § 16–5504(a), consistent with *Burke*, *Khan*, *Bronner*, and *Abba*s. Yet, the Opinion still suggests (at 15) that "prevails, in whole or in part" in § 16–5504(a) means something else:

> We held in *Frankel* that the phrase "prevails in whole or in part" in the FOIA statute "suggests that the D.C. Council intended to authorize attorney's fees in FOIA cases more often than in other types of cases,"… *Frankel* rejects Jacobson's position that court-ordered relief is a prerequisite to attorneys' fees."

This statement makes a giant, unsupported leap, arguing, because the catalyst theory applies to FOIA cases, court-ordered relief is not required for fees under the Anti-SLAPP Act. But *Fraternal Order of Police (FOP),* 113 A.3d at 200, citing *Settlemire* and *Buckhannon*, rebuffs this argument by "rejecting the catalyst theory in non-FOIA contexts," consistent with *Burke*, *Khan*, *Bronner*, and *Abbas*:

> In *Frankel v. District of Columbia*, 110 A.3d 553 (D.C. 2015), we reaffirmed that the "catalyst theory" applies to determine whether a party is eligible for fees under D.C. FOIA. Op. at 200–01. We rejected the District's argument that *McReady v. Department of Consumer and Regulatory Affairs*, 618 A.2d 609 (D.C.1992), which recognized the catalyst theory for D.C. FOIA cases, was undercut by intervening opinions of the **United States Supreme Court and this court rejecting the catalyst theory in non-FOIA contexts.** Id. at 6–10 (citing *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res*., 532 U.S. 598, 601, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001), and *Settlemire*, 898 A.2d at 907). (Emphasis added).

Frankel, itself, explains why the catalyst theory applies only to the FOIA:

> …the catalyst theory has been part of the D.C. FOIA since its inception. When drafting FOIA, the D.C. Council stated its intention to craft enforcement sanctions mirroring the "federal model,"…, and in 1976 this included attorney's fee awards based on the catalyst theory.
> …Congress acted to "clarif[y] that the Supreme Court's decision in *Buckhannon*…does not apply to [federal] FOIA cases,"
> …Congress amended the federal FOIA to codify the catalyst theory, explicitly authorizing attorney's fees…".
> …we note that *Buckhannon* does not apply to federal FOIA suits and we interpret the D.C. FOIA similarly…

Frankel, 110 A.3d at 557-558. In sum, Congress stopped *Buckhannon* from applying to federal FOIA cases, and the D.C. Council mirrored the federal FOIA. Unlike with the FOIA, no evidence shows the D.C. Council intended to apply the catalyst theory to § 16–5504(a): no catalyst theory adoption from a federal act or re-adoption after Congress overrode *Buckhannon*. In fact, § 16–5504(a) has no federal counterpart, like 5 U.S.C. § 552(a)(4)(E)(ii)(II), that states one prevails upon "a voluntary or unilateral change in position by the agency…".

The Opinion (at n. 11) ignores this history: "we have never purported to foreclose the catalyst approach outside of FOIA cases…". But *Burke*, *Khan*, *Bronner*, *Abbas*, *Settlemire*, and *FOP* foreclose the catalyst approach. *Frankel* also does not even address § 16–5504(a), as *Khan* does, or voluntary dismissals, so is far less binding than *Khan*, which the Opinion says (at 16) is not a voluntary dismissal case, so not binding. In fact, *Frankel* is inapposite since **catalyst-theory fees do not even apply to a plaintiff in the FOIA**. They apply to a government defendant.

In sum, eight cases, taken as a whole or individually, unanimously reject the catalyst theory and hold no fees are permitted upon a voluntary dismissal before a ruling under § 16–5504(a). No case, including *Frankel*, finds otherwise.

II. The Panel Opinion Relies on an Incorrect Reason for Dismissal

The Opinion states (at 26-27 and 18)

> The trial court cogently explained that the timing of Jacobson's dismissal made it fairly obvious that it was the special motions to dismiss that prompted him to dismiss his suit….there was no "new event or information" that provided an alternative plausible explanation for Jacobson's dismissal.
>
> A defendant on course to prevail on their special motion to dismiss should not be at the mercy of a plaintiff who might strategically voluntarily dismiss their suit to avoid paying an imminent fee award.

The reasons for Prof. Jacobson's dismissal were stated publicly and had nothing to do with avoiding awards (*supra* at 3-4). If avoiding awards is a concern, though, shouldn't the D.C. Council modify § 16–5504(a), like Congress modified federal

FOIA law to stop *Buckhannon* from applying to it? *Frankel,* 110 A.3d at 557-5588. En banc review is requested to evaluate if fees are just and supported by law.

III. The Panel Opinion Raises Issues of Exceptional Importance

The Opinion raises three issues of exceptional importance. First, does one who files, then voluntarily dismisses, a defamation claim before a ruling always risk an award of fees under § 16-5504(a)? Resolving this issue is important so that those who file a complaint know whether they face this risk.

Second, does a defamation claim in D.C. arise only if a statement is an ad hominem or related attack, as held in the Opinion, or does a defamation claim also arise from an ordinary false fact? The Opinion (at 23) states,

> Jacobson has not pointed to any ad hominem attacks or other statements that could fairly be described as defamatory,…

Similarly, the trial court held (JA935):

> Here…the statements simply do not accuse Dr. Jacobson of misconduct or impugn his integrity…they simply do not attack Dr. Jacobson's honesty or accuse him of misconduct.

However, don't ordinary false facts that injure someone also defame?

> A statement is defamatory "if it tends to injure [the] plaintiff in his trade, profession or community standing, or lower him in the estimation of the community."…The statement "must be more than unpleasant or offensive; the language must make the plaintiff appear 'odious, infamous, or ridiculous.'"

Competitive Enter. Inst v. Mann, 150 A.3d 1213, 1241 (D.C. 2016). Neither the trial court nor the Opinion addressed Prof. Jacobson's claim that ordinary false facts

defamed him. (JBr. 38-48). For example, did the Clack Paper's false claims of model error (JBr. 28-29) that caused headlines making Prof. Jacobson, a computer modeler by profession, appear odious, infamous, and ridiculous (JBr. 38-40 and *supra* at 3), defame him? In California, a false claim of professional error defames since it imputes to one "incompetence in his trade." *Gould v. Maryland Sounds Ind., Inc.,* 31 Cal.App.4th 1137 (1995). If ordinary false facts defame, would Prof. Jacobson's have likely succeeded in his defamation claim had he not dismissed?

Third, does D.C. law now prohibit considering as defamatory, damaging false facts or lies published maliciously in science papers, as held (Opinion at 24):

> But to even recount the allegedly false statements lays bare that he is seeking to drag a scientific debate into court under the auspices of defamation law. To illustrate, Jacobson alleges that (1) Clack falsely stated that the values in Table 1 of Jacobson's article were maximum values when they were in fact average values; (2) Clack falsely stated that he was unaware of any explanation for the large peak discharge of hydropower depicted in three figures in the Jacobson article; (3) Clack falsely claimed that the annual hydropower output represented in Jacobson's article was higher than historical averages; and (4) Clack falsely asserted that Jacobson's work contained modeling errors. To even form an opinion on whether Jacobson is correct would require so deep an understanding of the relevant science that these debates lie squarely within the realm of scientific debate-who is right on these matters is not something that defamation law polices.

Without citing controlling authority, the Opinion holds D.C. courts will not examine if a science statement defames because that "requires so deep an understanding of the relevant science." But are statements, such as "Table 1

contains maximum values" and "modeling errors arose," harder than non-science statements to judge as factual or false? Four scientists declared them damaging false facts. (JBr. 31-36). Doesn't *Oparaguo v. Watts*, 884 A.2d 63, 77 (D.C. 2005) require this court to ensure plaintiff "can prove no set of facts in support of his claim…" when reviewing a dismissal for defamation and to "constru[e] the complaint in the light most favorable to the plaintiff"? Isn't the first step is to ask if statements are "provably false statements of fact"? *Mann*, 150 A.3d at 1242. The trial court never examined facts; it adopted NAS' argument from the start the "facts" were "scientific disagreements, thus could not defame. (JBr. 27). This court is asked to review if any set of facts support Prof. Jacobson's defamation claim. If so, would he have likely succeeded on the merits if he had not dismissed?

If courts will not evaluate claims of false facts in science papers, scientists can simply falsify facts and lie to defame with impunity. Do scientists face a higher standard than non-scientists public figures in D.C. defamation cases?

V. Conclusion

For the reasons stated, this court is requested to rehear this appeal en banc.

Mark Z. Jacobson

Dated: February 25, 2024

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

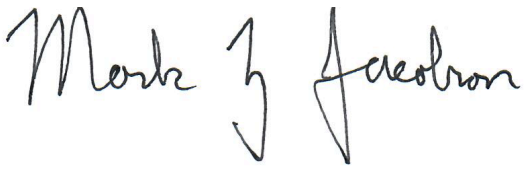
2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.



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Signature

__22-CV-0523____
Case Number(s)

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__February 25, 2024___
Date

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CERTIFICATE OF SERVICE

D.C. Appellate Case No. 22-CV-0523

On February 25, 2024, copies of this document were e-served, through the D.C. Appellate e-filing system, to

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