COMMISSION EXHIBIT 1

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

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ADAM B. KAHAN
STAFF ATTORNEYS

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SPECIAL COUNSEL

CONFIDENTIAL

October 10, 2025

Via USPS and Email: ([redacted]@oalaw.com)
Michael J. Lawson, Esq.
O'Connell & Aronowitz
54 State Street, 9th Floor
Albany, New York 12207-2501

Re: *Matter of Frank M. Mora*

Dear Mr. Lawson:

Enclosed please find an executed Stipulation as to the authenticity and admissibility of hearing exhibits and an Exhibit List of Commission Counsel's and Respondent's Exhibits.

Thank you for your cooperation with this matter.

Very truly yours,

Melissa DiPalo
Principal Attorney

Enclosure

cc: Stephen R. Coffey, Esq., ([redacted]@oalaw.com)
Mark Levine ([redacted]@cjc.ny.gov)
Meghan E. Hebert ([redacted]@oalaw.com)

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANK M. MORA, **STIPULATION**

a Judge of the Poughkeepsie City Court,
Dutchess County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Frank M. Mora ("Respondent"), who is represented in this proceeding by Stephen R. Coffey, Esq., as follows:

1. This Stipulation is respectfully submitted to the Referee in this matter, Peter Bienstock, Esq., for admission into evidence at the hearing in this matter as Commission Exhibit 1.

2. The parties stipulate to the admission into evidence of Commission Exhibits 2 to 28 and Respondent's Exhibits A to G, as set forth in Appendix A to this Stipulation. The parties do not contest the admissibility or authenticity of Exhibits 2 to 28 and Respondent's Exhibits A to G but reserve the right to contest the weight and/or relevance given to these exhibits.

Dated: October 10, 2025

Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
By:



Melissa DiPalo
Principal Attorney

Dated: October 10, 2025



Stephen R. Coffey, Esq.
Michael J. Lawson, Esq.
Attorneys for Respondent

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
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Dated:

Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
By:



Melissa DiPalo
Principal Attorney

Dated: October 10, 2025



Stephen R. Coffey, Esq.
Michael J. Lawson, Esq.
Attorneys for Respondent

APPENDIX A

STIPULATED EXHIBITS

COMMISSION COUNSEL'S EXHIBITS

EXHIBIT	DESCRIPTION
Comm Ex. 1	Stipulation dated October 10 , 2025.
Comm Ex. 2	Audio Recording of 911 call on December 28, 2021 (0:00:00 to 00:01:17), with Cover Page
Comm Ex. 2-A	Certified Transcript of Audio Recording of 911 call on December 28, 2021 (0:00:00 to 00:01:17)* *subject to the errata page attached to transcript
Comm Ex. 3	Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:02:45), with Cover Page
Comm Ex. 3-A	Certified Transcript of Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:02:45)* *subject to the errata page attached to transcript
Comm Ex. 4	Audio Recording of 911 call on December 28, 2021 (0:00:00 to 00:01:13), with Cover Page
Comm Ex. 4-A	Certified Transcript of Audio Recording of 911 call on December 28, 2021 (0:00:00 to 00:01:13)
Comm Ex. 5	Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:01:05), with Cover Page

Comm Ex. 5-A	Certified Transcript of Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:01:05)
Comm Ex. 6	Complaint filed by Stacey Koch with Commission, dated December 29, 2021
Comm Ex. 7	Summons and Complaint in *Frank Mora v Stacey Koch* (Index No. 2022-54141) (*"Mora v Koch"*)
Comm Ex. 8	Affidavit of Service in *Mora v Koch*
Comm Ex. 9	Notice of Motion and Memorandum of Law in Support of Koch's Motion to Dismiss Complaint in *Mora v Koch*
Comm Ex. 10	Notice of Motion, Affirmation in Support of Motion to Intervene and Dismiss, and Memorandum by Counsel to the Commission in *Mora v Koch*
Comm Ex. 11	Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss in *Mora v Koch*
Comm Ex. 12	Reply Memorandum of Law in Support of Koch's Motion to Dismiss Complaint in *Mora v Koch*
Comm Ex. 13	Commission's Memorandum in Reply in *Mora v Koch*
Comm Ex. 14	Transcript of Oral Argument in *Mora v Koch*
Comm Ex. 15	Decision and Order in *Mora v Koch* dated April 4, 2023
Comm Ex. 16	Settlement Agreement in *Mora v Koch*
Comm Ex. 17	Apology Letter from Frank Mora to Stacey Koch dated May 4, 2023
Comm Ex. 18	Letter from Commission to Respondent dated April 8, 2024, with attachments

Comm Ex. 19	Letter from Commission to Respondent, dated May 21, 2024, with attachments
Comm Ex. 20	Emails from Respondent to Michael H. Sussman, Esq., dated November 23, 2022, at 4:02 PM and 8:09 PM
Comm Ex. 21	Email from Respondent to Michael H. Sussman, Esq., dated February 2, 2023 at 7:41 PM
Comm Ex. 22	Email from Respondent to Michael H. Sussman, Esq., dated February 7, 2023, at 8:55 AM, and attachment
Comm Ex. 23	Emails from Respondent to Michael H. Sussman, Esq., dated February 8, 2023, at 8:49 AM and 9:34 AM
Comm Ex. 24	Email from Respondent to Michael H. Sussman, Esq., dated February 8, 2023, at 9:51 PM
Comm Ex. 25	Email from Respondent to Michael H. Sussman, Esq., dated February 13, 2023, at 10:10 AM
Comm Ex. 26	Email from Respondent to Michael H. Sussman, Esq., dated March 6, 2023, at 3:15 PM
Comm Ex. 27	Email from Respondent to Michael H. Sussman, Esq., dated April 3, 2023, at 10:44 AM
Comm Ex. 28	Email from Respondent to Michael H. Sussman, Esq., dated May 12, 2023, at 7:14 PM

RESPONDENT'S EXHIBITS

EXHIBIT	DESCRIPTION
Respondent's Ex. A	10 NYCRR 2.60
Respondent's Ex. B	Gov. Hochul mask mandate announcement dated December 10, 2021
Respondent's Ex. C	NYS Dept of Health Interim Guidance dated April 17, 2020
Respondent's Ex. D	Picture of face shield provided to Counsel on March 12, 2024
Respondent's Ex. E	Email from Respondent to Stacey Koch from March 7, 2022
Respondent's Ex. F	Michael Brown letter dated June 13, 2022
Respondent's Ex. G	Advisory Committee on Judicial Ethics Opinion 12-96 from June 14, 2012

COMMISSION
EXHIBIT
2

COVER PAGE

Audio Recording of 911 call on December 28, 2021
(0:00:00 to 00:01:17)



911 Call #1

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911 OPERATOR: 911. What's the address for the emergency?

MS. KOCH: 27 Davis Avenue.

911 OPERATOR: What town and city is that in?

MS. KOCH: Poughkeepsie.

911 OPERATOR: Okay. And what's the closest cross street to Davis Avenue?

MS. KOCH: Raymond.

911 OPERATOR: And the phone number you're calling from?

MS. KOCH: (845) 454-1025.

911 OPERATOR: And your name?

MS. KOCH: Stacey.

911 OPERATOR: What's the last name, Stacey?

MS. KOCH: Pardon me?

911 OPERATOR: And your last name?

MS. KOCH: K-O-C-H.

911 OPERATOR: Okay. And what's the problem?

MS. KOCH: I have a -- I'm a private medical practice, and I have a gentleman who's refusing to leave and will not wear a mask. And I have --

911 OPERATOR: Okay.

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MS. KOCH: -- an office full of people. He wears a clear plastic face shield that does not cover his mouth.

911 OPERATOR: Okay, hold on. Let me get you right on with the local police. You're going to hear a click. Don't hang up, okay?

MS. KOCH: Okay. Go sit right over here. I apologize.

(End of 911 Call #1)

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CERTIFICATION

I, Joey Oliveros, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: September 29, 2025



Joey Oliveros

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANK M. MORA,

a Judge of the Poughkeepsie City Court,
Dutchess County.

ERRATA SHEET TO Comm. Ex. 2-A

Respondent submits this errata sheet with changes to the transcript submitted as stipulated Comm. Exhibit 2-A, for the Audio Recording of 911 call on December 28, 2021 (0:00:00 to 00:01:17), with Cover Page:

Page	**Line**	**CORRECTION**
2	7-8	"Okay. ***(unintelligible)*** right over here. I apologize."

COMMISSION
EXHIBIT
3

COVER PAGE

Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021
(0:00:00 to 00:02:45)



Poughkeepsie P.D. Call #1

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POUGHKEEPSIE POLICE: Town of Poughkeepsie Police.

911 OPERATOR: Hey, it's just a transfer call. I have Stacey on the line, and I'm getting over call number 9789 for a male causing a disturbance.

POUGHKEEPSIE POLICE: All right.

Hello?

MS. KOCH: Hi.

POUGHKEEPSIE POLICE: Hi.

MS. KOCH: Stacey Koch. I manage Seeta Eye Centers, right here in Poughkeepsie. I have many patients present, and I have gentleman who is not adhering to the mask that we require in our practice.

POUGHKEEPSIE POLICE: Okay. And you're over at --

MS. KOCH: So we're a medical practice, and he has to wear a mask here.

POUGHKEEPSIE POLICE: Okay. So you're at 27 Davis?

MS. KOCH: Yes.

POUGHKEEPSIE POLICE: You know what this male's name is?

MS. KOCH: You know, the problem is now this -- pardon me?

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POUGHKEEPSIE POLICE: What's his name? Do you know?

MS. KOCH: What is your name, sir?

Frank Mora.

POUGHKEEPSIE POLICE: Frank Mora?

MS. KOCH: M-A-U-R-A -- oh, sorry. M-O-R-A.

POUGHKEEPSIE POLICE: M-O-R-A. And he's right in front of you, and you said he's refusing to leave ,and he also refusing to put a mask on?

MS. KOCH: Yes. And I'm very surprised because I believe he's a longtime patient. But he says he has a medical explanation, but he has no documentation.

POUGHKEEPSIE POLICE: Okay. Just stay on the line. I'm going to put you on hold real quick. Let me just ask them something, okay?

MS. KOCH: Yup.

POUGHKEEPSIE POLICE: Okay.

MS. KOCH: I mean, I'm happy to provide a paper mask for you. But you can't use our practice without (unintelligible).

MR. MORA: I can. I can.

MS. KOCH: No, you can't.

MR. MORA: (Unintelligible) undocumented --

MS. KOCH: I wish you wouldn't speak if you're

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not going to wear a mask, okay? Don't talk.

MR. MORA: Okay.

MS. KOCH: I understand, ma'am. I'm doing the best I can to protect you.

Thank you, Mike (phonetic). I appreciate your presence. I'm on the phone with the police, trying to get somebody to come here.

If you just lived through what I lived through, you would know what you're doing -- no, don't speak because we don't want your air.

MR. MORA: Don't want my air?

MS. KOCH: I do not. I do not.

MR. MORA: You go to a restaurant --

MS. KOCH: I do not. I do not.

MR. MORA: -- and everybody --

MS. KOCH: I do not go to a restaurant. I live with someone who had cancer three times, and I really don't want your germs on me.

POUGHKEEPSIE POLICE: Ma'am, you're still there?

MS. KOCH: Yes.

POUGHKEEPSIE POLICE: All right. So the police, we don't enforce the mask mandate. However, if he's refusing to leave, we can send somebody up.

MS. KOCH: That's right. That's what I'm

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requesting.

POUGHKEEPSIE POLICE: Okay. All right. So --

MS. KOCH: Now. Yes, because I've --

POUGHKEEPSIE POLICE: Yeah.

MS. KOCH: -- a room full of people so it's really creating a problem for me.

POUGHKEEPSIE POLICE: Okay. So you have a bunch of people in the waiting room?

MS. KOCH: Yes.

POUGHKEEPSIE POLICE: All right. So as soon as I can get someone over there, I'll have someone come there, all right?

MS. KOCH: How long do you expect?

POUGHKEEPSIE POLICE: We're at shift change so I can't give you an accurate -- like, a specific time. I would say, hopefully, soon.

MS. KOCH: Okay.

POUGHKEEPSIE POLICE: But the call is in. I got this, so as soon as we get an officer on the road, they'll be right over.

MS. KOCH: Right.

POUGHKEEPSIE POLICE: All right?

MS. KOCH: Thank you very much.

POUGHKEEPSIE POLICE: All right. No

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problem.

MS. KOCH: I appreciate it.

POUGHKEEPSIE POLICE: All right.

MS. KOCH: Okay. Bye.

(End of Poughkeepsie P.D. Call #1.)

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CERTIFICATION

I, Joey Oliveros, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: September 29, 2025



Joey Oliveros

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANK M. MORA,

a Judge of the Poughkeepsie City Court,
Dutchess County.

ERRATA SHEET TO Comm. Ex. 3-A

Respondent submits this errata sheet with changes to the transcript submitted as stipulated Comm. Exhibit 3-A, for the Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021 (0:00:00 to 0:02:45), with Cover Page:

Page	Line	CORRECTION
2	24	The audio is unintelligible. Cannot confirm accuracy.
3	2	The audio is unintelligible. Cannot confirm accuracy.
3	11	The audio is unintelligible. Cannot confirm accuracy.
3	13	The audio is unintelligible. Cannot confirm accuracy.
3	15	The audio is unintelligible. Cannot confirm accuracy.

COMMISSION
EXHIBIT
4

COVER PAGE

Audio Recording of 911 call on December 28, 2021
(0:00:00 to 00:01:13)



911 Call #2

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911 OPERATOR: 911. What is the address of your emergency?

MS. KOCH: This is 27 Davis Avenue. I'm having a big problem with a patient who refuses to leave and is making a big ruckus in my waiting room. He's walking out now.

911 OPERATOR: Okay, ma'am, what is your last name?

MS. KOCH: Koch, K-O-C-H. He's walking out now.

911 OPERATOR: Okay. And what's your first name, ma'am?

MS. KOCH: My name is Stacey.

911 OPERATOR: Okay. We had an individual call already.

MS. KOCH: (Unintelligible).

911 OPERATOR: You're calling back?

MS. KOCH: He just left so --

911 OPERATOR: Okay.

MS. KOCH: -- I'm going to hope it's okay.

911 OPERATOR: Okay. Stay on the line for the Town Police. Don't hang up.

MS. KOCH: Thank you.

But I just don't understand how one person feels

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they get to inflict themselves on everybody else.

(End of 911 Call #2.)

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CERTIFICATION

I, Joey Oliveros, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: September 29, 2025



Joey Oliveros

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COMMISSION
EXHIBIT
5

COVER PAGE

Audio Recording of Town of Poughkeepsie Police Department call on December 28, 2021
(0:00:00 to 00:01:05)

COMMISSION EXHIBIT

5A

Poughkeepsie P.D. Call #2

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POUGHKEEPSIE POLICE: Town of Poughkeepsie Police (unintelligible).

911 OPERATOR: Hello, Town of Poughkeepsie Police. 911. Carrying over call for service number 9792. I reference the complaint at Davis Avenue. The person that was causing a disturbance is now leaving.

POUGHKEEPSIE POLICE: Okay.

Hello.

MS. KOCH: Hi. The man just left.

POUGHKEEPSIE POLICE: Okay.

MS. KOCH: But I don't know what he's doing next.

POUGHKEEPSIE POLICE: What do you mean "next"?

MS. KOCH: I mean, he literally would not leave and was creating a big ruckus in my waiting room and just finally stepped out, but I don't know if he's left the parking lot. I don't know if he's trying to come back in again. I do know his name, and I can't believe he created such a difficult time in my waiting room in a very tame ophthalmology practice.

POUGHKEEPSIE POLICE: Okay.

MS. KOCH: He left.

POUGHKEEPSIE POLICE: Do you have a

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physical description of him?

MS. KOCH: All right. He left.

POUGHKEEPSIE POLICE: Oh, he's gone?

MS. KOCH: He's our patient. He's our patient. I know everything about him, actually.

POUGHKEEPSIE POLICE: Okay. You said he did leave?

MS. KOCH: He just left.

POUGHKEEPSIE POLICE: All right.

MS. KOCH: He drove away.

POUGHKEEPSIE POLICE: So if he returns, give us a call back.

MS. KOCH: Okay. Thank you.

POUGHKEEPSIE POLICE: Yup.

(End of Poughkeepsie P.D. Call #2.)

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www.escribers.net | 800-257-0885

CERTIFICATION

I, Joey Oliveros, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: September 29, 2025



Joey Oliveros

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SCJC- Legal Email 12/29/2021

COMMISSION EXHIBIT 6

From: no-reply@weebly.com
To: SCJC
Subject: New Form Entry: Complaint Form
Date: Wednesday, December 29, 2021 2:05:13 PM

You've just received a new submission to your Complaint Form.
Mark as Spam

Submitted Information:

Title
Mrs.

Name
Stacey Koch

M.I.

Phone Number 1
18454541025

Phone Number 2

Email
[redacted]@seetaeye.com

Address Line 1
27 Davis Avenue

Address line 2

City
Poughkeepsie

State

New York

Zip
12603

Are you or were you represented by a lawyer?
No

Lawyer's Name

Lawyer's Phone Number

Lawyer's Address

Lawyer's City

Lawyer's State
New York

Lawyer's Zip

Judge's Name
Frank Mora

Judge's Court
City of Poughkeepsie Court

Judge's County
Dutchess

Date(s) of Incidents(s)
12/28/21

Name of Case (if applicable)

Index Number of Case (if applicable)

In the space below, please describe the alleged misconduct. Include as much detailed information as possible, such as what happened, where and when; the names of witnesses; who said what to whom, and in what tone of voice; etc.

Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police where on their way to our practice. He then had a letter created from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [redacted] year old boy. After receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora.

Today's Date

12/29/21

Judiciary Law § 44 requires that all complaints be signed and in writing. I understand that by clicking “I agree” below I am electronically signing this complaint, which has the same legal effect as my handwritten signature

I agree

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

COMMISSION EXHIBIT 7

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff(s),

-against-

STACEY KOCH

Defendant(s).

Index No. [type in Index No]

Summons

Date Index No. Purchased:

To the above named Defendant(s)

Stacey Koch
27 Davis Avenue
Poughkeepsie, NY 12603

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the County of Dutchess
which is where Plaintiff and Defendant reside

Dated: Goshen, NY
December 21, 2022

Sussman & Associates
by
Michael H. Sussman
Attorneys for Plaintiff
Frank Mora
Sussman & Associates
1 Railroad Ave - Suite 3
PO Box 1005
Goshen, NY 10924

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 12-29-2022 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Summons # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/30/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF DUTCHESS Index No.

----------x

FRANK MORA, **VERIFIED COMPLAINT**

Plaintiff,

vs.

STACEY KOCH,

Defendant.

----------x

PRELIMINARY STATEMENT

This is a defamation claim arising from the false and damaging statements written by defendant concerning plaintiff, a sitting Judge, to the New York State Commission on Judicial Conduct. Through her false and libelous statements, defendant intentionally sought to imperil and jeopardize plaintiff's ability to practice his profession and has caused plaintiff substantial emotion distress and humiliation.

PARTIES

1. Plaintiff Frank Mora is a resident of the City of Poughkeepsie, County of Dutchess and is a person of legal age who may sue and be sued.

2. Defendant Stacey Koch is a person of legal age who lives in the City of Poughkeepsie, works in the County of Dutchess, is of legal age and may sue and be sued.

JURISDICTION

3. The events giving rise to this Verified Complaint arose in the County of Dutchess as and between residents of this County and the sum in controversy is in excess of the jurisdiction of any inferior court. Accordingly, this Honorable Court has jurisdiction over this matter.

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 12-29-2022 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Complaint # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/30/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

AS AND FOR A FIRST CAUSE OF ACTION

4. On December 28, 2021, within the last year, plaintiff brought one of his sons to Seeta Eye, an ophthalmology office in the County of Dutchess.

5. Defendant Koch was the office manager of Seeta Eye at the time and was at work when plaintiff entered the business with his son.

6. Plaintiff had a patient/provider relationship with Seeta Eye and known defendant Koch for more than twenty years.

7. Earlier in 2021, when visiting Seeta Eye, plaintiff explained that he did not medically tolerate face masks and wore a shield.

8. He was then permitted to enter the waiting room/reception area with his face shield to pay for medical services which one of his sons received.

9. On December 28, 2021, plaintiff again attended to the reception area wearing a face shield with another son.

10. A receptionist asked him to put on a mask and plaintiff advised he could not do so.

11. The receptionist asked plaintiff to speak with Ms. Koch, the office manager, and she then called Ms. Koch.

12. Upon her arrival, Ms. Koch demanded that plaintiff don a mask even though earlier in 2021, he had explained to her that he was unable medically to tolerate a mask; when he began to again explain why he could not do so, Koch began yelling at plaintiff in a rude and disrespectful manner.

13. Koch demanded that plaintiff provide medical documentation of his incapacity to wear a mask.

14. Such a demand of a patient was unlawful [under Interim Guidance provided by the Governor's office on April 17, 2020].

15. After Ms. Koch continued yelling and screaming at plaintiff, she called the police.

16. After calling the police, defendant claimed that it was plaintiff who was upsetting other patients.

17. After demanding that plaintiff stop talking, defendant again called the police, this time reporting she was facing an emergency.

18. During defendant's second phone call to the police, plaintiff decided to try to further defuse the situation by obtaining and providing a doctor's note attesting to his inability to wear a mask.

19. He advised defendant Koch he was going to seek such a note and left the medical office with his son.

20. Plaintiff reached his chiropractor who emailed a note which plaintiff forwarded to defendant Koch.

21. Koch received this note and allowed plaintiff and his son to return that afternoon to the eye doctor's office.

22. The visit occurred without further incident.

23. Thereafter and on the following day, Koch wrote statements about the incidents which are false, professionally damaging to the plaintiff as a jurist and calculated to subject him to personal ridicule and shame.

24. Specifically, on December 29, 2021, defendant wrote the following false and libelous statements on a complaint form provided by the New York State Office of Judicial Conduct:

a) "Mr. Mora *created a huge scene* in our waiting room..."

(b) "He *taunted me in front of a waiting room of @20 people*..."

(c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice*."

(d) "He *then had a letter created* from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask."

(e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice."* See Exhibit 1 which is attached.

25. Each statement is materially false in that: [a] plaintiff did not cause a scene, let alone a "huge scene" in the waiting room; defendant Koch lost her temper and began screaming and yelling as plaintiff sought to explain the situation; [b] plaintiff did not taunt Koch at any time; [c] plaintiff has abiding respect for the police and would never intimate or state the belief that, if called, police would not attend to a situation and plaintiff had no information as to what the police conveyed to defendant about their intent to come, or not to come, to the medical office; [d] plaintiff would never "have a letter created," which intimates to a reasonable reader the exercise of some authority he did not wield over a medical provider to make misrepresentations

concerning his medical condition and [e] at all times, plaintiff acted in a professional manner and the contrary claim is without any factual basis and diminishes plaintiff's reputation and his capacity to properly discharge his duties and responsibilities as a City Judge, his profession.

26. The account provided by Koch is further refuted by one eyewitness, an employee of Seeta, who, at great personal risk, attested to plaintiff's professional behavior during the December 28, 2021 incident with Koch.

27. Defendant's conduct has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct.

28. By libeling plaintiff and avowedly and intentionally seeking to interfere thereby with his capacity to perform the duties of his profession, defendant engaged in defamation per se.

WHEREFORE, plaintiff requests that this Honorable Court accept jurisdiction over this matter, empanel a jury to hear and decide this matter and enter judgment including compensatory damages of $250,000 and punitive damages of $175,000 against defendant and in favor of plaintiff, and order defendant to pay the costs and disbursements arising from this matter and enter any other order the interests of law and equity require.

Dated: December 16, 2022

Yours, etc.

MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES
1 Railroad Avenue, Ste 6
Goshen, NY 10924
[redacted]

Counsel for Plaintiff

VERIFICATION

STATE OF NEW YORK)
)ss:s.
COUNTY OF ORANGE)

MICHAEL H. SUSSMAN, an attorney licensed to practice law in the State of New York and in good standing to do so, hereby affirms and verifies as following:

1. I am counsel for plaintiff in this matter.
2. Plaintiff is a resident of Dutchess County.
3. My principal law office is in Goshen within Orange County.
4. I have discussed the contents of the annexed Verified Complaint with my client and reviewed relevant documents and things.
5. I hereby verify that, to my knowledge and information, the facts set forth in the annexed Verified Complaint are true and accurate.
6. I make this Verification under the authority of CPLR section 3020(d)(3).

MICHAEL H. SUSSMAN 12/16/22

COMMISSION EXHIBIT 8

Affidavit of Service
(Please print)

State of New York, County of Dutchess Supreme City Court

FRANK MORA Plaintiff/Petitioner Index No. 2022-54141
vs.
Court Date
Stacey Koch Defendant/Respondent

Mark M Kurtt being duly sworn, deposes and says that deponent is over the age of eighteen years and is not a party in this proceeding. Deponent served a true copy of Summons & Verified Complaint

In the above entitled proceeding, such service having been made in the following manner stated herein; and said person being the proper and authorized person to be served in this proceeding, the name of said person, complete address, time and date is as follows:

On Tuesday - January 3, 2023 at 27 Davis Ave. Poughkeepsie N.Y. I served Stacy Koch at 1630 hrs. MK

[X] By delivering to and leaving personally with Stacey Koch, known to the deponent to be the same person mentioned and described in the above named proceeding as the person to be served.

[ ] By delivering to and leaving personally with _____, on the person to be served and associated with him/her and after conversing with him/her, deponent believes him/her to be a person of such suitable age and discretion; and by mailing a copy of the proceeding herein to said authorized person to the address and at the time stated above, which is his/her last known address or actual place of business mailed in a post paid envelope marked "personal and confidential."

[ ] By delivering to and leaving with _____, the agent, for service an the person in this proceeding an designated under Rule 318 of the CPLR. Service having been made to such person at the place, time, and date stated above.

[ ] By affixing a true copy of the same to the door of the actual place of business, dwelling place, or usual place of abode as stated above; and by mailing a copy of the proceeding herein to said person to the address and on the date and time as stated above. Service was made in the manner stated in this paragraph because deponent was unable, with due diligence, to find the proper or authorized person to be served; or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode as stated above, having called there at the following times and dates:

_____

_____

[ ] By delivering to and leaving with the person named above at said address, upon information and belief, the person served is an officer of the domestic corporation _____ named in this proceeding authorized to be served herein.

Deponent further states upon information and belief that said person so served is not in the Military Service of the State of New York or of the United States as the term is defined in either the State or Federal statutes.

Deponent further states that he/she describes the person actually served as follows:

Gender	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)	Other Features:
[ ] Male	[X] White	[ ] Light	60	5'4	150	
[X] Female	[ ] Black	[ ] Medium				
[ ] Other	Other:	[X] Dark				
		[ ] White/Gray				

Sworn to before me this _____ day of January, 20 23

Notary Public

Server's Signature

Print Name

MICHAEL HOWARD SUSSMAN
Notary Public, State of New York
No. 02SU6332584
Qualified in Orange County
Commission Expires Nov. 09, 20___

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 01-05-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Affidavit of Service #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

AUG 30 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

COMMISSION EXHIBIT 9

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 **ORAL ARGUMENT REQUESTED**

NOTICE OF MOTION TO DISMISS COMPLAINT

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, the Affirmation of Victor A. Kovner, dated February 2, 2023, and the exhibits annexed thereto, and all pleadings and proceedings hereto and herein, Defendant Stacey Koch will move before this Court, at an I.A.S. Motion Term, at the Courthouse located at 10 Market Street, Poughkeepsie, New York, on February 28, 2023, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order dismissing the Complaint with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, awarding her attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1, and granting such other and further relief as this Court deems appropriate.

PLEASE TAKE FURTHER NOTICE that, pursuant to N.Y. C.P.L.R. 2214(b), Plaintiff Frank Mora's answering papers shall be served upon the undersigned at least seven (7) days before the date on which this motion is noticed to be heard.

This is an action for defamation.

Dated: February 2, 2023

Respectfully submitted,

By: */s/ Victor A. Kovner*
Victor A. Kovner
Raphael Holoszyc-Pimentel
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
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Attorneys for Plaintiff Frank Mora

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 02-02-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Notice # 2023-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
DUTCHESS COUNTY
AUG 30 2023
ljc
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff,	Index No. 2022-54141
- against -	Mot. Seq. No. 001
STACEY KOCH, Defendant.	**ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW IN SUPPORT OF KOCH'S MOTION TO DISMISS COMPLAINT

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 02-03-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Memorandum of 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 30 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

DAVIS WRIGHT TREMAINE LLP

Victor A. Kovner
Raphael Holoszyc-Pimentel
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax: [redacted]
[redacted]r@dwt.com
[redacted]@dwt.com

Attorneys for Defendant Stacey Koch

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Frank G. Runyeon, *Unvaxxed NY Judge Stripped of Most Criminal Cases*, LAW360 (Feb. 1, 2022, 6:50 p.m.), https://www.law360.com/articles/1460655/unvaxxed-ny-judge-stripped-of-most-criminal-cases 2

Defendant Stacey Koch ("Koch") respectfully submits this memorandum of law in support of her motion to dismiss the Verified Complaint of Plaintiff Frank Mora ("Mora") with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, and for attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1.[1]

I. PRELIMINARY STATEMENT

In December 2021, at the height of the Omicron surge of the COVID-19 pandemic, Mora caused a disturbance at the medical practice where Koch is employed. Mora repeatedly refused to abide by the practice's rules that required masks pursuant to CDC guidelines. The disagreement resulted in the police being called to the practice.

Upon learning that Mora was a sitting judge, Koch felt that it was her civic duty to notify the appropriate authorities of the unprofessional behavior by a government official that she had witnessed. Koch filed a confidential complaint with the New York State Commission on Judicial Conduct (the "Commission").

No good deed goes unpunished. One year later, Mora filed this lawsuit against Koch, claiming that certain of Koch's statements in her complaint to the Commission were defamatory.

This claim is frivolous and should be dismissed. It is well established that complaints to the official bodies that govern the conduct of attorneys are immunized from defamation claims under the absolute privilege for statements in a judicial proceeding, regardless of the truth, falsity, or motive of those statements. *Wiener v. Weintraub*, 22 N.Y.2d 330 (1968). The

[1] The Complaint and Exhibit 1 to the Complaint were filed at NYSCEF Doc. Nos. 1 and 2, and are attached as Exhibits A and B to the accompanying Affirmation of Victor A. Kovner, respectively.

Commission is such a body, and consequently, Koch's statements to the Commission are clearly immunized against Mora's defamation claim under the absolute privilege.

The fundamental defects in the Complaint call into question Mora's motive for filing it. Indeed, the notion that Mora seeks redress for "humiliation" and "embarrassment" caused by Koch's *confidential* complaint is belied by the fact that Mora *publicly* filed that very complaint as an exhibit to his pleading. The purpose of this lawsuit appears to be to retaliate against Koch and to intimidate her or other witnesses in the pending judicial misconduct inquiry of Mora—the very harms that the absolute privilege is meant to prevent. This Court should not countenance these tactics and should promptly dismiss this case with prejudice.

This case is a classic "SLAPP" (Strategic Lawsuit Against Public Participation)—the use of the legal system to chill the right to free speech or to petition the government. Under New York's recently amended anti-SLAPP statute, this case must be summarily dismissed, and Koch is entitled to a mandatory award of her attorneys' fees and costs.

II. FACTUAL BACKGROUND

A. The Parties

Mora is a sitting Poughkeepsie City Court judge.[2] Compl. at 1.

Koch is the office manager of Seeta Eye, an ophthalmology practice in Poughkeepsie. Compl. ¶¶ 4–5.

[2] Mora is no stranger to controversy surrounding rules intended to stem the COVID-19 pandemic. In early 2022, Mora reportedly violated court rules by regularly entering the courthouse maskless (wearing only a face shield) and without having been vaccinated, and by presiding over criminal arraignments by video. *See* Frank G. Runyeon, *Unvaxxed NY Judge Stripped of Most Criminal Cases*, LAW360 (Feb. 1, 2022, 6:50 p.m.), https://www.law360.com/articles/1460655/unvaxxed-ny-judge-stripped-of-most-criminal-cases. Mora has also filed a federal lawsuit challenging the New York courts' vaccine requirement. *See Mora v. N.Y. State Unified Ct. Sys.*, No. 7:22-cv-10322 (S.D.N.Y. filed Dec. 6, 2022).

B. Mora Flouts Seeta Eye's COVID Masking Rules

In December 2021, as a medical practice, Seeta Eye required anyone entering the premises to wear a mask, pursuant to CDC and health department guidelines. Compl. Ex. 1.[3] On December 28, Mora entered the waiting room of Seeta Eye without a mask, instead wearing a face shield. Compl. ¶ 9. At the time, there were approximately 20 other individuals in the waiting room, plus Seeta Eye's staff. Compl. Ex. 1. Upon being asked to wear a mask, Mora refused. Compl. ¶ 10. Koch asked Mora several times to either leave or wear a mask that Seeta Eye offered to him. Compl. Ex. 1. Mora claimed to have a medical condition that prevented him from wearing a mask. Compl. ¶ 12; Compl. Ex. 1.

When Mora persisted in refusing to either leave or wear a mask, Koch called the police. Compl. ¶¶ 15, 17; Compl. Ex. 1. In Koch's words, Mora caused "a huge scene" and "taunted" her that the police would not come. Compl. Ex. 1. When it became clear that the police would respond to the call,[4] Mora finally left the premises. Compl. ¶¶ 17–19; Compl. Ex. 1.

Mora then contacted his chiropractor to obtain a note stating that Mora had an unspecified "medical condition," and provided the note to Koch. Compl. ¶ 20; Compl. Ex. 1. Koch called the chiropractor to obtain the specific diagnosis, but the chiropractor refused to

[3] On a motion to dismiss, "the Court may consider both the facts alleged in the complaint as well as the documents attached to it as exhibits, which may be incorporated by reference." *Shuman v. N.Y. Mag.*, 72 Misc. 3d 1211(A), at *2 (Sup. Ct. N.Y. Cnty. 2021), *aff'd*, 211 A.D.3d 558 (1st Dep't 2022). Thus, the Court may consider Koch's complaint, which was attached as Exhibit 1 to Mora's pleading and is cited herein for background. Insofar as Mora alleges that five specific statements in Koch's complaint are false, *see* Compl. ¶ 24(a)–(e), the Court need not resolve those factual issues because falsity "is irrelevant" where the statements are absolutely privileged, as explained *infra* p. 12. *Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).

[4] According to Koch, the police affirmatively stated that they would come to the office. Compl. Ex. 1. According to Mora, Koch told the police that it was an "emergency," which would naturally trigger a police response. Compl. ¶ 17.

provide that information and instead began an unsolicited lecture criticizing masks. Compl. Ex. 1.

At this point, Seeta Eye decided to accommodate Mora given that he was there to oversee an eye exam for his [redacted]-year-old son. Compl. ¶ 21; Compl. Ex. 1. Mora claims that the exam then occurred "without further incident." Compl. ¶ 22. In fact, Seeta Eye had to escort Mora and his son into and out of the practice through a side door so as to not expose the other patients to Mora, who remained unmasked. Compl. Ex. 1.

C. Koch Files a Complaint with the Commission on Judicial Conduct

Koch was aware that Mora was an attorney and contacted the Dutchess County Bar Association to inquire why an area attorney would behave as he did in a medical practice in defiance of CDC and health department guidelines. Compl. Ex. 1.

Upon learning that Mora was a judge, Koch was "shocked." *Id.* Out of a sense of civic duty, on December 29, Koch decided to file a complaint with the Commission reporting Mora's "unprofessional behavior" that she had witnessed the day before, by completing and signing the Commission's online complaint form. *Id.* In Koch's words, she "simply fe[lt] our government needs to know" about his behavior, because "[t]his man should not be allowed any decision making for others when he can not act professionally in this medical practice." *Id.*

D. The Commission Commences a Confidential Investigation

The Commission is authorized to receive and investigate complaints of judicial misconduct, including but not limited to "conduct, on or off the bench, prejudicial to the administration of justice." N.Y. Judiciary Law § 44(1). "Upon receipt of a complaint," the Commission "shall conduct an investigation of the complaint," or it may summarily dismiss the complaint if it lacks merit on its face. *Id.* In the course of an investigation, the Commission may

require the judge to appear before it, in which case the judge is notified and served with the complaint. *Id.* § 44(3).

By law, all complaints, proceedings, and records of the Commission are confidential. *Id.* § 45(1). However, in this lawsuit, Mora has disclosed that the Commission is investigating him and that he was "required . . . to answer [Koch's] claims before" the Commission. Compl. ¶ 27. Mora also disclosed the full text of Koch's allegations in the complaint that initiated the Commission's investigation. Compl. Ex. 1.[5]

E. Mora Files This Action Against Koch

On December 29, 2022 (exactly one year after Koch's complaint to the Commission), Mora filed this action against Koch, claiming that her complaint to the Commission defamed him. Compl. ¶ 24. Mora takes issue with five statements in Koch's complaint, including that Mora "created a huge scene" and "can not act professionally in this medical practice." *Id.* ¶ 24(a)–(e). Mora seeks $425,000 in compensatory and punitive damages, including for "humiliation, shame and embarrassment." *Id.* at 5 & ¶ 27.

Koch now moves to dismiss this action pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a.

III. ARGUMENT

A. The Amended Anti-SLAPP Statute Applies to This Action

This lawsuit is precisely the type of action that New York's recently amended anti-SLAPP statute was meant to deter. SLAPP suits "are characterized as having little legal merit

[5] Mora's lawsuit has generated media coverage of the Commission's investigation, which, but for his lawsuit, would have otherwise remained confidential. *See Judge Suing Office Manager for Defamation After Argument over Mask Policy at Doctor's Office*, MID HUDSON NEWS (Jan. 3, 2023, 4:24 a.m.), https://midhudsonnews.com/2023/01/03/judge-suing-office-manager-for-defamation-after-argument-over-mask-policy-at-doctors-office/.

but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." *Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 28 (1st Dep't 2022) (quoting *600 W. 115th St. Corp. v. Von Gutfeld*, 80 N.Y.2d 130, 137 n.1 (1992)).

The anti-SLAPP statute applies to an "action involving public petition and participation," which is defined to include a claim based on "any . . . lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition." N.Y. Civ. Rights Law § 76-a(1)(a)(2). Clearly, Koch's complaint to the Commission concerning inappropriate behavior by a sitting judge implicates her constitutional right to petition the government, as well as her right to free speech on an issue of public interest. *See Pulizotto v. McMahon*, 406 F. Supp. 3d 277, 290, 296 (S.D.N.Y. 2019) ("The nature of reporting ethical misconduct within the judiciary as a 'right to petition for a redress [of] grievances' is 'among the most precious of the liberties safeguarded by the Bill of Rights.'"); *Aristocrat Plastic Surgery*, 206 A.D.3d at 29 (recognizing that an issue of "public interest" is "construed broadly" and includes "matters of political, social, or other concern to the community"). Because this action arises from Koch's exercise of her protected rights, the anti-SLAPP statute applies.

Because the anti-SLAPP statute controls this action, special procedures apply. Where, as here, the defendant moves to dismiss for failure to state a claim, the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law." N.Y. C.P.L.R. 3211(g)(1). This provision shifts "the burden . . . upon the plaintiff to establish that its claim has the requisite substantial basis." *Sackler v. Am. Broad. Cos.*, 71 Misc. 3d 693,

700 (Sup. Ct. N.Y. Cnty. 2021) (quoting *Duane Reade, Inc. v. Clark*, 2 Misc. 3d 1007(A), at *5 (Sup. Ct. N.Y. Cnty. 2004)). In order to avoid dismissal, the "plaintiff must establish by clear and convincing evidence a 'substantial basis' in fact and law for its claim." *Id.* (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5). A "substantial" basis is "a more stringent standard than the 'reasonable' standard that would otherwise apply." *Id.* (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5).[6]

B. Koch's Statements Are Immunized Under the Absolute Privilege for Statements in a Judicial Proceeding

Mora cannot establish that his claim has a substantial basis in law or sets forth a cognizable cause of action, because the allegedly defamatory statements are protected under the absolute privilege for statements in a judicial proceeding. "The question of whether a statement is privileged is a question of law for the court and proper to determine on a motion to dismiss." *Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).[7]

[6] Mora's Complaint also fails to state a claim under the traditional motion-to-dismiss standard of N.Y. C.P.L.R. 3211(a)(7). Under the traditional standard, the "court must determine whether the factual allegations taken from the four corners of the complaint manifest any cognizable cause of action." *Klepetko v. Reisman*, 41 A.D.3d 551, 551 (2d Dep't 2007). While the court considers "any reasonable view of the facts stated," *Strujan v. Kaufman & Kahn, LLP*, 168 A.D.3d 1114, 1115 (2d Dep't 2019), "bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss for failure to state a cause of action," *Parsippany Const. Co. v. Clark Patterson Assocs., P.C.*, 41 A.D.3d 805, 806 (2d Dep't 2007) (quoting *Meyer v. Guinta*, 262 A.D.2d 463, 464 (2d Dep't 1999)). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

[7] Should this litigation proceed, Koch reserves her right to assert additional defenses, including that her statements were substantially true, were not made with actual malice, and constituted protected opinion.

1. Koch's Complaint to the Commission Commenced a Judicial Proceeding

For over fifty years, the New York Court of Appeals has recognized that complaints to the official bodies that govern the conduct of attorneys are immunized from defamation claims under the absolute privilege for statements in a judicial or quasi-judicial proceeding. *Wiener v. Weintraub*, 22 N.Y.2d 330, 332 (1968); *see Bisogno*, 31 Misc. 3d 1203(A), at *4 (recognizing that *Wiener*'s holding is "abundantly clear"); *see also Kilkenny v. L. Off. of Cushner & Garvey, LLP*, 76 A.D.3d 512, 513 (2d Dep't 2010). In *Wiener*, the Court of Appeals held that the filing of a complaint letter concerning an attorney with the Grievance Committee of the New York City Bar Association initiated a judicial proceeding and thus came within the absolute privilege. *Wiener*, 22 N.Y.2d at 332. This rule furthers "the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a . . . designated body for investigation." *Id.* "[T]he necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined," without fear that the complainant will be sued for libel. *Id.*

In reaching this conclusion, the Court of Appeals relied on two factors present in attorney grievance proceedings that rendered them a "judicial proceeding" for purposes of the absolute privilege. First, the grievance committee investigates the complaint and determines whether or not the charges are supportable in the course of "quasi-judicial" proceedings. *Id.* at 331–32. In that regard, the committee employs safeguards characteristic of a judicial proceeding, namely, that "it is adversarial, results in a determination that derives from the application of appropriate provisions in the law to the facts and is susceptible to judicial review." *Herzfeld & Stern, Inc. v.*

Beck, 175 A.D.2d 689, 691 (1st Dep't 1991); *see also Allan & Allan Arts Ltd. v. Rosenblum*, 201 A.D.2d 136, 141–42 (2d Dep't 1994).

Second, the grievance complaint and proceedings are, by statute, "private and confidential." *Wiener*, 22 N.Y.2d at 332 (quoting N.Y. Judiciary Law § 90(10)). This confidentiality "eliminate[s]" any risk of reputational damage arising from a defamatory complaint. *Id.*[8]

Here, Koch's complaint to the Commission is indistinguishable from the complaint to the grievance committee in *Wiener* and is thus absolutely privileged. Just like the grievance committee, the Commission is a "quasi-judicial" body. *Doe v. Comm'n on Jud. Conduct*, 246 A.D.2d 409, 409 (1st Dep't 1998); *Harley v. Perkinson*, 187 A.D.2d 765, 766 (3d Dep't 1992); *Cunningham ex rel. Unnamed Town & Vill. Justs. v. Stern*, 93 Misc. 2d 516, 517–18 (Sup. Ct. Erie Cnty. 1978). The Commission's organic statute and Mora's own Complaint bear this out.

First, as Mora himself admits, the Commission's proceedings are adversarial, "requir[ing] him to answer her . . . claims before" the Commission. Compl. ¶ 27. The Commission is empowered to "require the appearance of the judge" and to take his and witnesses' testimony in the course of its investigation, and it may draw up formal charges that the judge must answer in writing and that are adjudicated at a hearing. N.Y. Judiciary Law § 44(3)–(4). In either case, the

[8] While confidentiality protection strongly supports the absolute privilege, the privilege may even apply to nonconfidential statements where procedural safeguards and substantial public interests are present. *See Rosenberg v. MetLife, Inc.*, 8 N.Y.3d 359, 368 & n.7 (2007) (extending absolute privilege to employee termination notice filed with National Association of Securities Dealers).

judge has the right to be represented by counsel and to present evidence relevant to his defense.[9] *Id.*

The Commission's proceedings result in a determination by applying the relevant law to the facts. If the complaint lacks merit, the Commission may dismiss the complaint. *Id.* § 44(1), (6). After a hearing, the Commission issues a written determination (together with findings of fact and conclusions of law) that the judge be admonished, censured, removed, or retired. *Id.* § 44(7). In evaluating whether the judge committed misconduct, the Commission considers whether the judge abided by New York and federal laws, the Code of Judicial Conduct, the Chief Administrator's rules governing judicial conduct, and any other rules applicable to New York judges. 22 N.Y. C.R.R. 7000.9(b); *see id.* pt. 100 (rules governing judicial conduct).

The Commission's proceedings afford judicial review. The judge may appeal the Commission's determination to the Court of Appeals. N.Y. Judiciary Law § 44(7), (9). In sum, the many safeguards of the Commission's proceedings bear all the hallmarks of judicial proceedings. *See Herzfeld*, 175 A.D.2d at 691.

Finally, Koch's complaint and the Commission's proceedings are, by law, confidential. N.Y. Judiciary Law § 45(1). As such, Koch's complaint presents no risk of prejudice to Mora, which is all the more reason that the absolute privilege applies here. *See Wiener*, 22 N.Y.2d at 332.

The same policy concerns that animated the *Wiener* court apply with equal or greater force here. Clearly, "it is in the public interest to encourage those who have knowledge of" judicial misconduct to report that misconduct to the Commission. *Id.*; *see Stern v. Morgenthau*,

[9] If the matter proceeds to a formal hearing, the judge receives additional safeguards, including the right to inculpatory and exculpatory discovery and the right to call and cross-examine witnesses. N.Y. Judiciary Law § 44(4).

62 N.Y.2d 331, 339 (1984) ("[T]he effective performance of [the Commission's] function necessarily requires the free flow of information to the Commission . . . ."). "[T]he necessity of maintaining the high standards of [the bench]—indeed, the proper administration of justice—requires that there be a forum in which . . . persons, unlearned in the law, may state their complaints" without fear of reprisal. *Wiener*, 22 N.Y.2d at 332. "There is 'hardly . . . a higher governmental interest than a State's interest in the quality of its judiciary.'" *Nicholson v. State Comm'n on Jud. Conduct*, 50 N.Y.2d 597, 607 (1980) (quoting *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 848 (1978) (Stewart, J., concurring)). Surely, "ensuring the integrity of the judiciary is no less important than . . . protecting the integrity of the bar," and that important public interest requires the application of the absolute privilege to complaints concerning judges just as much to complaints about attorneys.[10] *N.Y. State Comm'n on Jud. Conduct v. Rubenstein*, 23 N.Y.3d 570, 582 (2014). Accordingly, Koch's complaint commenced a judicial proceeding and is within the absolute privilege.

2. Koch's Statements in Her Complaint Are Absolutely Privileged

Mora's defamation claim arises from Koch's statements in her complaint to the Commission. *See* Compl. ¶ 24. Because Koch's complaint commenced a judicial proceeding, her statements are absolutely privileged.

Statements in a judicial or quasi-judicial proceeding are absolutely privileged "so long as they are material and pertinent to the issue to be resolved in the proceeding." *Bisogno v. Borsa*,

[10] For these reasons, other states' appellate courts have likewise held that complaints concerning judges are absolutely privileged. *See Bailey v. Superior Ct.*, 130 Ariz. 366, 368 (Ct. App. 1981) ("The public policy considerations that afford an absolute privilege for defamatory statements made in a complaint about a lawyer's conduct to the State Bar apply equally well to a complaint about a member of the judiciary."); *Starnes v. Int'l Harvester Co.*, 141 Ill. App. 3d 652, 654 (1986) ("Illinois public policy is to . . . grant absolute privilege to complaints made to the [judicial inquiry board].").

101 A.D.3d 780, 781 (2d Dep't 2012) (quoting *Kilkenny*, 76 A.D.3d at 513). "The test of pertinency . . . is extremely liberal so as to 'embrace[] anything that may possibly or plausibly be relevant or pertinent.'" *Brady v. Gaudelli*, 137 A.D.3d 951, 952 (2d Dep't 2016) (quoting *Black v. Green Harbour Homeowners' Ass'n, Inc.*, 19 A.D.3d 962, 963 (3d Dep't 2005)).

Here, there is no doubt that Koch's statements were pertinent to the proceeding. Indeed, her "statements concerned the very subject of the . . . proceeding." *Id.* The subject of her complaint was Mora's "unprofessional behavior in [her] medical practice," Compl. Ex. 1, and the Commission must investigate whether Mora's behavior constituted "conduct, on or off the bench, prejudicial to the administration of justice," N.Y. Judiciary Law § 44(1).[11] Each of the five allegedly defamatory statements described the unprofessional behavior that Koch witnessed. *See* Compl. ¶ 24(a)–(e). They are plainly relevant to the proceeding.

Accordingly, Koch's statements are absolutely privileged. Whether her statements are true or false "is irrelevant." *Bisogno*, 31 Misc. 3d 1203(A), at *4. The privilege protects her statements "regardless of the motive for which they were made." *Brady*, 137 A.D.3d at 952. And the privilege applies "irrespective of whether formal charges are ever presented," protecting "every step of the proceeding even if it is preliminary and/or investigatory," such as the filing of Koch's complaint here. *Nineteen Eighty-Nine, LLC v. Icahn Enters. L.P.*, 99 A.D.3d 546, 547 (1st Dep't 2012) (citation omitted). Because Koch's statements are absolutely privileged, Mora's defamation claim fails as a matter of law.

[11] Among other things, the Commission may investigate whether Mora's behavior violated his "higher obligation to insure that his conduct off the Bench does not undermine the integrity of the judiciary or public confidence in his character and judicial temperament." *Quinn v. State Comm'n on Jud. Conduct*, 54 N.Y.2d 386, 392 (1981).

C. Koch Should Be Awarded Her Costs and Attorneys' Fees

Under the anti-SLAPP statute, Koch is entitled to a "mandatory" award of attorneys' fees and costs upon the dismissal of the case. *Golan v. Daily News, L.P.*, 77 Misc. 3d 258, 272–73 (Sup. Ct. N.Y. Cnty. 2022). The statute provides that "costs and attorney's fees ***shall*** be recovered upon a demonstration . . . that the action . . . was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law." N.Y. Civ. Rights Law § 70-a(1)(a) (emphasis added). Such a demonstration mandating attorneys' fees "includ[es] an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven," i.e., the dismissal provision setting forth the "substantial basis" standard that governs this case, as explained *supra* p. 6. *Id.* If Koch prevails on her motion to dismiss, she is entitled to attorneys' fees. *See Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 27–28, 32 (1st Dep't 2022) (holding that defendant is entitled to attorneys' fees on anti-SLAPP motion to dismiss); *Golan*, 77 Misc. 3d at 272–73 (awarding counsel fees on anti-SLAPP motion to dismiss); *Gillespie v. Kling*, No. 158959/2021, 2022 WL 16699233, at *3–5 (Sup. Ct. N.Y. Cnty. Nov. 2, 2022) (same); *Kerns v. Ishida*, No. 161364/2020, 2022 WL 5519650, at *2 (Sup. Ct. N.Y. Cnty. Oct. 7, 2022) (same); *Vaughn v. Xu*, No. 160322/2020, 2022 WL 3446931, at *5 (Sup. Ct. N.Y. Cnty. Aug. 17, 2022) (same).[12]

Alternatively, the Court should award costs and attorneys' fees because this action is "frivolous" under N.Y. C.P.L.R. 8303-a and/or 22 N.Y. C.R.R. 130-1.1. An action is frivolous if

[12] Koch reserves her right under the anti-SLAPP law to seek compensatory and punitive damages, which may be awarded where the action was filed for the "purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights." N.Y. Civ. Rights Law § 70-a(1)(b)–(c). Koch's damages include, inter alia, emotional distress arising from being named as a defendant and media coverage of the lawsuit.

it is "without any reasonable basis in law or fact" or "the primary purpose in commencing [it] was to harass." *Doscher v. Meyer*, 177 A.D.3d 697, 699 (2d Dep't 2019). Courts frequently award attorneys' fees against plaintiffs who file meritless defamation claims that are barred by the absolute privilege for statements in a judicial proceeding, like the claim here. *See id.*; *Carniol v. Carniol*, 288 A.D.2d 421, 422 (2d Dep't 2001); *Grasso v. Mathew*, 164 A.D.2d 476, 480 (3d Dep't 1991).

As one justice sternly warned, bringing a defamation suit based on a privileged report of attorney misconduct is antithetical to "the proper administration of justice" and, to put it bluntly, "abhorrent." *Bisogno*, 31 Misc. 3d 1203(A), at *4. A sitting judge should know better, and should bear the costs of defending this meritless lawsuit.

IV. CONCLUSION

For all the foregoing reasons, the Court should dismiss the Complaint with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, and award Koch her attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1.

Dated: February 2, 2023

Respectfully submitted,

By: /s/ Victor A. Kovner
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Raphael Holoszyc-Pimentel
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Attorneys for Defendant Stacey Koch

Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Victor A. Kovner, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Memorandum of Law in Support of Koch's Motion to Dismiss Complaint contains 4,461 words.

/s/ Victor A. Kovner
Victor A. Kovner

COMMISSION EXHIBIT 10

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

NOTICE OF MOTION

Index No. 54141/2022

PLEASE TAKE NOTICE that upon the annexed Affirmation of Robert H. Tembeckjian, Administrator of and Counsel to the New York State Commission on Judicial Conduct ("Commission"), the accompanying Memorandum of Law, the proposed Answer and upon all prior pleadings and proceedings had herein, the Commission will move this court at the Dutchess County Courthouse, 10 Market Street, Poughkeepsie, New York, on the 28th day of February 2023 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order allowing the Commission to intervene in this action pursuant to CPLR 1012(a)(2) and/or 1013, and dismissing the Complaint in its entirety pursuant to CPLR 3211(a)(7), or, alternatively, in the event that the motion to dismiss the Complaint is denied, granting the Commission leave pursuant to CPLR 3211(f) to serve the within

Answer within ten (10) days of service of the Order deciding this motion with Notice of Entry, and for such other relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering affidavits, and any notice of cross-motion, with supporting papers, if any, shall be served upon the Commission at least seven days before the return date of this motion.

Oral argument is requested.

Dated: New York, New York
February 6, 2023

Robert H. Tembeckjian

ROBERT H. TEMBECKJIAN
Administrator and Counsel
New York State Commission on Judicial Conduct
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STATE OF NEW YORK
COUNTY OF DUTCHESS SS:
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Notice of Motion # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURT

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

AFFIRMATION IN SUPPORT OF MOTION TO INTERVENE AND DISMISS

STACEY KOCH,

Defendant.

ROBERT H. TEMBECKJIAN, an attorney duly admitted to practice in the State of New York, hereby affirms and states the following to be true under the penalties of perjury:

1. I am the Administrator and Counsel to the New York State Commission on Judicial Conduct ("Commission"), proposed intervenor in this proceeding, and am fully familiar with all the facts and circumstances set forth herein.

2. I make this affirmation in support of the Commission's motion to intervene pursuant to CPLR 1012(a)(2) and/or 1013, and to dismiss the matter pursuant to CPLR 3211(a)(7). As part of its submission on this motion, the Commission is also filing a memorandum of law and a proposed Answer pursuant to CPLR 1014.

3. The plaintiff in this action is a judge of the Unified Court System who is currently under investigation by the Commission. The defendant in this action is a private citizen who filed the complaint with the Commission that led to its current investigation of the plaintiff.

4. As set forth more fully below, and in the accompanying memorandum of law, the Commission has a unique and substantial interest in this proceeding. Plaintiff's frivolous lawsuit is clearly intended to intimidate a complainant/witness in an ongoing Commission investigation and will likely deter other witnesses from coming forward, inasmuch as plaintiff's lawsuit has already been reported in the press.[1] On information and belief, the matter appeared in a newspaper before the defendant was even served. If the plaintiff's suit is permitted to proceed, his public attack against a Commission complainant would have a chilling effect on witnesses in every Commission investigation, who might reasonably seek to avoid the costs of defending against such litigation.

5. In addition, because Commission investigations are confidential pursuant to Judiciary Law § 45, the defendant is not as equipped to provide this Court with factual information about our investigatory and adjudicatory processes that is relevant to the adjudication of this motion to intervene and dismiss. In this

[1] https://midhudsonnews.com/2023/01/03/judge-suing-office-manager-for-defamation-after-argument-over-mask-policy-at-doctors-office/

regard, I note that it was plaintiff's own lawsuit that first made public the Commission's confidential investigation of him and the defendant's allegedly defamatory statements about him.

The Commission's constitutional mandate to accept and investigate complaints of judicial misconduct, and its complaint process.

6. Pursuant to Article VI, Section 22, of the New York State Constitution and Judiciary Law § 44(1), the Commission is required to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge or justice of the unified court system."

7. Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," the Commission has a "duty to preempt and mitigate these potential consequences by quickly and effectively investigating allegations of judicial misconduct." *New York State Commission on Judicial Conduct v Rubenstein*, 23 NY3d 570, 582 (2014).

8. The Commission's "concern is [thus] institutional, to protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984).

9. To facilitate that mandate, the Commission's website has an online complaint form, which permits private citizens to file complaints of judicial

misconduct from their computers or other electronic devices. *See* https://www.nyscjcforms.com. The form requires a name and contact information for the complainant, which enables Commission staff to conduct follow-up interviews in furtherance of its investigations.

The defendant's complaint before the Commission alleging that the plaintiff committed judicial misconduct.

10. On December 29, 2021, Stacey Koch – an employee of an ophthalmology practice in New York State – utilized that online form to file a complaint with the Commission against the Poughkeepsie City Court Judge Frank Mora. A copy of Ms. Koch's complaint to the Commission is annexed to the Plaintiff's Summons and Complaint as Exhibit 1.

11. The complaint alleged that, on December 28, 2021, Judge Mora "exhibited unprofessional behavior" in Ms. Koch's medical practice by refusing to wear a mask in the waiting room (which the practice required) and "creat[ing] a huge scene."

12. Ms. Koch alleged that she called the police after Judge Mora refused several requests to put on a mask, and that Judge Mora "taunted" her "in front of a waiting room of [about] 20 people" by "stating the police won't come."

13. The complaint further alleged that Judge Mora subsequently proffered a letter from a chiropractor "stating Mr. Mora has a 'medical condition' that prevents him from wearing a mask." Despite believing that the letter from the

chiropractor was "bogus," Ms. Koch had her staff "escort[ ] Mr. Mora and his son into the practice through a side door . . . so as not to expose [the practice's] patients to Mr. Mora."

The Commission's pending investigation into the complaint against the plaintiff.

14. Pursuant to Judiciary Law § 44(1) and 22 NYCRR 7000.3(b), the Commission authorized an investigation into Ms. Koch's complaint.

15. On April 12, 2022, after conducting preliminary witness interviews, Commission Counsel wrote a letter to Judge Mora asking him to answer a number of questions about his alleged conduct at the ophthalmology practice. Pursuant to Commission Policy 2.6(D), the letter included a copy of Ms. Koch's complaint.[2]

16. Judge Mora, through counsel, responded by letter dated June 17, 2022.

17. To date, Judge Mora has not been formally charged with misconduct related to Ms. Koch's December 29, 2021, complaint.

18. The investigation currently is ongoing and additional witness interviews are being scheduled.

19. Pursuant to Judiciary Law § 44(3), Judge Mora will also be called to testify at the Commission.

[2] The Commission's Policy Manual is available online at: https://cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.pdf

The plaintiff's instant defamation action.

20. By papers dated December 21, 2022, Judge Mora – through counsel – filed the instant defamation suit against Ms. Koch.

21. The plaintiff's Verified Complaint alleged that five particular statements made by Ms. Koch in her December 29, 2021, complaint to the Commission were materially false. Verified Complaint ¶¶ 24-25.

22. The Verified Complaint further alleged that Ms. Koch's indicated conduct "has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct." Verified Complaint ¶ 27.

23. The demand for relief at the end of the Verified Complaint seeks a judgment against Ms. Koch in the aggregate amount of $425,000. Verified Complaint p. 5.

Due process during Commission proceedings.

24. The plaintiff will be afforded a full and fair opportunity to contest the veracity of Ms. Koch's allegations during the Commission's proceedings.

25. As indicated above, Judge Mora has already been provided with a copy of Ms. Koch's complaint and an opportunity to respond in writing, with the assistance of counsel.

26. Pursuant to Judiciary Law § 44(3) and 22 NYCRR 7000.3(e), the Commission has authorized me to require Judge Mora to appear and give testimony under oath. I will set the date and send him notice after additional witnesses have been interviewed. During his testimonial appearance, Judge Mora has the right to the assistance of counsel, and to submit evidentiary material relevant to the complaint. *Id.*

27. In the event the Commission authorizes service of a Formal Written Complaint, Judge Mora would be entitled to file an Answer to the charges therein, exchange pre-hearing discovery and participate in a hearing before a neutral referee, at which the rules of evidence applicable to nonjury civil proceedings would apply. Judiciary Law § 44(4); 22 NYCRR 7000.6(g),(h), (i).

28. Upon receipt of the referee's report, Judge Mora would be entitled to briefing and oral argument before the full Commission. 22 NYCRR 7000.7.

29. Finally, if the Commission renders a public determination finding that Judge Mora has committed judicial misconduct, he is entitled to review as of right in the Court of Appeals. Judiciary Law § 44(7). *See also Matter of Raab,* 100 NY2d 305, 311 (2003).

Conclusion

30. The Commission has a substantial constitutional interest in this matter that the defendant cannot adequately represent (Const Art VI, § 22). The

defendant, as a Commission complainant and witness, has absolute immunity against a defamation claim such as plaintiff has brought against her (*Wiener v Weintraub,* 22 NY2d 330, 332 (1968)). And plaintiff's lawsuit, if allowed to continue, would have a chilling effect on other Commission witnesses and as such interfere with the Commission's investigation and resolution of the complaint against him.

WHEREFORE, the Commission respectfully requests that this Court issue an order: (1) granting the Commission's motion to intervene as a third-party defendant; (2) dismissing the matter pursuant to CPLR 3211(a)(7), for the reasons noted here and further articulated in the accompanying memorandum of law; and (3) granting such other and further relief as the Court may deem just and proper.

Dated: February 6, 2023
Albany, New York

Robert H. Tembeckjian

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SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

MEMORANDUM BY COUNSEL TO THE COMMISSION ON JUDICIAL CONDUCT IN SUPPORT OF MOTION TO INTERVENE AND TO DISMISS.

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STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Memorandum # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
DUTCHESS COUNTY
AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Of Counsel:

Edward Lindner
Denise Buckley
David Stromes

Dated: February 6, 2023

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of a motion to intervene in the above-captioned matter pursuant to CPLR 1012(a)(2) and/or CPLR 1013, and to dismiss the matter pursuant to CPLR 3211(a)(7) because the communications at issue, which were part of a complaint to the Commission, are shielded by absolute privilege and thus are immune from defamation actions.

BACKGROUND AND PROCEDURAL HISTORY

Pursuant to Article VI, Section 22, of the New York State Constitution and Judiciary Law § 44(1), the Commission is required to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge or justice of the unified court system." Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," the Commission has a "duty to preempt and mitigate these potential consequences by quickly and effectively investigating allegations of judicial misconduct." *New York State Commission on Judicial Conduct v Rubenstein*, 23 NY3d 570, 582 (2014). The Commission's "concern is [thus] institutional, to protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984).

To facilitate that mandate, the Commission's website has an online complaint form, which permits private citizens to file complaints of judicial misconduct from their computers or other electronic devices. *See* https:// www.nyscjcforms.com. The form requires a name and contact information for the complainant, which enables Commission staff to conduct follow-up interviews in furtherance of its investigations.

As indicated by Exhibit 1 to the plaintiff's complaint, on December 29, 2021, Stacey Koch – an employee of an ophthalmology practice in New York State – utilized that online form to file a complaint with the Commission against Poughkeepsie City Court Judge Frank Mora. The complaint alleged that, on December 28, 2021, Judge Mora "exhibited unprofessional behavior" in Ms. Koch's medical practice by refusing to wear a mask in the waiting room (which the practice required) and "creat[ing] a huge scene." Ms. Koch alleged that she called the police after Judge Mora refused several requests to put on a mask, and that Judge Mora "taunted" her "in front of a waiting room of [about] 20 people" by "stating the police won't come." The complaint further alleged that Judge Mora subsequently proffered a letter from a chiropractor "stating Mr. Mora has a 'medical condition' that prevents him from wearing a mask." Despite believing that the letter from the chiropractor was "bogus," Ms. Koch had her staff "escort[ ] Mr. Mora and his son into the practice through a side door . . . so as not to expose

[the practice's] patients to Mr. Mora." A copy of Ms. Koch's complaint to the Commission is annexed to the plaintiff's Summons and Complaint as Exhibit 1.

The Commission authorized an investigation into Ms. Koch's complaint (Tembeckjian Aff ¶ 14). On April 12, 2022, after conducting preliminary witness interviews, Commission Counsel sent Judge Mora a copy of Ms. Koch's complaint and asked him to answer a number of questions about his alleged conduct at the ophthalmology practice (Tembeckjian Aff ¶ 15). Judge Mora, through counsel, responded by letter dated June 17, 2022 (Tembeckjian Aff ¶ 16).

To date, Judge Mora has not been formally charged with misconduct related to Ms. Koch's December 29, 2021, complaint (Tembeckjian Aff ¶ 17). The investigation currently is ongoing, additional witness interviews are being scheduled, and Judge Mora will be called to testify at the Commission (Tembeckjian Aff ¶¶ 18, 19).

By papers dated December 21, 2022, Judge Mora – through counsel – filed the instant defamation suit against Ms. Koch, alleging that five particular statements she made in her December 29, 2021, complaint to the Commission were materially false (Verified Complaint ¶¶ 24-25). The Verified Complaint further alleged that Ms. Koch's indicated conduct "has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial

misconduct" (Verified Complaint ¶ 27). The Verified Complaint's request for relief seeks a judgment against Ms. Koch in the aggregate amount of $425,000 (Verified Complaint p. 5).

ARGUMENT

POINT I

THE COMMISSION HAS A SUBSTANTIAL INTEREST IN THIS PROCEEDING SUCH THAT INTERVENTION IS APPROPRIATE.

The Commission has a substantial and unique interest in this matter, warranting intervention. By bringing this frivolous defamation action against a witness in an ongoing Commission investigation – a witness who has absolute immunity from such a suit – the plaintiff has interfered with the Commission's constitutional mandate to investigate complaints against New York State judges. Plaintiff's suit threatens to intimidate not only this defendant, but other witnesses in this same investigation who now may be reasonably reluctant to come forward with relevant information. Equally importantly, if allowed to go forward, plaintiff's suit will have a chilling effect on every Commission investigation by discouraging citizens from reporting instances of judicial misconduct for fear of being sued for hundreds of thousands of dollars.

Intervention by the Commission is also appropriate because defendant Koch is not privy to the confidential details of the Commission's investigation, and thus

is not as equipped to provide the court with factual information about the Commission's investigatory and adjudicatory processes that is relevant to the application of absolute immunity. As set forth in Point II below, those processes provide the plaintiff with multiple opportunities to contest Ms. Koch's allegations. In light of that fact, binding precedent provides that communications by witnesses to the Commission are entitled to absolute immunity from suit, and this defamation proceeding against Ms. Koch should be dismissed pursuant to CPLR 3211(a)(7).

A. Motions to intervene should be liberally granted.

Under CPLR 1012(a)(2), a "person shall be permitted to intervene in any action . . . when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Under CPLR 1013, a court may grant permissive intervenor "when the person's claim or defense and the main action have a common question of law or fact."

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action." *Yuppie Puppy Pet Prods Inc v St. Smart Realty LLC*, 77 AD3d 197, 201 (1st Dept 2010). Although they arise under two different rules, "[d]istinctions between intervention as of right and discretionary intervention are no longer sharply applied." *Id.* (citing Siegel, NY Prac § 178, at 307 [4th ed]). "Regardless of whether intervention is sought as a matter of right pursuant to CPLR 1012 or as a

matter of discretion pursuant to CPLR 1013, intervention should be permitted where the intervener has a real and substantial interest in outcome of the proceedings." *Clarke v City of New York*, 43 Misc 3d 1202(A) (Sup Ct Queens Co 2014) (citing *Berkowski v Board of Trustees of Inc Vil of Southampton*, 67 AD3d 840, 843 [2d Dept 2009]; *Perl v Aspromonte Realty Corp*, 143 AD2d 824, 825 [2d Dept 1988]).

Judged by those standards, intervention should be granted.

B. The Commission has a unique and substantial interest in this proceeding, warranting intervention.

In order to protect its interest and constitutional mandate in ensuring public confidence in a fair, impartial, and ethical judiciary, the Commission must safeguard the ability of private citizens to lodge complaints of judicial misconduct and to serve as witnesses in such proceedings when circumstances require. If prospective complainants believe that a judge may retaliate against them with a civil defamation suit for filing a complaint and/or testifying in ensuing proceedings, the resulting chilling effect would silence many would-be complainants and severely frustrate the Commission's ability to fulfill its constitutional duties.

In *Matter of Kopf*, 169 AD2d 428 (1st Dept 1991), the Appellate Division, First Department, found that a similar institutional interest in protecting the integrity of ongoing proceedings was a sound basis for intervention. There, a

plaintiff shareholder sued a corporation alleging that a transfer of certain shares was fraudulent. While the suit was pending, the United States government commenced a criminal investigation into the plaintiff and convened a grand jury. The United States then moved to intervene in the civil suit under CPLR 1012(a)(2). The trial court denied the motion, but the First Department reversed and granted the motion to intervene, holding that "the Government has a unique interest in protecting the integrity of ongoing Grand Jury proceedings," which "constitutes the compelling interest required for intervention as of right." 169 AD2d at 428-29 (citing *Cascade Natural Gas v El Paso Natural Gas*, 386 US 129 [1967]).

Just as the government had an interest in "protecting the integrity of ongoing Grand Jury proceedings" in *Kopf*, the Commission in this matter has an interest in protecting the integrity of both its ongoing investigation of Judge Mora, as well its broader constitutional mandate. As to the former, Ms. Koch is a material witness in the case against Judge Mora, having witnessed an incident at her place of work during which the plaintiff allegedly exhibited temperament unbecoming of a judge, in violation of Sections 100.1, 100.2, and 100.4(A)(2) of the Rules Governing Judicial Conduct. By suing Ms. Koch for defamation during the pendency of that investigation, the plaintiff has intimidated and frightened a Commission witness whose continued cooperation is necessary to investigate, and perhaps prosecute, the open complaint against him.

To the broader point, the Commission has an interest in protecting the integrity of its constitutional mandate to investigate complaints against New York State judges, which depends upon private citizens who witness misconduct being willing to come forward with non-anonymous complaints. As the Court of Appeals has explained, the Commission has an "institutional" concern in "protect[ing] the integrity of the judiciary and thereby preserv[ing] and enhanc[ing] the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984). "Experience teaches that the effective performance of that function necessarily requires the free flow of information to the Commission." *Id.*

Here, Judge Mora's defamation suit has imperiled that "free flow of information" and will have a chilling effect as to future would-be complainants who witness judicial misconduct but are deterred from filing complaints for fear of reprisal in the form of a defamation suit. Ms. Koch – a private citizen who is unfamiliar with the Commission's procedures and the investigative status of the open case against Judge Mora – cannot adequately represent and defend the Commission's interests in defending the integrity of its pending case against Judge Mora or its broader constitutional mandate. As a result, the Commission's motion to intervene should be granted.

POINT II

THIS MATTER SHOULD BE DISMISSED BECAUSE THE DEFENDANT'S COMPLAINT TO THE COMMISSION IS ENTITLED TO ABSOLUTE IMMUNITY AS A MATTER OF LAW.

New York Courts have long shielded certain classes of communications from defamation litigation behind a specially enacted privilege, based on the "recogni[tion] that the public interest is served by shielding [such possibly defamatory] communications . . . rather than risk stifling them altogether." *Stega v New York Downtown Hospital*, 31 NY3d 661, 669 (2018) (quoting *Liberman v Gelstein*, 80 NY2d 429, 437 [1992]) (quotation marks omitted). In particular, the Court has held, because the "social benefit in encouraging free speech or the discharge of governmental responsibility sometimes outweighs [an] individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements." *Id.* (quoting *Park Knoll Assoc v Schmidt*, 59 NY2d 205, 208 [1983]) (quotation marks omitted).

Two types of privilege exist: qualified and absolute. If a communication is entitled to qualified privilege, the person who initiated it may be sued in a defamation action, but the plaintiff bears the burden of proving that the communication was made with malice – that is, "spite or ill will" or "reckless disregard of whether [it was] false or not." *Stega*, 31 NY3d at 670 (quoting

Lieberman, 80 NY2d at 437-38) (quotation marks omitted); *see Toker v Pollack*, 44 NY2d 211, 219 (1978). By contrast, communications entitled to absolute privilege "entirely immunize[ ]" the individual who made them "from liability in a defamation action." *Stega*, 31 NY3d at 669; *Rosenberg v MetLife, Inc*, 8 NY3d 359, 365 (2007); *Toker*, 44 NY2d at 219.

A. Communications made in the course of a Commission proceeding are entitled to absolute privilege.

Absolute privilege is reserved for communications that occur in the course of "a proceeding in a court" or before "an administrative body exercis[ing] a quasi-judicial function" – *i.e.*, a body that is empowered to hold a hearing at which both parties are entitled to participate and take remedial action, "whether it be an award of compensation, disbarment, or revocation of a license." *Stega*, 31 NY3d at 670-71 (quoting *Toker*, 44 NY2d at 222) (quotation marks omitted). Notably, the Court of Appeals has explicitly held where the communication at issue is made to an administrative body exercising a quasi-judicial function, "the absolute privilege can extend to preliminary or investigative stages of the process, particularly where compelling public interests are at stake." *Rosenberg*, 8 NY3d at 365.

Consistent with those standards, the Court of Appeals held more than half a century ago that a complaint to a state attorney grievance committee is entitled to "absolute privilege." *Wiener v Weintraub*, 22 NY2d 330, 332 (1968). The Court's application of absolute privilege in *Wiener* hinged on its finding that the state

attorney grievance committee constituted "a quasi-judicial body." *Id.* Since then, the Court of Appeals and Appellate Division have repeatedly reaffirmed that rule. *Stega*, 31 NY3d at 670; *Rosenberg*, 8 NY3d at 365-66; *Casa de Meadows Inc (Cayman Islands) v Zaman*, 76 AD3d 917, 920 (1st Dept 2010); *Kilkenny v Law Office of Cushner & Garvey LLP*, 76 AD3d 512, 513 (2d Dept 2010); *Sinrod v Stone*, 20 AD3d 560, 561-62 (2d Dept 2005); *Jonas v. Faith Properties, Inc*, 221 AD2d 959, 961 (4th Dept 1995).

As the *Wiener* Court explained, "it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a Grievance Committee or some other designated body for investigation." 22 NY2d at 332. The Court acknowledged that "on occasion false and malicious complaints will be made," but held that "the necessity of maintaining the high standards of our bar -- indeed, the proper administration of justice --" outweighs that potential harm, which is adequately addressed in any event by the Grievance Committee's exercise of its function as a quasi-judicial body and the confidentiality provision applicable to attorney grievance complaints. *Id.*

The holding and reasoning of *Wiener* apply with equal force to complaints made to the Commission. Indeed, the analogy is ironclad, and the application is indistinguishable. The quasi-judicial nature of the Commission has been

recognized by the Court of Appeals and lower courts. *See Nicholson v State Com. on Judicial Conduct*, 50 NY2d 597, 606 (1980); *Doe v Commission on Judicial Conduct*, 246 AD2d 409, 409 (1st Dept 1998); *Cunningham v Stern*, 93 Misc 2d 516, 517-18 (Sup Ct Erie Co 1978). Moreover, the Commission bears all of the characteristics of a quasi-judicial body. Like the attorney grievance committee in *Wiener* the Commission "functions as a quasi-judicial body through its investigation of complaints and administration of disciplinary proceedings." *Rosenberg*, 8 NY3d at 365-66. Furthermore, it holds hearings "at which both parties [are] entitled to participate," after which it "takes remedial action." *Stega*, 31 NY3d at 670. Judges who are subject to a Commission investigation have multiple opportunities to contest the veracity of a complainant's allegations, including: (1) opportunities to respond to the allegations in writing and under oath during the investigation; (2) the right to a full evidentiary hearing if the Commission authorizes a Formal Written Complaint; and (3) review as of right in the Court of Appeals if the Commission renders a determination imposing public discipline (Tembeckjian Aff ¶¶ 26-29). *See also* Judiciary Law §§ 42-45.

Given these facts, the public policy articulated by the *Wiener* Court requires that complaints made to the Commission are protected by absolute privilege. As in *Wiener*, "it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of" judges to remit that knowledge to the

Commission. 22 NY2d at 332. Indeed "[t]here is hardly . . . a higher governmental interest than a State's interest in the quality of its judiciary" (*Nicholson*, 50 NY2d at 607) (quotation marks omitted), which the Court of Appeals has explicitly held to be "no less important than . . . protecting the integrity of the bar." *Rubenstein*, 23 NY3d at 582. Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," ensuring "public confidence in the judiciary is of singular importance." *Id.* at 581-82.

The same chilling effect that the *Wiener* Court sought to combat threatens the Commission now as a result of plaintiff's lawsuit: "If a complainant were to be subject to a libel action by the accused [judge]," as has happened here, "the effect in many instances might well be to deter the filing of legitimate charges" against judges in the future. *Wiener*, 22 NY2d at 332. That result – which is utterly incompatible with the Commission's constitutional mandate – is unacceptable. Fortunately, the solution is simple, requiring no more than an application of *Wiener* and its progeny to the logical conclusion that correspondence in the course of a Commission proceeding, including complaints made in the "preliminary or investigative stages of the process," are entitled to absolute privilege that confers full immunity against a defamation suit. *Rosenberg*, 8 NY3d at 363; *see Stega*, 31 NY3d at 670-71; *Toker*, 44 NY2d at 219; *Wiener*, 22 NY2d at 332.

B. Dismissal under CPLR 3211(a)(7) is an appropriate remedy.

CPLR 3211(a)(7) permits a court to dismiss a claim where the pleading fails to state a cause of action. Courts of this state have routinely invoked this statute to dismiss a defamation claim where the communications specified in the complaint were entitled to absolute privilege. *See eg, Credit Agricole Corporate and Inv Bank New York Branch v BDC Finance LLC*, 114 AD3d 552, 553 (1st Dept 2014); *Rufeh v Schwartz*, 50 AD3d 1002, 1004 (2d Dept 2008); *Allan and Allan Arts LTD v Rosenblum*, 201 AD2d 136, 137 (2d Dept 1994); *Capoccia v Couch*, 134 AD2d 806, 807 (3d Dept 1987); *see also Wiener*, 22 NY2d at 331, 333 (granting motion to dismiss pursuant to "CPLR 3211 (subd. (a))").

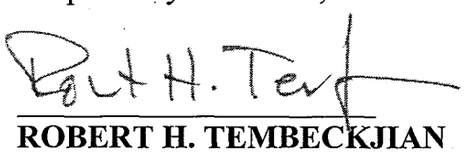
Accordingly, this Court should dismiss the claim against Ms. Koch pursuant to CPLR 3211(a)(7).

CONCLUSION

For the foregoing reasons, Commission Counsel respectfully requests that the Commission's motion for intervention be granted and the plaintiff's action be dismissed based on the absolute privilege attached to the defendant's complaint alleging judicial misconduct.

Dated: February 6, 2023
Albany, New York

Respectfully submitted,



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COMMISSION EXHIBIT 11

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF DUTCHESS Index No. 2022-54141

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FRANK MORA,

Plaintiff,

vs.

STACEY KOCH,

Defendant.

----------x

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Assigned: Rosa, J.S.C.

PRELIMINARY STATEMENT

This is a defamation claim arising from the false and damaging statements written by defendant concerning plaintiff, a sitting Judge, to the New York State Commission on Judicial Conduct. Through her false and libelous statements, defendant intentionally sought to imperil and jeopardize plaintiff's ability to practice his profession and caused plaintiff substantial emotion distress and humiliation.

STATEMENT OF FACTS [1]

[1] Violating the most basic rules governing adjudication of motions to dismiss, (*Cohn v Lionel Corp.*, 21 N.Y.2d 559, 562 [1968], defendant Koch presents her own version of events and requests that this Court adjudicate the case on her narrative. But doing so would be plain error and the facts set forth below should control resolution of this motion. Judge Mora has a medical condition in which he is not able to tolerate the wearing of masks. He was given specific permission from his Administrative Judge, Hon. Kathie Davidson, and Deputy Chief Administrative Judge for Courts Outside of New York City, Hon. Vito C. Caruso, to wear a face shield in lieu of a mask due to his condition. In addition, Judge Mora was given specific permission to be in the Poughkeepsie City Court for each and every time that he was there. Further, Judge Mora was directed by his Administrative Judge to conduct criminal cases virtually. Surely, the headline "Unvaxxed NY Judge Defies Courthouses Ban As Others Ousted" is a sensational one. If the reporter had integrity, he would have published the truth. But the truth is not as interesting as the fiction he created.

According to the Verified Complaint, the factual statements of which control disposition of this motion, Plaintiff Frank Mora is a resident of the City of Poughkeepsie, County of Dutchess, and is a person of legal age who may sue and be sued, and Defendant Stacey Koch is a person of legal age who lives in the City of Poughkeepsie, works in the County of Dutchess, is of legal age and may sue and be sued. The events giving rise to this Verified Complaint arose in the County of Dutchess as and between residents of this County and the sum in controversy is in excess of the jurisdiction of any inferior court. Accordingly, this Honorable Court has jurisdiction over this matter. In addition, the matter was timely filed, and defendant and intervenor make no contrary claim.

The Underlying Event

On December 28, 2021, within the last year, plaintiff brought one of his sons to Seeta Eye, an ophthalmology office in the County of Dutchess. *See* Complaint, para. 4. Defendant Koch was then the office manager of Seeta Eye and at work when plaintiff entered the business with his son. Plaintiff had a patient/provider relationship with Seeta Eye and had known defendant Koch for more than twenty years.

Earlier in 2021, when visiting Seeta Eye, plaintiff explained that he did not medically tolerate face masks and wore a shield. Defendant then permitted him to enter the waiting room/reception area with his face shield to pay for medical services which one of his sons received.

This court should completely disregard the Law360 article and Judge Mora's federal lawsuit that has been brought up by Defendant Koch. They are both completely irrelevant to the instant matter and are only submitted in an attempt to prejudice the court against Judge Mora.

On December 28, 2021, plaintiff again attended to the reception area wearing a face shield with another son. A receptionist asked him to put on a mask and plaintiff advised he could not do so as he does not medically tolerate masks. The receptionist asked plaintiff to speak with defendant Koch, the office manager, and then called her. Upon her arrival, Koch demanded that plaintiff don a mask even though, earlier in 2021, he had explained to her that he was unable medically to do so.

When plaintiff began to again explain why he could not do so, Koch began yelling at him in a rude and disrespectful manner and demanded that plaintiff provide medical documentation of his incapacity to wear a mask. Such a demand of a patient was unlawful [under Interim Guidance provided by the Governor's office on April 17, 2020]. The authority for entities to set a mask policy is governed by 10 NYCRR 2.60. This regulation is very clear stating that only those "able to medically tolerate a face-mask may be required to cover their nose and mouth with a mask or face-covering...." Accordingly, any mask policy must except a person who is not able to medically tolerate a mask. This was not done.

Judge Mora had clearly advised Koch eleven (11) months prior to this incident that he did not medically tolerate a mask. He then again advised both the receptionist and Koch at the time of the incident. Further, the regulation does not require, nor does it make any mention of, proof of medical documentation. Even so, Judge Mora provided medical documentation, which Defendant Koch unilaterally deemed bogus. Even after Defendant Koch verified directly with Dr. M[redacted] that he had sent the documentation, Defendant Koch still wrote in her complaint to the Commission that it was "seemingly bogus."

After defendant Koch yelled and screamed at the plaintiff, she called the police and after calling the police, she again claimed that plaintiff was upsetting other patients. After demanding

that plaintiff stop talking, defendant again called the police, this time reporting she was facing an emergency.

During defendant's second phone call to the police, plaintiff decided to try to further defuse the situation by leaving to obtain a doctor's note attesting to his inability to wear a mask. He advised defendant Koch he was going to seek such a note and left the medical office with his son.

Plaintiff reached his chiropractor who emailed a note which plaintiff forwarded to defendant Koch who received this note and allowed plaintiff and his son to return that afternoon to the eye doctor's office. The visit occurred without further incident.

Defendant Falsely Reports the Event to the New York State office of Judicial Conduct

The following day, Koch wrote statements about the incident which were false, professionally damaging to the plaintiff as a jurist, and calculated to subject him to personal ridicule and shame.

Specifically, on December 29, 2021, defendant wrote the following false and libelous statements on a complaint form provided by the New York State Office of Judicial Conduct:

a) "Mr. Mora *created a huge scene* in our waiting room…"

(b) "He *taunted me in front of a waiting room of @20 people…*"

(c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice*."

(d) "He *then had a letter created* from Chiropractor G[redacted] M[redacted] [sic] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask."

(e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice."*

According to the Verified Complaint, each of these statements is materially false in that: [a] plaintiff did not cause a scene, let alone a "huge scene," in the waiting room; instead, defendant Koch lost her temper and began screaming and yelling as plaintiff sought to explain the situation; [b] plaintiff did not taunt Koch at any time; [c] plaintiff has abiding respect for the police and would never intimate or state the belief that, if called, police would not attend to a situation, and plaintiff had no information as to what the police conveyed to defendant about their intent to come, or not to come, to the medical office; [d] plaintiff would never "have a letter created" by a physician, a claim which intimates to a reasonable reader the exercise of some authority Judge Mora did not wield over a medical provider to make misrepresentations concerning his medical condition; and [e] at all times, plaintiff acted in a professional manner and the contrary claim is without any factual basis and diminishes plaintiff's reputation and his capacity to properly discharge his duties and responsibilities as a City Judge, his profession.

The account provided by Koch is further refuted by one eyewitness, an employee of Seeta, who, at great personal risk, attested to plaintiff's professional behavior during the December 28, 2021 incident with Koch.

Defendant's conduct has caused plaintiff emotional distress, humiliation, shame, and embarrassment and required him to answer her false claims before a state Commission designed and empowered to investigate judicial misconduct. By libeling plaintiff and avowedly and intentionally seeking to interfere with his capacity to perform the duties of his profession, defendant engaged in defamation *per se*.

Plaintiff seeks a jury trial on his defamation claim and compensatory damages of $250,000 and punitive damages of $175,000 against defendant.

LEGAL ARGUMENT

Defendant and the intervening Commission erroneously assert that, regardless of her intent or motive, Koch is entitled to absolute immunity because she provided her defamatory account of events to an investigative authority which New York State has empowered to investigate and discipline judges.

In fact, on its face, Koch's statement is an unsworn averment made out-of-court. It is not analogous to sworn testimony received in a court or to a sworn charge or testimony received by an administrative or investigative body. And, the Commission's web site, which invites complaints from members of the public about the judiciary and has a form for the completion of such complaints, does not suggest or require that such statements be sworn to or notarized. Nor does it promise or represent that a person filing such a complaint, let alone a sham or false complaint, will receive confidentiality or any form of immunity from suit filed by an offended party.

A. THE VERIFIED COMPLAINT MUST BE CONSTRUED IN THE LIGHT MOST FAVORABLE TO PLAINTIFF

On a motion to dismiss based upon absolute privilege, the facts must be taken most favorably to the plaintiff and "where there is a question as to the applicability of the privilege, the issue should be decided at trial." *Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986] ("In an analogous case involving a commercial relationship, where the offending statement included in the counterclaim charged the commission of fraud on numerous others (*Wiser v Koval*, 50 AD2d 523, 524 [1st Dept 1975], *appeal dismissed* 38 N.Y.2d 873 [1975], *lv*

dismissed 39 N.Y.2d 922 [1976]), this court held that the existence of a privilege at common law for the alleged defamation should be decided upon a trial. Applying the guidelines delineated in *Youmans* to the instant case, we find that triable issues of fact are raised as to the existence of the common-law privilege."). *Also see*, *Flomenhaft v. Finkelstein*, 127 A.D.3d 634, 637-38 (1st Dept 2015) (noting that Halperin remains good law, refusing to grant absolute immunity in favor of a person sued for making allegedly false out of court statements which allegedly predicated defamatory claims in lawsuit brought by a third party against plaintiff and referring the matter to fact-finder for resolution). The same principles and result obtain here.

B. DEFENDANT FILED A SHAM COMPLAINT AND IS NOT ENTITLED TO ABSOLUTE PRIVILEGE

When a person files a sham complaint and defames another intentionally in state court, s/he is not entitled to absolute immunity. *Halperin v Salvan*, *supra.* at 548. In *Halperin*, a lawyer filed suit against parties who had allegedly defamed him in the Complaint they filed to initiate a prior court case. The Court rejected any absolute immunity defense, holding, "[W]e cannot agree with our dissenting colleague's conclusion that the defamatory statements at issue are protected by the common-law privilege afforded to words spoken and written in the course of judicial proceedings. This privilege is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, *made in good faith and without malice*. (*Moore v Manufacturers Natl. Bank*, 123 N.Y. 420, 426 [1890].) In *Youmans v Smith, 153 N.Y. 214, 220 [1897]),* the court explained the relevant guidelines in determining whether the privilege has been lost: "If counsel through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and *so needlessly defamatory as to warrant the inference of express malice, they lose their privilege and must take the*

consequences. In other words, if the privilege is abused, protection is withdrawn." (Emphases added.)

Here, plaintiff alleges that defendant Koch intentionally made false and defamatory statements about him to induce the Commission to investigate and ultimately sanction him. The situation is directly analogous to that presented in *Flomenhaft, supra.*, where plaintiff alleged that Finkelstein "made false representations to Harrison about plaintiff and that the statements were made specifically to induce Harrison to start an action against the plaintiff." Likewise, here, plaintiff submits that Koch knowingly made false and defamatory out-of-court statements to the Commission which caused it to initiate proceedings against Judge Mora. In such a situation, no absolute privilege applies as a matter of law though a jury could conclude after hearing the evidence that Koch did NOT make her complaints with the required "sham" intent, making apposite the absolute privilege.

In short: in light of the allegations of plaintiff's Verified Complaint, no absolute immunity applies to Koch's defamatory statements, which were made out of court, never verified and, according to the Verified Complaint, offered in bad, not good, faith.

Defendant's motion is improperly premised on this court determining that defendant made her complaint in good faith and without malice, but this is inappropriate where, as here, the Verified Complaint avers the opposite – defendant intentionally made false statements about Judge Mora to embarrass and humiliate him and to have sanctions imposed upon him, and, as such, must be denied.

C. THE NATURE OF THE FORUM DOES NOT CONTROL

Defendant and the intervening Commission claim that because Koch's statements were made to a quasi-judicial forum, they automatically and categorically gain the benefit of an absolute privilege. This is plainly erroneous; the above-cited precedent establishes that even statements made in court pleadings and proceedings may be pierced and serve as a predicate for a defamation action where the trier of fact concludes that the false statements were a "sham," that is, made in bad faith and with the intent, as pled here, to subject a plaintiff to humiliation and embarrassment.

As this is such a case and as defendant Koch's complaint to the Commission constitutes libel *per se* and, if taken as true, presents plaintiff Mora as a person who should not be a jurist, defendant's motion should be denied.

Likewise, any claim that Mora instituted this proceeding in bad faith to retaliate against the defendant is categorically denied as plaintiff has no such intent and proceeds to vindicate his own professional reputation which defendant besmirched by her false and defamatory statements.

CONCLUSION

The instant motion should be denied, an answer filed within ten days, and a discovery schedule established.

Dated: March 6, 2023

Yours, etc.

MICHAEL H. SUSSMAN

STATE OF NEW YORK (COUNTY OF DUTCHESS) SS. Supreme
BRADFORD KENDALL, COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS,
DUTCHESS COUNTY DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL
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AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Memorandum of Law
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COUNTY CLERK & CLERK OF THE SUPREME & COUNTY COURTS, DUTCHESS COUNTY

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Counsel for Plaintiff

To: All counsel through NYSCEF

COMMISSION EXHIBIT 12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 Assigned: Hon. Maria G. Rosa, J.S.C.

REPLY MEMORANDUM OF LAW IN SUPPORT OF KOCH'S MOTION TO DISMISS COMPLAINT

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 3-20-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Reply Memorandum #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/31/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

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Defendant Stacey Koch respectfully submits this reply memorandum of law in further support of her motion to dismiss the Verified Complaint of Plaintiff Frank Mora with prejudice and for attorneys' fees and costs.

I. PRELIMINARY STATEMENT

In her opening brief, Koch demonstrated that her complaint to the Commission commenced a judicial proceeding, the alleged defamatory statements in her complaint are therefore absolutely privileged, and she is entitled to attorneys' fees under the anti-SLAPP statute governing this action. In his opposition, Mora does not seriously dispute most of these points. Instead, his argument focuses on a narrow exception to the absolute privilege for "sham" proceedings and contends that Koch's complaint was a sham.

Mora's contention is belied by his own pleading and the record in this case. Not once does his Complaint allege that Koch perpetuated a sham proceeding. Moreover, the Commission's ongoing investigation, the affirmation of the Commission's Counsel, and Koch's complaint itself demonstrate that it is not even remotely a sham. The Court should reject Mora's belated and baseless "sham" argument.

As Koch noted in her opening brief, Mora's frivolous Complaint raises serious questions as to his motive for filing it. Mora's opposition makes a futile attempt to impugn Koch's motives, but the record makes clear that the only sham before this Court is Mora's Complaint. The Court should dismiss his Complaint with prejudice and award Koch her costs and attorneys' fees.

II. ARGUMENT

A. Mora Does Not Dispute that the Anti-SLAPP Statute Governs This Action

Mora does not dispute, and therefore concedes, that this action comes within the definition of a SLAPP suit and triggers the anti-SLAPP statute, as Koch argued in her opening

brief. *See* Koch's Mem. at 6–7, NYSCEF Doc. No. 6. Consequently, the anti-SLAPP statute sets the standard of review and displaces the traditional motion-to-dismiss standard on which Mora relies, *see* Pl.'s Mem. at 6–7, NYSCEF Doc. No. 26. *See also Griffith v. Daily Beast*, No. 100114/2020, 2022 WL 3339887, at *1 (Sup. Ct. N.Y. Cnty. Aug. 9, 2022) ("[Anti-SLAPP law] changed . . . the standard by which a court is to review a defendant's motion to dismiss.").

Under the anti-SLAPP standard, "the burden is upon the plaintiff to establish that its claim has the requisite substantial basis" in law. *Sackler v. Am. Broad. Cos.*, 71 Misc. 3d 693, 700 (Sup. Ct. N.Y. Cnty. 2021) (quoting *Duane Reade, Inc. v. Clark*, 2 Misc. 3d 1007(A), at *5 (Sup. Ct. N.Y. Cnty. 2004)). A "substantial basis in law" requires "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." *Smartmatic USA Corp. v. Fox Corp.*, 2023 N.Y. Slip Op. 00832, at **1 (1st Dep't Feb. 14, 2023) (quoting *Golby v. N & P Eng'rs & Land Surveyor, PLLC*, 185 A.D.3d 792, 793–94 (2d Dep't 2020)). As explained here and in Koch's opening brief, Mora cannot satisfy this "stringent standard." *Sackler*, 71 Misc. 3d at 700 (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5).

In a footnote, Mora objects to Koch's factual recitation and certain background information that undermines his preferred "narrative" alleged in his Complaint. Pl.'s Mem. at 1 n.1. But the Court may consider Koch's complaint to the Commission because it was attached as an exhibit to Mora's pleading and is thereby "incorporated by reference." *Shuman v. N.Y. Mag.*, 72 Misc. 3d 1211(A), at *2 (Sup. Ct. N.Y. Cnty. 2021), *aff'd*, 211 A.D.3d 558 (1st Dep't 2022). Moreover, the anti-SLAPP law allows the Court "to consider affidavits and other evidence not typically permitted under a CPLR 3211(a) motion to dismiss." *Project Veritas v. N.Y. Times Co.*, 2021 N.Y. Slip Op. 32892(U), at **8 (Sup. Ct. Westchester Cnty. Aug. 12, 2021). Thus, the Court may consider Koch's complaint to the Commission and other cited materials in her factual

recitation. In any event, Mora's preferred factual narrative is irrelevant, because Koch's complaint to the Commission is absolutely privileged "regardless of its truth or falsity." *Mayer v. Riordan*, 55 Misc. 3d 1203(A), at *7 (Sup. Ct. N.Y. Cnty. 2017) (citation omitted); *see also Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011) (holding that whether or not defendant's statements are valid is "irrelevant"), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).[1]

B. The Absolute Privilege for Statements in a Judicial Proceeding Protects Koch's Statements

Plaintiff cannot establish that his claim has a substantial basis because Koch's complaint to the Commission is absolutely privileged from defamation claims. Mora's contrary arguments are unavailing.

1. *Wiener v. Weintraub* Controls This Case

Mora cannot seriously dispute that under *Wiener v. Weintraub*, 22 N.Y.2d 330 (1968), a confidential complaint to bar or judicial authorities is absolutely privileged as a statement in a judicial proceeding. In his opposition, Mora notes that Koch's complaint was "an unsworn averment made out-of-court." Pl.'s Mem. at 6. He cites no authority for why this makes any difference. In fact, the "letter" to the grievance committee in *Wiener* was *also* an unsworn

[1] Because they are irrelevant, Koch will not belabor the many inaccuracies in Mora's "statement of facts." However, one false accusation merits rebuttal here. Mora contends that Koch was required to accept Mora's *ipse dixit* that he cannot "tolerate" a mask. Pl.'s Mem. at 3. In fact, unsupported assertions and even a physician's note do not automatically entitle an individual to a medical exemption from New York's mask mandate and must yield to public health concerns in certain circumstances. *See Doe v. Franklin Square Union Free Sch. Dist.*, 568 F. Supp. 3d 270, 289–90 (E.D.N.Y. 2021) (construing 10 N.Y. C.R.R. 2.60). That is particularly true here, where a chiropractor's note merely stated that Mora had an unspecified "medical condition," and the chiropractor refused to provide an actual diagnosis when Koch asked for one. Compl. Ex. 1; *see Strong v. Zucker*, 582 F. Supp. 3d 65, 71 (W.D.N.Y. 2022) (rejecting claim of plaintiff who purportedly could not "tolerate" a mask "due to some unspecified 'medical condition'"); *Adams v. City of New York*, 2022 N.Y. Slip Op. 30082(U), at **4–5 (Sup. Ct. N.Y. Cnty. Jan. 5, 2022) (rejecting claim of plaintiff who requested mask exemption but failed to provide "requisite medical documentation").

averment made out-of-court. *Wiener*, 22 N.Y.2d at 332; *see also Arts4All, Ltd. v. Hancock*, 5 A.D.3d 106, 108 (1st Dep't 2004) ("We reject plaintiffs' argument that the privilege applies only to statements made under oath and not to out-of-court statements . . . ."). Mora faults the Commission's complaint form because it "does not suggest or require that such statements be sworn to or notarized." Pl.'s Mem. at 6. But neither does *Wiener* contain such a suggestion or requirement. Finally, Mora faults the complaint form because it does not "promise or represent that a person filing such a complaint . . . will receive confidentiality or any form of immunity from suit." *Id.* Again, *Wiener* contains no such requirement. But just like *Wiener*, Koch's complaint is protected by statutory confidentiality, under N.Y. Judiciary Law § 45(1). *See Wiener*, 22 N.Y.2d at 332 (citing N.Y. Judiciary Law § 90(10)).

Mora makes no attempt to distinguish *Wiener* because it is indistinguishable. Koch's complaint to the Commission is absolutely privileged just like the letter to the grievance committee in *Wiener*. *See* Koch's Mem. at 9–11. Mora also does not dispute that Koch's statements were pertinent to the proceeding. *See id.* at 12. Accordingly, just as was the case in *Wiener*, the motion to dismiss should be granted. *See Wiener*, 22 N.Y.2d at 332–33.

2. Koch's Complaint to the Commission Is Not a "Sham"

The absolute privilege applies to all statements in a judicial proceeding "regardless of the motive for which they were made." *Gottlieb v. Colonel*, 180 A.D.3d 877, 879 (2d Dep't 2020) (quoting *Brady v. Gaudelli*, 137 A.D.3d 951, 952 (2d Dep't 2016)); *see also Fay v. Fay*, 2020 N.Y. Slip Op. 34930(U), at **2 (Sup. Ct. Dutchess Cnty. Nov. 5, 2020) (Rosa, J.); *Wiener*, 22 N.Y.2d at 331. "Absolute privilege confers immunity from liability without regard to motivation, irrespective of the speaker's motive, *even if uttered with malice*." *Matchett v. Stark*, 2016 N.Y. Slip Op. 31302(U), at **11 (Sup. Ct. N.Y. Cnty. July 6, 2016) (emphasis added); *see also Mayer*, 55 Misc. 3d 1203(A), at *7 (absolute privilege applies "regardless of 'any malice,

bad faith, recklessness or lack of due care with which it was spoken or written, and regardless of its truth or falsity'"). A plaintiff's "allegations of malice and falsity, even if they are true, are insufficient to strip [defendant's] complaint of the protection of the absolute privilege accorded to judicial proceedings." *Tradition (N. Am.) Inc. v. Bernhardt*, 2009 N.Y. Slip Op. 30493(U), at **5 (Sup. Ct. N.Y. Cnty. Feb. 27, 2009).

Accordingly, Mora's claims of malice and bad faith are "irrelevant." *TRB Acquisitions LLC v. Yedid*, No. 651160/2021, 2021 WL 4350241, at *1 (Sup. Ct. N.Y. Cnty. Sep. 20, 2021). Nonetheless, Mora relies on *Halperin v. Salvan*, 117 A.D.2d 544 (1st Dep't 1986), to invoke a "narrow exception" to absolute privilege for "sham" proceedings.[2] *Azzopardi v. Giorio Armani Corp.*, 2014 N.Y. Slip Op. 30284(U), at **7 (Sup. Ct. N.Y. Cnty. Jan. 27, 2014). But as an initial matter, Mora, relying on 19th-century cases, sets forth an outdated and incorrect standard for the sham exception. *See* Pl.'s Mem. at 7–8 (citing *Moore v. Mfrs.' Nat. Bank*, 123 N.Y. 420, 426 (1890); *Youmans v. Smith*, 153 N.Y. 214, 220 (1897)).[3]

Under current law, the absolute privilege may be lost only where the sham proceeding is "brought *solely* to defame." *Manhattan Sports Rests. of Am., LLC v. Lieu*, 146 A.D.3d 727, 727 (1st Dep't 2017) (emphasis added) (quoting *Flomenhaft v. Finkelstein*, 127 A.D.3d 634, 638 (1st Dep't 2015)). This strict standard may be met where the complainant "failed to move forward" with the proceeding or where the adjudicating body suggested that the underlying complaint "is a

[2] The sham exception is available only in narrow circumstances because otherwise the exception would swallow the rule and "substantially contravene the policy that underlies the privilege." *Lacher v. Engel*, 33 A.D.3d 10, 14 (1st Dep't 2006); *see also* Koch's Mem. at 10–11 (explaining policy rationale for absolute privilege for statements in judicial proceedings).

[3] Moreover, even Mora's cited cases recognize that "the question of malice has no place" in cases of absolute privilege, *Moore*, 123 N.Y. at 426, which protects the statements "irrespective of the motive with which they are used," *Youmans*, 153 N.Y. at 219 (quoting *Marsh v. Ellsworth*, 50 N.Y. 309, 311 (1872)).

sham or was brought solely for defendant's malicious motive." *Lacher v. Engel*, 33 A.D.3d 10, 14 (1st Dep't 2006). Plainly, Mora cannot meet this standard for numerous reasons.

First, Mora's Complaint never alleges that Koch's complaint to the Commission was a sham or filed solely to defame Mora. In his brief, Mora cites no paragraph in his Complaint where he makes such an allegation, because he never did. His "sham" theory was concocted after the fact in a futile attempt to save his pleading. That is reason enough to dismiss his Complaint. *See Rosenberg v. Home Box Off., Inc.*, 2006 N.Y. Slip Op. 30358(U), at **20 (Sup. Ct. N.Y. Cnty. Jan. 30, 2006) ("[P]laintiff may not amend his complaint to add a new legal theory via statements in a memorandum of law in opposition to a pending dispositive motion."), *aff'd*, 33 A.D.3d 550 (1st Dep't 2006); *In re 9F Inc. Sec. Litig.*, 2023 N.Y. Slip Op. 30699(U), at **2 (Sup. Ct. N.Y. Cnty. Mar. 6, 2023) (dismissing complaint where plaintiffs' opposition papers asserted "new theories not reflected in the complaint").

Second, even if Mora had alleged a sham, such an allegation would be "conclusory and contradicted by the facts" in the record. *Lacher*, 33 A.D.3d at 13. On the face of Koch's complaint to the Commission, it is apparent that there were legitimate, non-malicious reasons for her complaint. Koch openly stated the reasons for making her complaint: "This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County." Compl. Ex. 1. This express explanation of her good faith undermines any claim that Koch filed her complaint for the sole reason to defame Mora. *See Peck v. Peck*, 2018 N.Y. Slip Op. 30990(U), at **22 (Sup. Ct. N.Y. Cnty. May 25, 2018) (rejecting sham exception where defendant had "motives other than to defame"), *aff'd*, 180 A.D.3d 558 (1st Dep't 2020).

Moreover, neither Koch nor the Commission failed to move forward with Koch's complaint. To the contrary, the Commission authorized an investigation into Koch's complaint, conducted witness interviews, propounded written questions to Mora, and received answers to those questions. Tembeckjian Aff. ¶¶ 14–16, NYSCEF Doc. No. 16;[4] Compl. ¶ 27. The Commission's investigation remains ongoing, and the Commission is scheduling additional witness interviews and intends to call Mora to testify. Tembeckjian Aff. ¶¶ 18–19; *see Peck*, 2018 N.Y. Slip Op. 30990(U), at **22 (rejecting sham exception where underlying "actions were and continue to be actively litigated").

The Commission has never remotely suggested that Koch's complaint was a sham. If her complaint lacked merit, the Commission could—but did not—summarily dismiss it. *See* N.Y. Judiciary Law § 44(1). The fact that the Commission instead chose to open an investigation—and continues to actively pursue that investigation—confirms that her complaint is not a sham. *See Chutko v. Ben-Ami*, 150 A.D.3d 582, 583 (1st Dep't 2017) (rejecting allegation of bad faith where adjudicating body "found that there were reasonable grounds to inquire into" litigant's claim); *Manhattan Sports*, 146 A.D.3d at 727 ("The fact that several of [litigant's] claims were sustained . . . further undercuts [the] contention that this litigation is a sham.").[5]

[4] Under the anti-SLAPP statute, the Court may consider the Affirmation of Robert H. Tembeckjian on this motion to dismiss. *See* N.Y. C.P.L.R. 3211(g)(2).

[5] The Commission's continuing and diligent investigation of Koch's complaint easily distinguishes this case from Mora's cited cases. In *Halperin*, the defendants filed but never prosecuted the underlying action containing the allegedly defamatory statements. *Halperin*, 117 A.D.2d at 545. In *Flomenhaft*, there was "little in the record" concerning the extent to which the underlying action was litigated, other than the fact that it was discontinued (and the underlying litigant then sued the alleged defamer upon realizing it was a sham). *Flomenhaft*, 127 A.D.3d at 636, 638. Here, in sharp contrast, the Commission's Counsel has affirmed that its investigation is ongoing and listed the various investigative steps it has taken and continues to take. Tembeckjian Aff. ¶¶ 14–19.

Finally, if Koch had intended solely to defame Mora, it would be an odd scheme to defame him by filing a complaint that must be kept, by statute, *confidential*. *See* N.Y. Judiciary Law § 45(1). If her complaint were a sham, it would inevitably be dismissed and never see the light of day or in any way harm Mora's reputation, which would defeat the point of the supposed sham. In sum, all the facts and circumstances indicate that Koch's complaint is not a sham, and certainly Mora has not established a substantial basis that it is, as is his burden in this SLAPP suit.

The only sham before this Court is Mora's Complaint in this case. Mora's baseless attempt to impugn Koch's motives cannot distract from the serious questions about his own motive in filing this case. The fundamental defects in his pleading, and his hollow claim to reputational damage by a confidential complaint that he himself publicly disclosed, reasonably lead to the conclusion that he filed this action to retaliate against and intimidate Koch or other witnesses in his pending misconduct inquiry. The Commission's Counsel shares this conclusion, and warns that Mora's retaliatory lawsuit, if allowed to proceed, will have a chilling effect on witnesses—the very harms that the absolute privilege is meant to prevent. *See* Tembeckjian Aff. ¶ 4. Notably, Mora's only response to these serious questions about his motive is a single sentence containing a conclusory denial.[6] *See* Pl.'s Mem. at 9.

[6] In fact, Mora's brief only compounds the questions about his motive. He decries as "fiction" the "sensational" allegations in a Law360 article that he violated court rules and criminal procedure. Pl.'s Mem. at 1 n.1. Curiously, Mora did not sue Law360 for defaming him with supposedly sensational allegations distributed to innumerable industry professionals, but he did file this defamation lawsuit against a private citizen who filed a confidential complaint alleging unprofessional behavior. Mora's selective prosecution of his supposed reputational damage suggests that he had an ulterior motive in singling out Koch with this lawsuit.

C. Koch Is Entitled to Attorneys' Fees and Costs

Mora does not dispute that, under the anti-SLAPP statute, if his case is dismissed, Koch is entitled to a mandatory award of attorneys' fees and costs. *See* Koch's Mem. at 13. Accordingly, Koch's request for attorneys' fees should be granted.

As this Court has previously noted, it is "deeply troubl[ing]" that a plaintiff—let alone a sitting judge—would file a defamation action based on a private citizen's reporting to government authorities her observations of conduct that she believed was improper. *Gottlieb v. Colonel*, 2016 N.Y. Slip Op. 33085(U), at **3–4 (Sup. Ct. Dutchess Cnty. Dec. 14, 2016) (Rosa, J.) (awarding attorney's fees and imposing sanctions), *judgment entered*, 2017 WL 11546097 (Sup. Ct. Dutchess Cnty. Mar. 6, 2017), *aff'd*, 180 A.D.3d 877 (2d Dep't 2020). Given that Koch's complaint was clearly privileged, Mora's action was "baseless" and "completely without merit in law." *Id.* at **3. Mora should bear the costs that he has imposed on Koch with this baseless lawsuit.

III. CONCLUSION

For all the foregoing reasons and those set forth in her opening brief, the Court should dismiss the Complaint with prejudice and award Koch her attorneys' fees and costs.

Dated: March 20, 2023

Respectfully submitted,

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Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Victor A. Kovner, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Reply Memorandum of Law in Support of Koch's Motion to Dismiss Complaint contains 2,984 words.

/s/ Victor A. Kovner
Victor A. Kovner

COMMISSION EXHIBIT 13

SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

MEMORANDUM OF LAW IN REPLY

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Dated: March 20, 2023

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 3-20-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Memorandum # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY SEAL

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

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PRELIMINARY STATEMENT

This Memorandum of Law is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in reply to plaintiff's opposition (Dkt. 26, Plf Opp) to defendant's motion to dismiss the complaint (Dkt. 15-18) and in further support of the Commission's motions to intervene and dismiss the complaint.[1]

POINT I

PLAINTIFF'S SILENCE REGARDING THE COMMISSION'S MOTION TO INTERVENE IS A CONCESSION THAT INTERVENTION IS APPROPRIATE.

Plaintiff's opposition is completely silent as to the Commission's motion to intervene in this matter. *See, generally,* Dkt. 26, Plf Opp. As a result, he has conceded that the Commission's intervention in this action is appropriate. *See People v. Gruden*, 42 NY2d 214, 216 (1977) ("Normally what is not disputed is deemed to be conceded."). For all the reasons set forth in the Commission's motion papers, the Commission respectfully requests that the Court grant its motion to intervene. *See* Dkt. 18, Com MOL, pp. 5-9.

[1] Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss is referred to herein as "Dkt. 26, Plf Opp", the Affirmation of Robert H. Tembeckjian in support of the Commission's motions to intervene and dismiss the complaint is referred to herein as "Dkt. 16, Tembeckjian Aff", and the Commission's Memorandum of Law in support of its motions to intervene and dismiss the complaint is referred to herein as "Dkt. 18, Com MOL".

POINT II

PLAINTIFF'S COMPLAINT IS BARRED BY THE DOCTRINE OF ABSOLUTE PRIVILEGE AND MUST BE DISMISSED PRE-ANSWER.

For more than one hundred years, Court of Appeals precedent has held that allegedly defamatory statements made in a judicial proceeding are protected by absolute privilege, so long as they are material and pertinent to the proceeding.

More than fifty years ago, in *Wiener v. Weintraub,* 22 NY2d 330 (1968), the Court of Appeals explicitly extended that same protection to statements made to a quasi-judicial disciplinary agency, such as the Commission. In doing so, the Court recognized that it is in the "public interest to encourage those who have knowledge of dishonest or unethical conduct impart that knowledge to a . . . designated body for investigation" and that fear of being sued for defamation might deter complainants from coming forward. *Id.* at 332.

To allow this action to proceed and require defendant to bear the cost of extended litigation would create the very chilling effect that the absolute privilege recognized by *Wiener* was designed to prevent. Indeed, an "absolute" privilege that is recognized only after responsive pleadings, discovery, and trial is no different from the qualified privilege afforded defendants in other contexts. Subjecting defendants who file misconduct complaints against judges to the cost and anxiety of protracted litigation will discourage the filing of complaints just as

if no privilege existed. Consistent with Court of Appeals' precedent and the State's important interest in maintaining public confidence in the integrity of the judiciary, this Court should grant the Commission's motion to dismiss the complaint.

A. The Court of Appeals' Holding in *Wiener v. Weintraub* Affords Absolute Privilege to All Complaints Made to the Commission, Even Complaints That are False and Maliciously Made.

The Court of Appeals' holding in *Wiener* affords absolute immunity to any complaint made to the Commission, even if false and maliciously made, so long as the statements made are material and pertinent to an alleged violation of the Rules Governing Judicial Conduct.

In *Wiener,* the Court reiterated the long-established principle that "statements . . . made in the course of judicial proceedings are privileged as long as such statements are material and pertinent to the questions involved . . . irrespective of the motive with which they are made." *Wiener*, 22 NY2d at 331 (emphasis added; internal quotations omitted). After observing that a proceeding before a body such as the Attorney Grievance Committee constitutes a "judicial proceeding" (*id.,* quoting *Doe v. Rosenberry*, 255 F.2d 118, 120 [1958]), the Court went on to find that "since the statement to the Grievance Committee was material and pertinent to the matter in issue, the defendants were protected by an absolute

privilege and the courts below had no alternative but to grant the motion dismissing the complaint." *Wiener*, 22 NY2d at 332-33.

Like the defendants in *Wiener*, defendant's complaint to the Commission is material and pertinent to the question of whether plaintiff has engaged in judicial misconduct. Here, defendant's allegedly defamatory statements consist of a series of allegations about plaintiff's conduct on December 28, 2021, during a visit to the ophthalmology office where defendant worked, including that plaintiff refused to comply with the office's masking policy, created a scene in the waiting room that resulted in a call to the police, and engaged in additional behavior unbecoming of a New York State judge. *See* Dkt. 2, Exhibit 1 to plaintiff's Complaint. These allegations, if substantiated, could result in a Commission determination that plaintiff has committed judicial misconduct.[2] The fact that the allegations are material and pertinent to the issue of judicial misconduct triggers the privilege and leaves this court with "no alternative but to grant the motion dismissing the complaint." *Wiener*, 22 NY2d at 332-33.

Plaintiff does not and cannot dispute the materiality and pertinence of defendant's complaint to the Commission. Instead, he attempts to evade dismissal

[2] This is so even though the alleged conduct did not take place inside a courthouse. Indeed, as the Court of Appeals has observed, "[t]here is no question that judges are accountable for their conduct at all times," and "misconduct, no matter where it occurs, subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge" *Matter of Senzer,* 35 NY3d 216, 220 (2020) (quoting *Matter of Backal*, 87 NY2d 1, 8 [1995] and *Matter of Kuehnel v State Commn. on Jud. Conduct*, 49 NY2d 465, 469 [1980], internal citations omitted).

of his complaint by alleging that defendant's communication to the Commission was a "'sham' . . . made in bad faith and with the intent . . . to subject plaintiff to humiliation and embarrassment." (Dkt. 26, Plf Opp, pp. 7-8; 9).

Plaintiff's argument misconstrues the case law. As a plain reading of *Wiener* makes clear, the extremely narrow exception denying absolute privilege for statements made in "sham" judicial proceedings brought solely for the purpose of defamation is simply inapplicable to cases like the one at bar. Thus, plaintiff's reliance on *Halperin v. Salvan*, 117 AD2d 544 (1st Dept 1986) (Dkt. 26, Plf Opp, pp. 7-8) is misplaced. Indeed, it rests on a failure to apprehend the vast public policy difference between protecting judicial proceedings in general and protecting proceedings that specifically address the honesty and integrity of judges and judicial officers.[3]

Petitioner is correct that *Halperin* holds that in some limited circumstances, the absolute privilege afforded statements made in ordinary civil suits can be "lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, made in good faith and without malice." *Id.* at 548. (Dkt. 26, Plf Opp,

[3] In fact, *Halperin* has been recognized to misstate well-established New York law on absolute privilege. Observing that the Court of Appeals had long ago concluded that "'[m]alice and bad faith simply do not destroy the privilege if the statements meet the minimal standard for pertinence,'" the court in *Pandozy v. Tobey*, 2007 U.S. Dist. LEXIS 76400, *3, 2007 WL 3010333, *1 (SDNY 2007), concluded that *Halperin* "is an aberration and that it misstates long-settled New York law on the subject." *Id.*

p. 7). But no such language appears in *Wiener*. To the contrary, the Court of Appeals explicitly extended absolute privilege to shield even malicious and bad-faith complaints of attorney misconduct from liability for defamation. *Wiener* recognized that:

> on occasion false and malicious complaints will be made. But, . . . the necessity of maintaining the high standards of our bar – indeed, the proper administration of justice – requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

22 NY3d at 332 (emphasis added).

Subsequent to *Wiener,* the Court of Appeals has repeatedly referenced the magnitude of affected public policy concerns when determining whether alleged defamatory statements are protected by absolute privilege. *See Liberman v Gelstein,* 89 NY2d 429, 437 (1992) ("When compelling public policy requires that the speaker be immune from suit, the law affords an absolute privilege"); *Rosenberg v MetLife, Inc*, 8 NY3d 359, 365 (2007) ("absolute privilege can extend to preliminary or investigative stages of the process, particularly where compelling public interests are at stake") (citing *Wiener*, *supra*).

The public policy considerations that led the Court to confer absolute immunity on allegations of attorney misconduct – even false allegations maliciously made – apply with even greater force to allegations of judicial misconduct. Indeed "[t]here is hardly . . . a higher governmental interest than a

State's interest in the quality of its judiciary." *Nicholson v State Com. on Judicial Conduct*, 50 NY2d 597, 607 (1980). In furtherance of that vital governmental interest, the Commission was created to "protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984). "Experience teaches that the effective performance of that function necessarily requires the free flow of information to the Commission." *Id.*

Requiring the defendant to bear the cost and suffer the anxiety of extended litigation threatens that "free flow of information" not just in this case, but in every potential investigation where complainants or witnesses fears that statements to the Commission adverse to the subject judge may expose them to suit. The doctrine of absolute privilege is designed to protect against that "chilling effect" by ensuring that the personal interests of "individuals participating in a public function, such as . . . quasi-judicial proceedings" do not suffer "an adverse impact," "especially fear of a civil action, whether successful or otherwise." *Rosenberg v. Metlife, Inc.*, 8 NY3d 359, 365 (2007).

Here, plaintiff's frivolous defamation suit has clearly imperiled that "free flow of information" to the Commission. This Court should dismiss his complaint, which never should have been brought in the first place.

B. Plaintiff Has Not Alleged Any Facts Sufficient to Invoke the "Sham" Exception to Absolute Immunity.

Even assuming, *arguendo*, that the "sham" exception to absolute immunity was available in this case, plaintiff has not alleged facts even remotely sufficient to warrant its application. Indeed, his complaint provides no facts in support of that theory at all. Nowhere in plaintiff's verified complaint does he allege that the defendant's complaint to the Commission was a "sham" or that she acted with malice. (Dkt. 1, Plf Complaint).

Instead, plaintiff asks this Court to deny the defendant absolute immunity for her complaint to the Commission solely on his own conclusory "alleg[ation] that defendant Koch intentionally made false and defamatory statements about him." (Dkt. 26, Plf Opp, p. 8). As *Halperin* and its progeny make clear, that bare allegation falls far short of what is required.

Halperin cites the Court of Appeals' decision in *Youmans v. Smith*, 153 NY 214, 220 (1897) for the "relevant guidelines in determining whether the privilege has been lost." *Youmans* held:

> If counsel through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege and must take the consequences.

Halperin at 548 (quoting *Youmans*, emphasis added). Nothing in plaintiff's complaint comes close to alleging that the defendant's statements to the Commission could meet that exacting standard.

As the First Department explained in *Lacher v Engel,* 33 AD3d 10 (1st Dept 2006), something more than a mere allegation of malice is required find that the privilege has been lost. *Lachler* noted that:

> In Halperin, this Court found that the allegation of malicious intent was "arguably substantiated" by the fact that the plaintiffs had not moved forward with the lawsuit, and because of the inflammatory language describing the purported class in the caption.

Id. at 14. In contrast, the *Lachler* Court found no factual basis in the record to support the plaintiff's contention that the defendant's "statements were made maliciously, and that the action was a mere sham for the purposes of cloaking defamatory statements" finding instead that the "allegations [were] conclusory and contradicted by the facts." *Id.* at 13. That same analysis applies in this case – plaintiff's "conclusory" allegation that defendant acted in bad faith cannot defeat the absolute privilege.

Contrary to the plaintiff's claim, *Flomenhaft v. Finkelstein*, 127 AD3d 634 (1st Dept 2015) (*see* Dkt. 26, Plf Opp, p. 8), does not support his argument. *Flomenhaft* acknowledged that ". . . a statement that is pertinent to litigation is absolutely privileged and cannot form the basis of a defamation action." *Id.* at 637.

The Court also reiterated the well-settled rule that "where the privilege is invoked, any doubts are to be resolved in favor of pertinence" and "the test to determine whether a statement is pertinent to litigation is extremely liberal, such that the offending statement, to be actionable, must have been outrageously out of context." *Id.* (internal quotations and citations omitted). As in *Halperin,* however, the *Flomenhaft* court found documentary facts in the record "supported plaintiff's claim that the lawsuit . . . against plaintiff was a sham." *Id.* at 638. Because plaintiff can point to no facts in this record supporting his claim that defendant's complaint to the Commission was made in bad faith, *Flomenhaft* is inapposite.[4]

There is no evidence that defendant Koch made her complaint to the Commission in bad faith, with malice, or that her complaint is a "sham" brought solely to embarrass the plaintiff. The fact that the Commission is investigating defendant's complaint (Dkt. 16, Tembeckjian Aff. ¶¶3-4) is conclusive evidence that defendant's statements are material and pertinent to the issue of judicial misconduct. Defendant has done all that she could do to press forward with her complaint. Plaintiff has not and cannot allege that defendant has taken any steps to

[4] There is also no basis for plaintiff's assertion that a complainant's use of the Commission's online complaint form, as opposed to making allegations in a sworn statement, nullifies the protection of absolute privilege (Dkt. 26, Plf Opp, p. 6). The Appellate Division, First Department has expressly rejected the assertion "that the privilege applies only to statements made under oath and not to out-of-court statements." *Arts4All, Ltd. v. Hancock*, 5 AD3d 106, 108 (1st Dept 2004).

withdraw or abandon her complaint. As a result, even if the "sham" exception set out in *Halperin* were applicable in this case, there is simply no factual basis to support its application here.

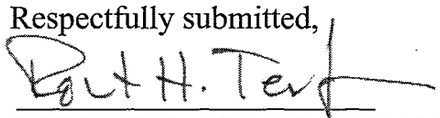
In sum, plaintiff does not dispute that the allegations made by defendant in her complaint to the Commission are material and pertinent to the issue of whether plaintiff engaged in judicial misconduct. There is not a single fact in the record to support plaintiff's conclusory allegation that her complaint was made in bad faith. As in *Wiener,* this court has "no alternative but to grant the motion dismissing the complaint." *Wiener*, 22 NY2d at 332-33.

CONCLUSION

For the foregoing reasons, Commission Counsel respectfully requests that the Commission's motion for intervention be granted and plaintiff's action be dismissed based on the absolute privilege attached to the defendant's complaint.

Dated: March 20, 2023
Albany, New York

Respectfully submitted,



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COMMISSION EXHIBIT 14

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS : CIVIL TERM
- X

FRANK MORA,

Plaintiff(s).

-against-

STACY KOCH,

Defendant(s).

- X

ORAL ARGUMENT

INDEX NO. 2022-54141

Dutchess County Courthouse
10 Market Street
Poughkeepsie, New York 12601
March 27, 2023

BEFORE: HONORABLE MARIA G. ROSA
Justice of the Supreme Court

APPEARANCES:

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(Appearances continued on next page)

(Appearances continued)

STATE OF NY COMMISSION ON JUDICIAL CONDUCT
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BY: EDWARD LINDNER, ESQ.

Frank Mora, Plaintiff
Stacey Koch, Defendant

Norma Anglero,
Senior Court Reporter

- P r o c e e d i n g s -

COURT CLERK: Calling numbers 10, 11 and 12 on the calendar. Mora v. Koch.

THE COURT: Good morning. Appearances, please.

MR. SUSSMAN: Michael H. Sussman, Sussman & Goldman, appearing for Judge Mora, Your Honor. Good morning.

THE COURT: Good morning.

MR. HOLOSZYC-PIMENTEL: Good morning, Your Honor. Raphael Holoszyc-Pimentel of Davis, Wright, Tremaine on behalf of the defendant, Stacey Koch.

THE COURT: Right. You're just going to have to say that name again. Raphael?

MR. HOLOSZYC-PIMENTEL: Raphael Holoszyc-Pimentel.

THE COURT: Spell it, please.

MR. HOLOSZYC-PIMENTEL: Sure. H-O-L-O-S-Z-Y-C dash P-I-M-E-N-T-E-L.

THE COURT: See, now that I would have guessed. The middle one, no.

MR. HOLOSZYC-PIMENTEL: It is a mouthful, Your Honor. And with me is Victor Kovner, also of Davis, Wright, Tremaine.

MR. KOVNER: Your Honor.

THE COURT: Good morning.

MR. LINDNER: Good morning, Your Honor. Edward Lindner on behalf of the New York State Commission on

Judicial Conduct.

THE COURT: Edward?

MR. LINDNER: L-I-N-D-N-E-R

MR. HOLOSZYC-PIMENTEL: And Your Honor, also in the courtroom is the defendant, Stacey Koch, and her husband, Fred Koch.

THE COURT: Good morning.

STACEY KOCH: Good morning, Your Honor.

THE COURT: And Judge Mora, good morning. Okay. Well, it's on for oral argument. So it's your motion first. So would you like to go first and the other counsel would like to sit down. That's fine.

MR. HOLOSZYC-PIMENTEL: Thank you, Your Honor.

May I use the podium?

THE COURT: Absolutely.

MR. HOLOSZYC-PIMENTEL: Thank you.

THE COURT: You have room.

Can you just hang on one second?

(Brief pause.)

THE COURT: All right. Okay. You may proceed, counselor.

MR. HOLOSZYC-PIMENTEL: Thank you, Your Honor. And may it please the Court, this case arises from a disturbance at a medical practice in Poughkeepsie where Ms. Koch works as an office manager.

At the height of the omicron surge of the COVID pandemic, Judge Mora repeatedly refused to wear a mask as required by the practice's rules and CDC guidelines. The disagreement resulted in the police being called. When Ms. Koch learned that Judge Mora was a judge, she felt it was her civic duty to report the unprofessional behavior that she had witnessed to The Commission on Judicial Conduct.

In this action, Judge Mora claims that Ms. Koch made defamatory statements in her complaint to The Commission. Judge Mora's claim is clearly barred by the absolute privilege for statements in a judicial proceeding.

In 1968, the New York Court of Appeals held, in Wiener against Weintraub, that a complaint to an attorney grievance committee is absolutely privileged. Ms. Koch's complaint to The Commission is indistinguishable from the complaint to the grievance committee in the Wiener case. Now, in his opposition brief, Judge Mora says that Ms. Koch's complaint was an unsworn, out of court statement, but so was the complaint in Wiener. It was an unsworn letter in the Wiener case. So these cases are totally indistinguishable and the absolute privilege clearly applies. There's a couple other points I would like to briefly address that were raised in Judge Mora's opposition.

Judge Mora argued that Ms. Koch's complaint is a sham invoking a narrow exception to absolute privilege for so-called sham proceedings, and this argument fails for a number of reasons.

First, Judge Mora never pled that Ms. Koch's complaint was a sham. So that is a sufficient basis on its own to reject that argument. Second, the sham exception is available only in narrow circumstances. Such as where the complainant failed to move forward with the proceeding or brought it for the sole purpose to defame. Now, that's important, Your Honor. It has to be the sole purpose to defame. Ordinary malice is not enough to invoke the sham exception. That exception, clearly, does not apply here. Neither Ms. Koch, nor the commission, failed to move forward with her complaints. In fact, the commission opened an investigation into her complaint, and the investigation remains ongoing to this day. And Ms. Koch, clearly, did not make her complaint solely to defame Judge Mora. As she explained in the complaint itself, she felt a civic duty to report to the government inappropriate behavior by a judge that she had witnessed.

And finally, I should just note that it wouldn't make sense to file a sham complaint with The Commission for the sole purpose to defame Judge Mora, because the complaint must be kept confidential by statute. So that

would defeat the point of a supposed sham defamatory complaint.

Finally, I'd like to talk briefly about the anti-SLAPP law that applies to this case. This is the very type of case that the anti-SLAPP law is meant to deter. And in his opposition, Judge Mora did not dispute that the anti-SLAPP law applies here. The anti-SLAPP law applies to any claim that is based on the exercise of the right to petition the government or the right to speak on a matter of public interest. And Ms. Koch's complaint to the commission satisfies both of those prongs. Now, because the anti-SLAPP statute applies, there are two consequences that are relevant here.

First, the anti-SLAPP law changes the motion to dismiss standard. It shifts the burden on to the plaintiff to establish that his claim has a substantial basis, and that is a more stringent standard than the typical standard that would apply on a motion to dismiss.

Second, the anti-SLAPP law allows the Court to consider affidavits and other evidence that won't normally be considered on a motion to dismiss. So for example, Your Honor, you can consider the affirmation from The Commission's counsel that they put in with their motion.

And finally, the anti-SLAPP law provides for a mandatory award of attorney's fees upon the dismissal of

this case. And as I noted earlier, Judge Mora has not disputed that these features of the anti-SLAPP law apply here.

Your Honor, those are the main points I wanted to hit. I'd be happy to go into more detail on any of them or address any questions that the Court may have.

THE COURT: I don't have any questions. Thank you for your argument, and we'll hear now from Mr. Lindner, if you would like to be heard.

MR. LINDNER: Good morning, Your Honor.

THE COURT: Good morning.

MR. LINDNER: Your Honor, I don't think it's possible to overstate how seriously The Commission takes this matter. This is a frivolous complaint, a suit brought to intimidate a witness in an ongoing commission investigation, and a good deal of damage has already been done. This matter was reported online even before the defendant was served, and has since been reported in the Mid-Hudson News and local radio stations. We have every reason to fear that members of the community, who may have information relevant to our complaint, will refuse to come forward, or that witnesses that we identified and subpoena will have surprising faulty memories because they fear ending up in your court being sued for hundreds of thousands of dollars. That institutional interest in

protecting the integrity of our investigation is to the heart of our motion to intervene. We know that the plaintiff has not opposed the motion to intervene, and so we ask you to grant that this morning. With that same institutional interest also runs to our motion to dismiss on the merits. The Commission cannot fulfill its constitutional mandate to investigate allegations of judicial misconduct unless members of the public feel free to tell us what they know without fear of retribution. And that's the analysis the Court of Appeals laid out in Wiener v. Weintraub, a case which is nearly identical on the facts in which we think is controlling.

Counsel has already addressed Wiener, so I'm not going to go into it in detail, but I will note the absolute privilege applied there, even though the statement in Wiener was made to a quasi judicial body and not to a court; even though it was made as an initial complaint and not testimony under oath in a court proceeding. And most importantly, even though the Court recognized that such statements might be false or maliciously made, the Court recognized that there was a danger to the attorney of reputational harm by a false or malicious complaint, but they found that the public interest, in making sure that complaints of attorney ethical misconduct could be investigated vastly outweighed that.

There is one other aspect in which Wiener is comparable or analogous to the case before you, and that's the confidential nature of our proceeding. The Court in Wiener noted that the danger of reputational harm to the attorney was mitigated because he would have the opportunity to litigate that in the grievance procedure, and if they were found to be false, there was no reputational harm because the members of the grievance committee, who had felt that the allegations were false, there would be no other reputational harm because the case would be dismissed privately.

Counsel pointed out that Section 45 of the judiciary law makes every complaint to The Commission confidential unless the judge waives confidentiality, or at the end of a long process, including an evidentiary hearing, The Commission makes a public determination of misconduct. If, in fact, this complaint is false, or even malicious, the plaintiff will have every opportunity to demonstrate that during our investigation, and of the commission of those charges, at a full evidentiary hearing in front of a mutual referee.

It's ironic to think that the only way the public has learned about this allegation is the plaintiff has chosen to bring this suit, rather than follow the normal procedure. So we're asking you this morning to grant our

motion to intervene and to dismiss this matter with a decision that clearly, emphatically, and unambiguously tells the public that any statements made to The Commission that are material and pertinent to a commission investigation are protected by absolute privilege.

THE COURT: Thank you, Mr. Lindner. I just have one question. When you say that this lawsuit was reported online in the Mid-Hudson News before the defendant was even served, so what you're saying is that the fact of it was disclosed by the plaintiff himself?

MR. LINDNER: I have no information as to how they found out. I can tell you that we found out about it because we found it on the Lohud blog the morning that the plaintiff was served. And if you check the time that the article was posted and the affidavit was served, it was, in fact, posted before it was served. She contacted us later in the day. The point is, this is out in the community. People know that this suit is out there and that very fact is the -- a concern that we have that this is going to make people afraid to talk to us because they may be sued.

THE COURT: But as far as you know, the only reason it's out in the community has nothing to do with any action by the defendant, correct?

MR. LINDNER: That's correct, Your Honor. And not by The Commission. That, I can state unequivocally.

THE COURT: All right.

Mr. Sussman, before I hear from you, can I ask -- just ask you one question? Is there any objection to the motion to intervene?

MR. SUSSMAN: None at this time.

THE COURT: Okay. So that motion is granted.

MR. SUSSMAN: Thank you, Your Honor.

THE COURT: Mr. Sussman.

MR. SUSSMAN: Thank you, Your Honor. And may it please the Court, we're here today because an individual named Stacey Koch had an encounter in which, according to the complaint, her behavior was entirely tempered and rude toward my client in the presence of other individuals.

Ms. Koch knew my client for, approximately, 20 years, knew he was a judge when she made her complaint. She didn't learn about that at some point after. She knew about it during the interaction with him in the waiting room of the optician's office. She threatened to call the police on my client for absolutely no reason. My client had a proper shield, which had been acknowledged by the very people who supervised him as a judge to be permitted to wear. There was no rule or regulation that he was, in fact, violating, and she became extraordinarily hostile in front of a large group of people to him, and that's what the complaint alleges. Then she made an absolute false

complaint that had nothing to do with his functioning as a judge. The distinction with the case they cited, of course, is the lawyer who was practicing as a lawyer had engaged in some inappropriate conduct as a lawyer. That's not what Ms. Koch was alleging. Ms. Koch didn't say, I was before Judge Mora and he treated me in an inappropriate matter. We know there are many complaints like that about judges. He was not functioning in any judicial capacity with regard to this woman. He was going with his child to an eye doctor's appointment.

Now, with regard to the notion of a sham complaint, counsel is wrong with regard to 3211 (7) and I don't want the Court to fall in unwillingly or unknowingly to a trap. The same law firm did the same thing in a case that the First Department just reversed called Miller v. Appavurai, which was a --

THE COURT: Say that again.

MR. SUSSMAN: The case is called Miller v. Appavurai. It's index number -- I'll spell it. A-P-P-A-V-U-R-A-I. Index number 16329-2020. Decision was rendered February 23rd, 2023 by the First Department.

THE COURT: Is it published?

MR. SUSSMAN: I have it.

THE COURT: Right, but is it published? Why are you giving me an index number?

MR. SUSSMAN: It was just decided within the last month. I don't know that it was published.

THE COURT: All right. Say the index number again.

MR. SUSSMAN: Yes. I'll give you the case. 16329-20, First Department. Now, here's the problem. Counsel gets up here and he says we have to prove -- we have to plead it's a sham. We don't have to plead it's a sham. If they want to make a claim of absolute privilege as they want to make a claim that a case -- a pleading lacks sufficient claims of malice. They do that in an affirmative defense. They don't do it through a motion. They do it in an affirmative defense. The law is very clearly established in New York that that's the proper proceeding. The reason for that is their absolute privilege claim depends on disputed facts. The facts relate to whether indeed this was a sham or not. The complaint makes clear that the whole complaint was made up. My client did not act inappropriately in the presence of anyone. He didn't run away when the police were called. He didn't make statements that he didn't -- he would control the police. He didn't make statements that he would have a doctor fabricate a letter on his behalf. All of which is the substance of what this woman says to the judicial commission. We don't have to say -- there's no

requirement that, we say, anymore than this requirement that we have the malice standard. You say there was malice. That's inferential from the facts. There are no buzz words required. And on a 3211 (a) (7) motion, the proper requirement is met by the actual facts which are pled. Likewise, counsel says we have to say it's the sole motivation. We don't have to say it's the sole motivation. That's not a requirement. It's obvious from the complaint, if you read the complaint, that we're arguing that her motivation in going was to fabricate these stories, disadvantage to him. Now, the motive for that will come out during a deposition. Why she made things up, what her motives were, the extent that those are even relevant, we will be able to develop. You can't develop that having not ever confronted or spoken to --

THE COURT: But wouldn't those all be questions of fact --

MR. SUSSMAN: Yes.

THE COURT: -- that would take place during The Commission's investigation?

MR. SUSSMAN: No, the commission -- let me get to -- I was going to address The Commission separately. I will get to The Commission. The commission's arguments are, on their face, frivolous for this reason. This complaint was filed one year and four months ago. This

notion of The Commission is doing some investigation and the investigation is going to be upheld. If The Commission hasn't done an investigation of a sitting judge in a year and four months, what have they been waiting for? The Commission is not -- when counsel says, doctrine of sham is relevant when there's a delay. You heard counsel say that. There's been a very significant delay. This has been hanging over my client for a year and four months. What are they doing? There are four of them sitting in court here today. When did they intend to get to this -- this finding? And the question that the court asked, my client has a public particular individual interest in not being defamed. An individual interest. It has nothing to do with whether --

THE COURT: Defamation, by its definition, requires that there be a public statement and there was no public statement. The statement was made in the context of a confidential proceeding before the Judicial Ethics Commission.

MR. SUSSMAN: A public comment may be a comment made to a third-party. These are third-parties. When the court says it has to be --- she's not speaking with her husband. She's not speaking in any other context. She's speaking in a manner conveying information, false information, intentionally, to a third-party.

THE COURT: To a -- excuse me, the content of a privileged communication.

MR. SUSSMAN: I don't agree that it's privileged. That's because it's circular.

THE COURT: How do you get around Wiener v. Weintraub?

MR. SUSSMAN: I just explained how I get around. When you're talking and you have a public interest, which the gentleman says they have. You certainly have a public interest in policing a judge if you're talking about a judge functioning in an official capacity. That's not what was happening here.

THE COURT: Well, that's also not what the rules of Court say. In particular, Rule 100.4, Extra judicial activities. "A judge shall conduct all of the judge's extra judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge or detract from the dignity of the judicial office." So that -- it doesn't have to be in the content of -- or context of the role as judge in the courtroom. It can be in any scenario.

MR. SUSSMAN: I think that that's an overbroad reading. The first clause there makes clear to cast some doubt about his impartiality as a judge, which should inform the reading that the Court provides of that. That

did not happen here. The judge didn't do anything in any capacity, which -- did anything other than go into a medical office.

THE COURT: It says "either/or." It's "cast reasonable doubt on the judge's capacity to act impartially as a judge; number two, detract from the dignity of judicial office; or number three, interfere, et cetera." So it's not read together. It's "either/or."

MR. SUSSMAN: If an individual who is a judge goes into a situation where the claim is no one knows he is a judge, which is the claim that you heard here today. How is it possible to say that however he acted in that context casts that kind of cloud on him?

THE COURT: Well, once it becomes known, it may. I thinks that's the purpose of the rule. But go on, I'm listening.

MR. SUSSMAN: My argument is very simple. This whole case comes down to whether the sham doctrine does or doesn't apply. When the sham doctrine applies, it permits the abrogation of any absolute immunity. That's the thrust of the cases that we've cited. They've never dealt with those cases. They admit there's a sham exception. They say it's very narrow. It's very narrow and applies in a situation where someone makes a complaint, whether it's a complaint in a court, which is absolutely privileged,

generally. Just as this is absolutely privileged, generally or not. If there's a sham, that's the end of the inquiry establishing immunity. Now, the question becomes, when do you make that determination? Do you make that determination now, on the basis of their version of events? You cannot. That would be judicial error. You have to make that determination based on our version of events. And our version of events, it's plainly a sham. She's made up the entire story. She has no basis to believe that my client is going to a doctor to fabricate or makeup a medical note. She has no basis to say that my client made comments about police officers, suggesting that he had no respect for them. These are things which cut directly to his functioning as a judge. These are the kinds of claims, baseless claims. Even though he was acting extra judicially, that goes to his lack of integrity. That's why she made those claims. Not because they were true. If there's a sham, there's no absolute immunity. And counsel speaks about, this gets reversed -- the burden somehow gets reversed because he brings it as an anti -- as a SLAPP case, an anti-SLAPP case. That's just this claim and we don't contest that. Well, first of all, we do contest it. Obviously, if you say it's a sham, it can't fall within the SLAPP lawsuit that -- it's a total non sequitur. The two go together. There's no reason to believe that Judge Mora

brought on a case to quiet her as his motive. His motive -- this is a year -- he brings the case a year after the complaint was filed. He knew about the complaint, Judge, for a year. If his intent was to, in some way, to intimidate witnesses, the minute he got the complaint he would have gone to this court and said wait a minute. That's not what he did. If you will, we were the ones trying to balance the rights in question here. Whatever they wanted to do with their investigation should long have been done a year later when we first initiated this case. We didn't go to the press. As the Court knows, full well, the media publishes cases once they're filed. They're filed in the court. The press gets notice of the filing by looking up the docket and they decide to cover what they want to cover.

THE COURT: Right, but the point, I think is, even if Judge Mora didn't go to the press, which I believe you when you say he didn't do that. But the point is that, no one would have known about it, other than The Commission and the defendant, and Judge Mora, if he hadn't filed the --

MR. SUSSMAN: I understand. That's part of our democracy, Judge. If you bring a lawsuit, a public lawsuit to vindicate your rights, it gets in the press. Clients come to me --

THE COURT: Right, but then the complaint is defamation, and the part about defamation that's the issue here, like it is in any case, is that the statement has to be something that's made public. And the only way it was made public is by the plaintiff's own action. I don't know how you have a claim for defamation.

MR. SUSSMAN: Well, you and I disagree about what making it public means. I believe that it's a sham complaint and it's filed with The Commission, it's actionable, and I don't think there's any law to the contrary on that issue. If it's made public in that sense, it's actionable. The Flomenhaft case is the same kind of structure. You have complaints there which are made about an individual, false statements, they're made in court. They're otherwise absolutely privileged, but in fact, they're defamatory.

THE COURT: What case?

MR. SUSSMAN: Flomenhaft.

THE COURT: You have to spell it for the court reporter.

MR. SUSSMAN: Flomenhaft is F-L-O-M-E-N-H-A-F-T.

THE COURT: Anything else, Mr. Sussman?

MR. SUSSMAN: No, thank you.

THE COURT: Okay. Counselor.

MR. HOLOSZYC-PIMENTEL: Thank you, Your Honor.

Very briefly, I would just like to address a few points that counsel made. First, for the first time I heard my -- opposing counsel attempt to distinguish the Wiener case, and this wasn't in his opposition brief, but I -- he claimed that because Judge Mora, at times, off the bench, that the complaint wasn't pertinent. And that's incorrect, Your Honor. And as you correctly noted Rule 100.4 covers a judge's conduct on or off the bench. And that's also, I should note, that the -- The Commission, in their brief, also stated that they are investigating whether Judge Mora quote "exhibited temperament unbecoming of a judge in violation of Sections 100.1, 100.2" and as Your Honor correctly noted, "100.4 (A) (2)." So clearly, a judge's conduct, on or off the bench, is relevant to The Commission's mandate and the complaint that Ms. Koch made goes directly to that. And that's in the judiciary law statute as well that -- the promulgated statute of The Commission. It refers to conduct on or off the bench.

Next, I heard opposing counsel discuss the Miller case and I believe he -- I heard him say that it was reversed. That's incorrect. That decision granted the defendant's motion to dismiss and the case was unanimously affirmed by the First Department, and I have the citation. It is 2023 New York Slip Opinion 01237, and that's Miller against Appadurai. That's spelled A-P-P-A-D-U-R-A-I.

Next, Mr. Sussman had stated that the absolute privilege should not be decided on a motion to dismiss. That's also incorrect. The Wiener case, itself, was a motion to dismiss and the New York Court of Appeals held that the lower court had no choice but to dismiss the complaint at the motion to dismiss stage. And there are other cases that we've cited in our brief explaining that the question of privilege can and should be decided at the motion to dismiss stage.

Next, contrary to what Mr. Sussman stated. In order to invoke the sham exception there -- it does -- the proceeding does have to be brought for the sole purpose to defame. That is very clear in the cases that we've cited in our brief. That is the current law of the sham exception. And that is particularly important during -- in this anti-SLAPP posture. The standard would be that the plaintiff has to show a substantial basis that Ms. Koch made her complaint to The Commission for the sole purpose to defame Judge Mora, and for all reasons that I stated in my opening statement, and in our briefs, that is clearly not the case here.

Mr. Sussman also asked what The Commission has been doing and I'll defer to The Commission to, you know, to speak on that point. But I would just note that the affirmation of The Commission's counsel did detail what

they have been doing and when they have been doing it with respect to Ms. Koch's complaint.

I would direct Your Honor to paragraphs 14 through 19 of the affirmation of The Commission's counsel. He has affirmed that they propounded written questions to Judge Mora, that Judge Mora responded, they may have conducted the interviews and intend to conduct additional interviews, and in fact, they also intend to call Judge Mora to testify in that case. So that that complaint is very active at The Commission, and they can speak more to that, but I would just note that this easily distinguishes the cases that Mr. Sussman cited concerning shams.

In those cases those were instances where the proceeding was discontinued or just abandoned and not prosecuted at all. That is a very different situation here where Ms. Koch and The Commission remained actively engaged in that proceeding.

Regarding the anti-SLAPP. Again, for the first time, because I didn't see it in his brief. I heard Mr. Sussman argue the anti-SLAPP statute doesn't apply here. I believe he said because of the sham exception that somehow that would also carve out the anti-SLAPP law. And that's just not right. The anti-SLAPP law applies to any claim based on an exercise of the right to petition the

government or the right to speak on the issue of public interest. Whether -- the motive or whether it was a sham is irrelevant. The fact that Ms. Koch petitioned the government and spoke on the issue of public interest and that gave rise to the action here. That triggers the anti-SLAPP law. There is no question.

Your Honor, those are all the points I would like to make, unless the court has further questions.

THE COURT: No, that's it. Thank you.

MR. HOLOSZYC-PIMENTEL: Thank you, Your Honor.

MR. SUSSMAN: May I be heard on two points, quickly?

THE COURT: Yes. Go ahead.

MR. SUSSMAN: I think, Judge, of all that you heard, there's two significant points. Counsel formulated this test for sham. He says there has to be a substantial basis for plaintiff to demonstrate -- this is under his SLAPP theory -- for you to conclude, or for the finder of fact ultimately to conclude, that quote, "the sole purpose was to defame Justice Mora." Let's assume for the purpose of argument that he's right about that. That's what has to be demonstrated by Judge Mora to get around the issue of absolute privilege. That's what he concedes in his argument. But the Miller case, which I cited, shows -- and he's right. The resolution of the case was that it was --

the dismissal was affirmed, but on an entirely different ground than the ground that the Supreme Court reversed -- dismissed it on. The Supreme Court, based on the arguments they made, found that there was an insufficient showing of malice on the four corners of the complaint. Either constitutional malice or common law malice, and on a 3211 (7) motion, dismissed the complaint. We appealed that dismissal and the First Department agreed that that was an inappropriate ground for dismissal at that stage of the case, because the issue of malice was one which had to be sufficiently pled, vehemently pled, in further detail, and was appropriately invoked as an affirmative defense. The court went onto say that it found the statements made by the 23 professors, who we claimed defamed Professor Miller, were statements of pure opinion. That's going to go up to Court of Appeals. I don't believe it's accurate, but that was the finding.

My point to the Court is this. Even if you accept counsel's argument that there is a sham exception and the sham exception does apply, when -- and he gave the definition of when he believes it applies. It is inappropriate for this Court to assert the rule of a finder of fact with regard to that question. Ms. Koch can claim -- and I don't doubt she claims this -- that she had another purpose. Counsel, twice in his argument,

articulated that alleged purpose. She felt she was trying to protect the public from an inappropriate judge. We understand that's what she claims. The question is, the Court can't accept that and say, oh yes, that was her purpose. How do we know that was her purpose before we engage in the discovery process and explode (sic) the lies from our point of view, which she told as a basis for explaining that that was not her purpose? Her purpose was to defame this individual in the very place where she knew it would hurt him, because she says explicitly in her complaint. "I don't feel he should be a judge." So it's not sufficient to simply say, as counsel has, SLAPP suit. It has nothing, frankly, to do with it because every lawsuit has a standard. It may be a heightened standard. It may not. I don't agree that it should be viewed under that prism. And again, in the Miller case, the Miller case viewed the anti-SLAPP suit, rejected the idea that that case had anything to do with it, and I think the same is true in this case. There they went to NYU and they claimed that this professor had racist and homophobic views. It was this, it was that, and they claimed it was a matter of public importance, and the court said no, it wasn't. It's a private dispute. This is a private dispute. This is a private dispute in which someone who has a grudge against my client for reasons which will be explored, goes to a

commission and makes statements that are highly defamatory to him, and it's cost him tremendous tsuris, T-S-U-I-R-S.

So I think my basic point, though, to the Court here is that under the 3211 (7) standard it would be, to me, plain legal error.

Now, counsel is talking about the Wiener case and other cases. These cases -- this case does not discuss, in any way, the sham exception. And if you read the case it doesn't discuss it. And the cases that are subsequent to it, as he says, that's a 1968 case, which do discuss the sham exception, make clear that it's a factually intensive process that you have to go through to determine whether that applies or not. Those cases -- I didn't make them up. They've been the law of the First and Second Departments for 20, 25 years. And in a situation like this, there's no magic words that need to be used. As I said early, plead it. The facts, as they're alleged, make clear -- make clear that from our point of view it was an entire sham. No other purpose.

So I'm inviting the Court to look at those cases. I think they are critically important to determining the issue. The Commission's interests, however laudatory they are, cannot insulate individuals who have these kinds of motives and are trying to punish and harm judges. Thank you.

THE COURT: Thank you, Mr. Sussman.

MR. HOLOSZYC-PIMENTEL: May I be heard very briefly?

THE COURT: Yeah, and then I'll hear from Mr. Lindner.

MR. HOLOSZYC-PIMENTEL: Thank you, Your Honor.

Just very briefly, two brief points. Regarding the Miller case, I just want to make clear for the Court that that case really doesn't have any applicability here. That was a case concerning a qualified privilege and here there is an absolute privilege. And as I had said earlier, the Wiener court (sic) has made clear that when the absolute privilege applies, as it does here, the Court has no choice but to dismiss the complaint at the motion to dismiss stage. And I would also direct the Court to the Bisogno against Borsa case. That's cited on Page 7 of our opening brief, and I quote, "the question of whether a statement is privileged is a question of law for the Court and proper to determine on a motion to dismiss."

Finally, you know, I heard Mr. Sussman, you know, reiterating this sham point. And Your Honor, the plaintiff can't just say the words sham and get past the motion to dismiss. There has to be a substantial basis that the complaint was a sham and there is no basis here, Your Honor. The reasons that Ms. Koch made her complaint are

set forth on the face of her complaint. It's attached to the complaint as Exhibit 1 in the complaint in this action. So you can read her complaint and why she felt that she had to report the conduct she witnessed to The Commission. And it is -- all the facts and circumstances indicate that this is a valid, legitimate complaint. The Commission could have dismissed Ms. Koch's complaint, if they felt that it was meritless or if they felt that it was sham. They did not do that. They decided to open an investigation and that investigation remains ongoing. So it is clear that Ms. Koch's complaint is not a sham.

THE COURT: So the question I have is, how can I determine whether her sole motive was malice on the basis of papers without a hearing, without determining credibility?

MR. HOLOSZYC-PIMENTEL: Your Honor, for several reasons. First, there are multiple reasons cited in her complaint. It shows why she made the complaint. And I would direct Your Honor to the Peck case that's cited in our reply brief. That's cited in our reply brief at Page 6, and that case held that where there were motives other than to defame, the sham exception should be rejected.

THE COURT: Right, but how do you decide motive on paper?

MR. HOLOSZYC-PIMENTEL: Well, she wrote her motive

on the paper. She wrote -- in her complaint to The Commission, she wrote, "I simply feel our government needs to know this man is abusing his position in Dutchess County" and she wrote that "this man should not be allowed any decision making for others when he cannot act professionally in this medical practice." That is her -- an expressed explanation of her good faith. So it could be decided on papers because she wrote it.

THE COURT: But don't they have the right to challenge her statement and say this isn't actually the reason, that may be she said this to avoid this exact scenario, and you know, get a lawsuit dismissed. I don't know. So how can I determine if that's a true statement? How can I decide I believe that without a hearing, a trial?

MR. HOLOSZYC-PIMENTEL: Well, the plaintiff would only be entitled to get to that stage if he puts forth a substantial basis that that was -- that those -- that that was the case, and that hasn't been satisfied here. You know, in addition to the face of Ms. Koch's complaint, that there is now evidence, in the record, of The Commission's active investigation of her complaint. So all the facts and circumstances indicate that Ms. Koch's complaint was not a sham, and there certainly was not -- is not a showing of a substantial basis. In fact, there was no showing at all in the complaint filed in this action because the --

that theory -- the sham theory wasn't even alleged. So there is a number of reasons why this Court should reject this belated sham theory.

THE COURT: Okay. Thank you.

MR. HOLOSZYC-PIMENTEL: Thank you, Your Honor.

THE COURT: Mr. Lindner, you've been very patient.

MR. LINDNER: Thank you, Your Honor.

To begin, Your Honor is, of course, correct in your reading of 100.4, the rules governing judicial conduct. It does not matter whether the alleged misconduct happened on the bench or in the course of judicial duties. We have 40 years of cases that say judges must observe high standards of conduct on or off the bench. I believe we cited Matter of Senzer, S-E-N-Z-E-R, as a Court of Appeals case that stands for that. But if the Court has any doubt about that, I'm happy to send you a supplemental letter with citations going back to the 1980's for that proposition.

I wanted to address the sham issue, which counsel has been going back and forth on, because you don't need to hold a hearing because the sham exception does not apply in this case, and that's what we made clear, I think, in our reply brief. Wiener itself says we understand that the complaint might be false. It might be maliciously made,

and yet because of public policy in making sure the complaints of ethical misconduct by attorneys can be fairly investigated, we find that there is still an absolute privilege. That's the principle holding of the case. And so contrary to counsel's claim that laudatory, public policy arguments can't insulate a defendant who makes a malicious claim, that's exactly what Wiener holds.

If, in fact, that narrow exception was applicable, there is simply no factual basis here. Go back to Halperin, which is his principle case, and look at what it cites as the standard. It's Youmans from 1897, I believe. And Youmans says that the defamatory statement to get through the sham exception has to be outside the bounds of reason. So far out as to not admit the argument. You have nothing close to that here. And in Halperin, and in the only other case which is applied, Flomenhaft. In both of those cases, there was a fact in the record that indicated that the complaint was not legitimate. In one case it was just abandoned. In another, it was dismissed and a different lawsuit was brought against a different lawyer. There is nothing like that in this record. And if a complainant -- I'm sorry, if a plaintiff in a defamation suit could get around the absolute privilege, which is so critical to our investigation simply by saying this is a sham, then there is no privilege. The harm in terms of

asking witnesses to come forward is not necessarily that you will ultimately find that she's liable for hundreds of thousands of dollars. The harm and what impedes our ability to get people to speak to us freely, is that they have to litigate. They have to go through discovery. Perhaps, they need to go through a trial. That's a substantial burden in terms of costs and anxiety. I believe the Rosenberg case we cited from the Court of Appeals mentions that as a factor, and that's what's at stake here. So it's absolutely true that the public policy, which the State of New York has in terms of maintaining public confidence in the integrity of judiciary. The Nicholson case from the Court of Appeals says the state has no higher interest than that, absolutely requires that this case be dismissed now.

I do want to address, briefly, the statements that were made about the status of The Commission's investigation, and I am somewhat constrained as to what I can share with the Court, because Judiciary Law 45 makes this all confidential. I can absolutely represent, as an officer of the court, the investigation is open and very much alive, and I can tell you -- I think I can tell you that the complaint that is before you, that is attached to the plaintiff's complaint, is not the only issue that we're investigating in this matter. There are other complainants

and other issues. So the timing of this may very well be affected by other considerations that we have as an investigatory body. In any event, the point here is not whether the commission is going forward in good faith. The point is that the complainant, the defendant in this case, has gone forward in good faith. There is no indication that I can represent to the Court that she has not tried to withdraw her complaint or back away from her complaint. Unlike Flomenhaft, unlike Halperin. She's done everything she could do to substantiate her complaint and that's all this court can ask.

THE COURT: Thank you, Mr. Lindner.

Okay. On another note, I'm wondering whether or not anyone would think it could be productive to have a settlement conference.

MR. SUSSMAN: Yes. I was going to -- that's why I said there was something I wanted to tell the Court before we started to hear arguments. So I think that would be helpful, from our point of view, and I'll obviously explain that to the Court if we proceed in that way.

THE COURT: All right. Do you all want to come in together to start, separately? You tell me.

MR. SUSSMAN: I think separately would be smart.

THE COURT: Is that okay with you?

MR. HOLOSZYC-PIMENTEL: Yes, Your Honor.

- P r o c e e d i n g s -

THE COURT: Mr. Lindner.

MR. LINDNER: Whatever Your Honor desires.

THE COURT: All right. Mr. Sussman, come on back.

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This is certified to be a true and accurate transcript of the stenographic notes.

Norma Anglero

NORMA ANGLERO

Senior Court Reporter

COMMISSION EXHIBIT 15

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

FRANK MORA,

Plaintiff,

-against-

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

DECISION AND ORDER

Index No. 2022-54141

Motion Sequences: 1, 2

The following papers were read and considered on the motion of Defendant seeking dismissal of the complaint and for an award of attorney's fees and costs (Seq. #1); and the motion of Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") seeking dismissal of the complaint. (Seq. #2):

Document:	NYSCEF Doc. No(s).:
SUMMONS & VERIFIED COMPLAINT and EXHIBIT 1	1
NOTICE OF MOTION – Seq. #1	5
MEMORANDUM OF LAW	6
AFFIRMATION IN SUPPORT and EXHIBITS A–B	7–9
MEMORANDUM OF LAW IN OPPOSITION	26[1]
REPLY MEMORANDUM OF LAW	31
NOTICE OF MOTION – Seq. #2	15

[1] Plaintiff filed a single memorandum of law in opposition, addressing arguments made in both pending motions.

AFFIRMATION IN SUPPORT 16
PROPOSED ANSWER 17
MEMORANDUM OF LAW IN SUPPORT 18

MEMORANDUM OF LAW IN OPPOSITION 26

REPLY MEMORANDUM OF LAW 32

BACKGROUND

This is an action for defamation. The following facts are taken from the complaint and presumed to be true for purposes of deciding both motions.

The events giving rise to this action commenced on December 28, 2021. That day, Plaintiff, a Judge of the Poughkeepsie City Court, brought his son to an ophthalmology office where a dispute arose between Plaintiff and the office manager, Defendant, regarding Plaintiff's unwillingness to wear a face mask while in the office. The following day, December 29, 2021, Defendant wrote certain "statements concerning [Plaintiff] . . . to the New York State Commission on Judicial Conduct" (Complaint at "Preliminary Statement"). The written statements were submitted via a complaint form provided by the New York State Office [sic] of Judicial Conduct" (*id.* at ¶24).[2]

Plaintiff alleges that Defendant's statements were false, libelous, professionally damaging to him as a jurist and calculated to subject him to personal ridicule and shame (*id.* at ¶¶ 23–24). Plaintiff further alleges that Defendant's statements caused him "emotional distress, humiliation, shame and embarrassment and required him to answer [Defendant's] false claims before a state commission designed and empowered to investigate judicial misconduct" (*id.* at ¶27). As a result of these events, Plaintiff seeks compensatory and punitive damages of $425,000.00 on a single cause of action for defamation *per se*.

Oral argument on these motions was held March 27, 2023, at which time all parties were heard. The first branch of the Commission's motion seeking leave to intervene in this matter was granted on the record as unopposed, and the caption has been amended accordingly. Defendant moves to dismiss the complaint pursuant to the defense of absolute privilege and pursuant to New York's "anti-SLAPP" statutes. The Commission moves for dismissal based on absolute privilege.

DISCUSSION

In order to decide the pending motions, the Court must make an initial determination of whether this is "an action involving public petition and participation." As recently discussed by the Second Department:

> In 1992, legislation was enacted to address "a rising concern about the use of civil litigation, primarily defamation suits,

[2] For reasons discussed below, the substance of Defendant's statements is not relevant to the determination of the issues raised herein, and the Court will not republish them as part of this opinion.

> to intimidate or silence those who speak out at public meetings against proposed land use development and other activities requiring approval of public boards. Termed SLAPP suits—strategic lawsuits against public participation—such actions are characterized as having little legal merit but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." The legislation was specifically aimed at broadening the protection of citizens facing litigation arising from their public petition and participation.
>
> [In 2020,] the Legislature amended the relevant statutes to broaden the scope of the law and afford greater protections to citizens facing litigation arising from their public petition and participation (see L 2020, ch 250).

(*Mable Assets, LLC v Rachmanov*, 192 AD3d 998, 998 [2d Dept 2021] (quoting *600 W. 115th St. Corp. v Von Gutfeld*, 80 NY2d 130 [1992]).

New York's "anti-SLAPP" statutes are codified at Civil Rights Law §§ 70-a and 76-a. As part of the 2020 amendments to these statutes, the Legislature enacted heightened pleading standards when a defendant moves to dismiss for failure to state a cause of action (CPLR 3211[a][7]), where the "[defendant] has demonstrated that the action . . . subject to the motion is an action involving public petition and participation as defined in [Civil Rights Law §76-a(1)(a)]" (CPLR 3211[g][1]).

An "action involving public petition and participation" is defined as lawsuit based upon: (1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition". (Civil Rights Law §76-a[1][a]). The court is to construe the term "public interest" broadly to include any subject other than a purely private matter (Civil Rights Law §76-a[1][d]).

A court is required to grant a preference to hearing a motion to dismiss a SLAPP action, and the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law" (CPLR §3211[g][1]). In adjudicating a motion to dismiss a SLAPP action, the court must consider the pleadings and supporting and opposing affidavits (CPLR §3211[g][2]).

Here, the Court readily finds that Defendant's conduct, as alleged in the complaint and discussed in Defendant's motion papers, falls within the broad definition of "public petition and participation." Her statements about Plaintiff concerned his status as a public official and his fitness for that role and were made to a governmental body charged with overseeing his conduct,

i.e., the Commission. Moreover, the statements were admittedly furnished through an online form provided by the Commission, the purpose of which is to invite members of the public to submit complaints about specific judges. Defendant's complaint about Plaintiff to the Commission may therefore be viewed as a public petition[3] and participation in furtherance of the right of free speech in connection with an issue of public interest, particularly in the broad sense the Court is required to apply.

As a result, the stricter pleading standards of CPLR 3211(g) apply, and to avoid dismissal Plaintiff is required to show that the single cause of action for defamation *per se* in the complaint "has a substantial basis in law or is supported by a substantial argument for an extension, modification or a reversal of existing law." That is not the case here.

A cause of action for defamation *per se* is based upon a false statement, published *without privilege* or authorization to a third party, and so offensive that malice is presumed, *i.e.* claiming that a person committed a crime of moral turpitude or suffers from a loathsome disease; To recover damages for defamation, a plaintiff must prove the defendant's publication to a third party of a false statement about the plaintiff, without privilege or authorization (*Knutt v. Metro Intern S.A.*, 91 A.D. 3d 915 [2nd Dept. 2012] citing *Epifani v. Johnson,* 65 A.D.3d 224, 233). A defamatory statement is one which " 'tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him *in the minds of a substantial number of the community*'" (*Golub v. Enquirer/Star Group,* 89 N.Y.2d 1074, 1076, quoting *Mencher v. Chesley,* 297 N.Y. 94, 100, emphasis added). Imputing a serious crime to the plaintiff constitutes defamation *per se* (*see Geraci v. Probst,* 15 N.Y.3d 336, 344; *Liberman v. Gelstein,* 80 N.Y.2d 429, 435). In the context of a defamation action, "[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable." *Park Knoll Assoc. v Schmidt*, 59 NY2d 205, 208 [1983].

The only defamatory conduct alleged in the complaint is Defendant's submission of her statements concerning Plaintiff to the Commission. It was further admitted during oral argument on this matter, and as supported by the affirmation of counsel for the Commission, that Defendant did not publish the statements to anyone else; and until Plaintiff filed this lawsuit, Defendant's statements and the Commission's proceedings with respect thereto were confidential and non-public.

Accordingly, this matter is subject to the controlling precedent of *Wiener v Weintraub* (22 NY2d 330 [1968]), wherein the Court of Appeals held that a written complaint about an attorney submitted to the local Grievance Committee and pertaining to potential misconduct by the attorney is "absolutely privileged," based upon overriding public interests:

> If a complainant were to be subject to a libel action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the hardship on a particular attorney, the

[3] See Merriam-Webster.com Dictionary (https://www.merriam-webster.com/), *Petition:* "a formal written request made to an authority or organized body (such as a court)."

> necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

(*Wiener v Weintraub*, 22 NY2d 330, 331–332 [1968]; *see also Bisogno v Borsa*, 31 Misc 3d 1203(A) [Sup Ct, Richmond County 2011], *affd*, 101 AD3d 780 [2d Dept 2012]).

The process followed with respect to judicial conduct complaints is very similar to the process followed with respect to complaints against attorneys, including the quasi-judicial and confidential nature of the proceedings (*see* Affirmation of Robert H. Tembeckjian, Esq., dated February 6, 2023 (NYSCEF Doc. No. 16) at ¶¶ 14–19, 24–29; Judiciary Law §§ 44, 45). Moreover, the same public concerns regarding the "necessity of maintaining high standards [and] the proper administration of justice" obviously apply to sitting judges at least as forcefully as to practicing attorneys. Thus, the defense of absolute privilege applies in this matter; and if Defendant's complaint is deemed to be absolutely privileged, this Court is required to dismiss the complaint at the pre-answer stage (*Wiener*, 22 NY2d at 332–333; CPLR 3211[g][1]), and the substance of the complaint to the commission is not relevant to this determination.

Plaintiff opposes the absolute privilege argument, raised by both Defendant and the Commission, on the basis that it does not apply where the underlying complaint is a "sham." For this argument, Plaintiff relies on a line of cases in the First Department, which in turn rely upon the Court of Appeals case of *Youmans v. Smith*:

> . . . If counsel, through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason, and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege, and must take the consequences. In other words, if the privilege is abused, protection is withdrawn.

(*Youmans v Smith*, 153 NY 214, 219–220 [1897] [internal quotations omitted]). This "common law privilege afforded to words spoken and written in the course of judicial proceedings . . . is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, made in good faith and without malice" (*Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986]).

The theory underlying the "sham action" exception or "sham litigation", *Flomenhaft v. Finkelstein*, 127 AD3d 634, 638 [1st Dept 2015], is inapplicable here as it is inconsistent with the policy and breadth of the absolute privilege expressed by the Court of Appeals in *Weiner*, which specifically applies even to "false and malicious complaints" (*Wiener*, 22 NY2d at 332). The critical distinction in the cases relied upon by Plaintiff is that "sham actions" are filed publicly before the attorney or judge has an opportunity to respond, while complaints made to governing

bodies overseeing attorneys and judges, and the quasi-judicial proceedings that follow, are "private and confidential" (*id.*).

In other words, there can be no abuse of the absolute privilege in the submission of a confidential complaint to the Commission, because the only persons to whom the complaint is published are public officials (Judiciary Law §41) charged with "receiv[ing], initiat[ing], investigat[ing] and hear[ing] complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge" (Judiciary Law §44), and who are bound by law to keep such complaints and related proceedings confidential (Judiciary Law §§ 45–46; *Wiener*, 22 NY2d at 332). Such circumstances are among the few, but well-recognized, reasons for application of an absolute privilege:

> Because the perceived social benefit in...he discharge of governmental responsibility sometimes outweighs the individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements...If the privilege is absolute, it confers immunity from liability regardless of motive.
>
> *...The public interest requires that such statements be absolutely privileged so that those discharging a public function may speak freely in doing so, insulated from harassment and fear of financial hazard...*

Park Knoll Assoc. v Schmidt, 59 NY2d 205, 208–209 [1983] [emphasis added; internal quotations and citations omitted].

By contrast, each of the cases on which Plaintiff relies for his argument that the "sham action" exception precludes dismissal of this case involved written statements used in a *public, civil action*, where the allegedly defamatory statements appeared in a civil pleading filed by an attorney. In each such case, the plaintiff was an attorney; and the allegedly defamatory statements were made to the public generally, before the plaintiff attorney had any opportunity to respond to the allegations confidentially in the context of a Grievance Committee investigation. Those cases present the opposite factual scenario of what has occurred here. Until Plaintiff commenced this action via a publicly-viewable compliant, to which he attached a full copy of Defendant's non-public statements to the Commission, the statements and the Commission's proceedings were confidential. Pursuant to *Wiener v. Weintraub*, Defendant's statements could not be deemed abusive of any privilege. Accordingly, the "sham action" exception to the absolute privilege does not apply here as a matter of law.

In fact, as the Commission's counsel asserted, there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility. The purpose of keeping the Commission's proceedings confidential is to protect not only the Judge involved but to protect the public by providing a safe forum in which to have complaints addressed. As counsel for the Commission stated, the absolute

privilege and confidentiality of the proceedings before it are critical to the Commission's investigation and to maintaining public confidence in the integrity of the judiciary.

Given that the subject-matter of this lawsuit squarely falls within the precedent of *Wiener v. Weintraub* and its progeny, and that Plaintiff has not furnished any "*substantial* argument" or precedent which warrant consideration of "an extension, modification or reversal of existing law" (CPLR 3211[g][1]), Defendant's statements must be deemed absolutely privileged and the complaint must be dismissed. As a statutory consequence, Defendant is entitled to an award of "costs and attorney's fees" (Civil Rights Law §70-a(1)(a)), as such an award is mandatory.

Based on the foregoing, it is hereby

ORDERED that Defendant's motion to dismiss is GRANTED; and it is further

ORDERED that the motion to dismiss of Intervenor-Defendant Commission is GRANTED; and it is further

ORDERED that the complaint is DISMISSED with prejudice; and it is further

ORDERED that a hearing on the amount of attorney's fees and costs to be awarded to Defendant shall be held in person on April 27, 2023 at 10:00 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: April 4, 2023
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 8-5-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Decision+Order #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Scanned to the E-File System only

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

Michael H. Sussman, Esq.
1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, NY 10924

Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020

New York State Commission on Judicial Conduct
Corning Tower, Suite 230, Empire State Plaza
Albany, NY 12223

COMMISSION EXHIBIT 16

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**"), made effective as of the date defined below, is entered into by and between Frank Mora ("**Mora**") and Stacey Koch ("**Koch**"). Mora and Koch may be referred to herein collectively as the "**Parties**" and individually as a "**Party**."

WHEREAS, Mora is a Poughkeepsie City Court Judge, and Koch is an office manager at Seeta Eye, an ophthalmology practice with a location at 27 Davis Avenue, Poughkeepsie, New York;

WHEREAS, on December 28, 2021, during the COVID-19 pandemic, Mora entered Seeta Eye, and Mora and Koch had a dispute regarding Mora's alleged inability to wear a face mask while in Seeta Eye;

WHEREAS, on December 29, 2021, Koch submitted a complaint to the New York State Commission on Judicial Conduct concerning Mora's behavior in Seeta Eye the day before;

WHEREAS, on December 29, 2022, Mora filed a lawsuit styled *Frank Mora v. Stacey Koch*, Index No. 2022-54141, in New York Supreme Court, Dutchess County (the "**Lawsuit**"), alleging that Koch's complaint was defamatory and seeking compensatory and punitive damages;

WHEREAS, on February 2, 2023, Koch filed a motion (i) to dismiss the Lawsuit (the "**Dismissal Motion**") and (ii) for attorney's fees and costs under New York Civil Rights Law § 70-a(1)(a) (the "**Fee Motion**");

WHEREAS, on April 4, 2023, the Court granted Koch's Dismissal Motion, dismissed the Lawsuit with prejudice, and held that Koch is entitled to a mandatory award of costs and attorney's fees, the amount of which would be determined at a later date;

WHEREAS, on April 27, 2023, Koch's counsel filed an affirmation in support of her Fee Motion, and Mora has prepared but not filed an opposition to the same in light of this Settlement Agreement;

WHEREAS, the Parties now desire to resolve the Fee Motion without further litigation;

NOW, THEREFORE, in consideration of the following promises, and for good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

1. **Effective Date.** The effective date of this Agreement (the "**Effective Date**") shall be the date that the last of the Parties signs this Agreement.

2. **Settlement Consideration.** In consideration of mutual agreements, representations, warranties, covenants, and releases set forth in this Agreement, the Parties agree to the following:

   a. **Payment.** Within twenty (20) days of the Effective Date, Mora shall make one payment of Twenty Thousand Dollars ($20,000.00) (the "**Payment**") to Koch. The Payment shall be made via check, cashier's check, or electronic wire transfer from Mora's counsel, Sussman & Goldman, to Koch's counsel, Davis Wright Tremaine LLP.

   b. **Apology.** Within twenty (20) days of the Effective Date, Mora shall send to Koch a signed apology letter that is attached as **Exhibit A** (the "**Apology**"). The Apology shall be sent from Mora's counsel, Sussman & Goldman, to Koch's counsel, Davis Wright Tremaine LLP. The content of the Apology shall be confidential as between Mora, Koch, and their counsel, but the fact that Mora delivered the Apology to Koch may be public.

c. **No Contact.** Beginning on the Effective Date and continuing in perpetuity, Mora shall have no contact with Koch nor any Seeta Eye location (the "**Contact Ban**"). The Contact Ban includes a prohibition on (i) any communication (whether oral, written, or electronic) with Koch or any Seeta Eye location, or (ii) intentional presence in the vicinity of Koch or at any Seeta Eye location. Mora agrees that a violation of the Contact Ban shall constitute irreparable injury warranting injunctive relief for specific performance.

d. **Waiver of Claims Related to Contact Ban and Appeal.** Mora agrees to waive and not assert any claim, including any claim based on a disability, against Koch, Seeta Eye, or its employees, arising from the Contact Ban. Mora further agrees to waive his right to appeal, or to move to reargue, renew, or otherwise reconsider, in connection with the Court's April 4, 2023 order or any judgment predicated on such order.

e. **Withdrawal of Fee Motion.** Within fourteen (14) days of Koch's receipt of the Payment and the Apology, Koch, through her counsel, shall inform the Court that she is withdrawing her Fee Motion pursuant to a settlement agreement. Neither this Agreement, nor any exhibits, shall be filed with the Court.

f. **Release of Claims in Fee Motion.** Upon the withdrawal of the Fee Motion, Koch shall thereby forever and unconditionally release, remit, acquit, and discharge Mora, and his present, former, and future (as applicable) spouses, heirs, representatives, predecessors, successors, insurers, agents, partners, principals, employees, contractors, and attorneys, from any claim for costs and attorney's

fees under New York Civil Rights Law § 70-a(1)(a), that Koch may have or ever had, from the beginning of time to the Effective Date, arising from the Lawsuit.

3. **No Release of Obligations in This Agreement.** Notwithstanding any provision in this Agreement, nothing in this Agreement is intended to or shall release any of the Parties from the obligations, duties, and covenants that are set forth in this Agreement.

4. **Miscellaneous.**

a. **Representations.** The Parties represent and warrant by their execution of this Agreement that they have approved and accepted this Agreement, and that they have the capacity to enter into this Agreement.

b. **Incorporation of Recitals.** The statements contained in the "**WHEREAS**" recitals of this Agreement are true, material, and necessary for a full comprehension and understanding of this Agreement and are accordingly incorporated herein as contractual terms of this Agreement.

c. **Choice of Law, Jurisdiction, and Venue.** This Agreement shall be deemed to have been made in the State of New York. This Agreement shall be governed by, and construed in accordance with, the internal laws of New York, without regard to conflict-of-law principles. The New York Supreme Court, New York County, shall have exclusive jurisdiction and venue over any claims or disputes arising under this Agreement.

d. **Severability.** The terms of this Agreement are severable, and if for any reason any part hereof shall be found to be unenforceable, the remaining terms and conditions shall remain in full force and effect.

e. **Acknowledgment of Advice of Counsel.** The Parties acknowledge that they have read this Agreement carefully, that they have been afforded a sufficient amount of time to consider and accept the terms and effects of this Agreement, that they have been advised by legal counsel of their choosing on all of the terms and effects of this Agreement prior to executing this Agreement, and that in all aspects and respects they are voluntarily entering into and executing this Agreement.

f. **Entire Agreement; Modifications.** No amendment, modification, or termination of this Agreement shall be deemed valid unless reduced to writing signed by all of the Parties. This Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements and understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. No Party is relying on any representations or promises other than those set forth expressly in this Agreement.

g. **Participation in Drafting.** Each of the Parties cooperated in the drafting and preparation of this Agreement and, if there is any deficiency in the construction of this Agreement, it shall not be construed against either Party.

h. **Successors and Assigns.** This Agreement shall inure to the benefit of the Parties' successors and assigns.

i. **Execution in Counterparts.** This Agreement may be executed in counterparts and transmitted by email, facsimile, or other electronic transmission, each of which when executed shall be deemed to be an original and all of which together shall constitute a single instrument binding upon the Parties. Signatures may be

electronic or handwritten, both of which being of equal effect whether kept in electronic or paper form. All fully executed copies shall be considered duplicate originals, equally admissible in evidence.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed as of the Effective Date.

By: _____ Date: May 16, 2023
FRANK MORA

By: _____ Date: May 22, 2023
STACEY KOCH

COMMISSION EXHIBIT
17

May 4, 2023

Dear Ms. Koch:

As you know, I was attempting to withdraw the lawsuit after the March 27th court appearance, however, it was not finalized before the court issued its expedited decision on April 4th.

I am going to share some very personal things with you. Perhaps if you had known at the time, our exchange would have turned out differently. I do not wear a mask because I suffer from severe (acute) anxiety, which manifests as object phobia. The physical symptoms were addressed by my chiropractor, that is why he was able to write a note. He was not able to put a diagnosis, as chiropractors are not able to address mental health issues or disabilities. [redacted].

[redacted]

I now know that this suit should not have been brought in the first instance, and I apologize for doing so.

The Patron Saint of Attorneys, Sir Thomas More, wrote a letter while imprisoned in the Tower of London. The following is one of the quotes from that letter, "To think my worst enemies my best friends, for the brethren of Joseph could never have done him so much good with their love and favour as they did him with their malice and hatred."

[redacted]

Please forgive me for any angst I have caused you.

Frank Mora

COMMISSION EXHIBIT 18

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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VICKIE MA
ERIC ARNONE
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STELLA E. GILLILAND
ADAM B. KAHAN
STAFF ATTORNEYS

ALAN W. FRIEDBERG
SPECIAL COUNSEL

CONFIDENTIAL

April 8, 2024

Via Email: [redacted]@yoderlaveglia.com; [redacted]@cjllaw.org
Hon. Frank M. Mora
c/o Chad J. LaVeglia, Esq.
Yoder Laveglia LLP
626 RXR Plaza, Suite #613
Uniondale, New York 11566

Re: File Nos. 2021/N-1120 and 2023/N-0369

Dear Judge Mora:

In connection with its investigation into allegations that you refused to wear a face mask at Seeta Eye Center on December 28, 2021 (2021/N-1120) and brought a defamation lawsuit against Stacey Koch, *Frank Mora v Stacey Koch*, in retaliation for Ms. Koch filing a complaint against you with the Commission (2023/N-0369), the Commission requests the following information:

1. A list of any and all email addresses that you used between December 28, 2021, to the present, including but not limited to [redacted]@nycourts.gov and [redacted]@yahoo.com.

2. Copies of any and all emails between you and Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on

December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

3. Copies of any and all text messages between you Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

4. Copies of any and all letters between you Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

5. Copies of any and all voice recordings made by and between you and Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

In addition to your responses to the foregoing, during your February 27, 2024, appearance at the Commission, you voluntarily testified about communications with your attorney, Michael H. Sussman, Esq., regarding the defamation lawsuit that you brought against Stacey Koch. In addition, in your letter dated March 12, 2024, supplementing the testimony that you gave at your appearance, you represented that you initiated the lawsuit against Ms. Koch "based on [Mr. Sussman]'s legal advice" and that Mr. Sussman "advised" you it "was a viable lawsuit." Having voluntarily testified about your communications with your attorney and having placed those communications at issue, you have waived the attorney-client privilege. *See*

e.g. Jakobleff v. Cerrato, Sweeney and Cohn, 97 AD2d 834, 835 (2d Dept 1983); *see also People v Patrick*, 182 NY 131, 175 (1905).

Please sign and return the enclosed Waiver of Confidential Communications permitting Michael H. Sussman, Esq., to provide communications, documents, information and testimony to the New York State Commission on Judicial Conduct related to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference.

Please respond in writing to this inquiry and sign and date the enclosed waiver and return it to the Commission on or before April 26, 2024.

Thank you for your continued attention to this matter.

Very truly yours,

MARK LEVINE
Deputy Administrator

Encl.

cc: Melissa DiPalo, Esq. – [redacted]@cjc.ny.gov

WAIVER OF CONFIDENTIAL COMMUNICATIONS

File Nos. 2021/N-1120, 2023/N-0369

I, FRANK M. MORA, a Judge of the Poughkeepsie City Court, Dutchess County, hereby waive the attorney-client privilege of confidentiality and give my attorney in *Frank Mora v Stacey Koch* (Index No. 2022-54141), Michael H. Sussman, Esq., permission to provide communications, documents, information and testimony to the New York State Commission on Judicial Conduct related to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference.

Dated:

_____

Hon. Frank M. Mora
Judge of the Poughkeepsie City Court

COMMISSION EXHIBIT 19

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STELLA E. GILLILAND
ADAM B. KAHAN
STAFF ATTORNEYS

ALAN W. FRIEDBERG
SPECIAL COUNSEL

CONFIDENTIAL

May 21, 2024

Via Email: [redacted]@cjllaw.org
Hon. Frank M. Mora
c/o Chad J. LaVeglia, Esq.
Yoder Laveglia LLP
626 RXR Plaza, Suite #613
Uniondale, New York 11566

Re: File Nos. 2021/N-1120 and 2023/N-0369

Dear Mr. LaVeglia:

I write in response to your letter dated May 9, 2024, in response to mine of April 8, 2024. Copies of both letters are attached as Exhibit 1 and Exhibit 2, respectively.

I. Request for Copies of Emails, Text Messages, etc.

At the outset, the information that you submitted with your letter was not wholly responsive to the requests made in Commission's letter of April 8. The Commission requested that you produce copies of any and all emails, text messages, letters and voice recordings between you and Mr. Sussman **from December 28, 2021, to present** (Exhibit 2, Questions 2 through 5). As you stated in your letter of May 9, you provided only "all Koch related emails from December 28, 2021, through the date of filing the Koch lawsuit (12/29/2022)" (Exhibit 1, p. 1).

The Commission requires that the judge provide the requested information for the time period specified in Questions 2 through 5 of the Commission's April 8th letter. As we previously advised in our letter dated October 13, 2023, the judge's failure to respond to the Commission's requests may be found to be a failure to cooperate with the Commission's investigation. *See Matter of O'Connor*, 2019 Ann Rep of NY Commn on Jud Conduct at 182, *removal accepted*, 32 NY3d 121 (2018); *Matter of McAndrews*, 2014 Ann Rep of NY Commn on Jud Conduct at 157.

II. Waiver of Attorney-Client Privilege

In your letter, you write that Judge Mora "disputes that he waived the attorney-client privilege when he testified in front of the Commission" because he was required to testify, would have been subject to a failure-to-cooperate charge had he "failed to answer the Commission's questions," and was not "warn[ed] . . . about possibly waiving the attorney-client privilege regarding his testimony about Mr. Sussman" (Exhibit 1, p. 1). You failed to provide a single citation for any authority in support for your position. In fact, case law firmly establishes the waiver.

Pursuant to statute, the attorney-client privilege protects "confidential communication[s] made between the attorney or his employee and the client in the course of professional employment" from compelled disclosure "in any action, disciplinary trial or hearing, or administrative action, proceeding or hearing conducted by or on behalf of any state, municipal or local governmental agency . . . ." CPLR 4503(a). However, the privilege may be waived by a number of circumstances, and "[e]xpress waiver of the privilege is rare," such that "cases are usually concerned with waiver by implication." Prince, Richardson on Evidence § 5-209. One common waiver scenario is the "at issue" waiver, which occurs "where a party affirmatively places the subject matter of its own privileged communication at issue in litigation" by "assert[ing] a claim or defense that he intends to prove by use of the privileged materials," such that "invasion of the privilege is required to determine the validity of a claim or defense of the party

asserting the privilege, and application of the privilege would deprive the adversary of vital information." *Deutsche Bank Trust Company of Americas v Tri-Links Inv. Trust*, 43 AD3d 56, 63-64 (1st Dept 2007) (internal citations omitted); *see Melcher v Apollo Medical Fund Management LLC*, 37 AD3d 217 (1st Dept 2007) (attorney-client privilege waived where the client "testif[ied] that he replied only upon the advice of [his attorney] in setting up [an offshore corporation] as he did"); *see generally US Bank National Association v Lightstone Holdings LLC*, 196 AD3d 445 (1st Dept 2021).

Here, the plain language of the statutory privilege made it applicable to the Commission's investigation as an "administrative action" or "proceeding" conducted by a state agency, such that no "warning" was necessary – especially for a client-attorney represented by his own counsel. CPLR 4503(a). While Judge Mora certainly was required to appear before the Commission to testify, a judge so situated may attempt to invoke a federal or state law privilege where applicable. Here, of course, your own opening statement made clear that Judge Mora "relied exclusively on his attorney's advice" in filing the lawsuit underlying the misconduct charge against him (IA, p. 10),[1] and Judge Mora subsequently gave extensive testimony about his reliance on his attorney's advice with regard to the commencement and continuation of the suit and the merits of an appeal. There is simply no question that he "asserted a claim or defense that he intend[ed] to prove by use of the privileged materials," thus causing the privilege to be waived. *See Deutsche Bank Trust Company*, 43 AD3d at 64.

In view of the forgoing, the Commission reiterates its request that Judge Mora sign, date and return the Waiver of Confidential Communications that was previously provided with the Commission's letter of April 8, and a copy of which is attached hereto. Should Judge Mora decline to execute the waiver for the reasons proffered in your May 9 letter, **please provide whatever legal authority you have in support of the position that Judge Mora has not waived the attorney-client privilege.**

[1] "IA" refers to transcript of Judge Mora's testimony at his investigative appearance on February 27, 2024, which was provided to the judge by letter dated April 10, 2024.

Kindly submit (1) the information requested in Questions 2 through 5 of the Commission's letter of April 8, 2024, and (2) an execute Waiver of Confidential Communications on or before June 12, 2024.

Thank you for your prompt attention to this matter.

Very truly yours,

MARK LEVINE
Deputy Administrator

cc: Melissa DiPalo, Principal Attorney
Via Email: [redacted]@cjc.ny.gov

WAIVER OF CONFIDENTIAL COMMUNICATIONS

File Nos. 2021/N-1120, 2023/N-0369

I, FRANK M. MORA, a Judge of the Poughkeepsie City Court, Dutchess County, hereby waive the attorney-client privilege of confidentiality and give my attorney in *Frank Mora v Stacey Koch* (Index No. 2022-54141), Michael H. Sussman, Esq., permission to provide communications, documents, information and testimony to the New York State Commission on Judicial Conduct related to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference.

Dated:

_____

Hon. Frank M. Mora
Judge of the Poughkeepsie City Court

EXHIBIT 1

LAW OFFICE OF CHAD J. LAVEGLIA PLLC

May 9, 2024

Via Electronic Mail
[redacted]@cjc.ny.gov, [redacted]@cjc.ny.gov

PERSONAL & CONFIDENTIAL
Mark Levine, Esq.
Deputy Administrator
Melissa DiPalo, Esq.
Senior Attorney
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, NY 10006

Re: File Nos. 2021/N-1120 and 2023/N-0369
Hon. Frank M. Mora

Dear Deputy Administrator Levine and Ms. DiPalo:

Thank you for the extension for Judge Mora to respond to your letter dated April 8, 2024, alleging that Judge Mora waived his attorney-client privilege. The following is provided to the best of Judge Mora's recollection. Judge Mora respectfully reserves the right to file supplemental information if necessary. Judge Mora has signed below, acknowledging that he has read this letter and adopts its contents.

Judge Mora disputes that he waived the attorney-client privilege when he testified in front of the Commission on February 27, 2024. Judge Mora's testimony was required per your letter dated October 13, 2023, in accordance with Section 44, subdivision 3, of the Judiciary Law. There is nothing voluntary about a Judge testifying before the Commission. In fact, if a Judge does not answer the Commission's questions, that Judge would be subject to a complaint for failing to cooperate with the Commission. Per the transcript, Page 2, Lines 13-16, Referee Goldstock advised Judge Mora that the rules of evidence do not apply. In addition, no warning was given to Judge Mora about possibly waiving the attorney-client privilege regarding his testimony about Mr. Sussman, as it was given to him on Page 85, Line 25 through Page 86, Line 6, when he was testifying about Michael Brown.

Notwithstanding the above, attached please find an Affirmation from Michael H. Sussman, Esq., and all Koch related emails from December 28, 2021, through the date of filing the Koch lawsuit (12/29/22).

Judge Mora only communicated with Mr. Sussman from [redacted]@yahoo.com.

The first email communication between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference is dated December 8, 2022. Judge Mora has reviewed that email, and all emails from that period, that are being submitted to the Commission (a total of 14), and they are complete and accurate. Some emails have been redacted as they relate to non-Koch matters.

There are no text messages between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

There are no letters between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

There are no voice recordings between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

Mr. Sussman's affirmation, and the emails provided, corroborate Judge Mora's testimony that the Koch defamation lawsuit was not brought in retaliation for Ms. Koch having filed a complaint against him with the Commission.

Thank you.

Chad J. LaVeglia Esq.

Hon. Frank Mora

AFFIRMATION OF MICHAEL H. SUSSMAN, ESQ.

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

Michael H. Sussman, Esq. states:

1. I am a 1978 honors graduate of Harvard Law School and have worked as a public interest lawyer for the last 46 years, first for the United States Department of Justice Civil Rights Division, then for the NAACP National Office and starting on January 1, 1986 in my own practice in this state. I focus on civil rights and constitutional and criminal law. I am duly licensed attorney in the State of New York, having been admitted on February 5, 1986. My office is now located at 1 Railroad Avenue, Goshen, New York.

2. I first met Judge Mora in or about 2019, as he was one of the plaintiffs in a class-action lawsuit regarding the State of New York's repeal of religious exemptions for school vaccinations.

3. I currently represent Judge Mora in his lawsuit against the New York State Unified Court System, et al, regarding his religious discrimination claims for denying him a religious exemption to the Covid-19 vaccination policy. Mr. Mora signed a retainer in that matter on November 12, 2022. We are currently awaiting argument in the Second Circuit on our appeal of the district's court's order granting defendants' motion to dismiss.

4. I have advised and counseled Judge Mora *pro-bono* regarding his pending matters before the New York State Commission on Judicial Conduct (hereafter "Commission") from on or about March 30, 2022, to present though I understand he has had his own primary counsel in that matter.

5. I represented Judge Mora in a defamation lawsuit against Stacey Koch which I filed in late 2022.

6. Although I was apprised of Ms. Koch's complaint and the Commission's proceedings from on or about April 12, 2022, through the present day, the first time Judge Mora and I spoke about taking legal action against Ms. Koch, was after Michael Brown appeared before the Commission in or about September 2022.

7. Sometime after September 2022, Judge Mora contacted me by telephone, relayed what Michael Brown told him, and asked if he had any legal recourse, specifically tortious interference with business. In this time period, I was working on preparing

the federal Complaint. In mid-November 2022, Mr. Mora requested that I work on the SEETA matter and I did prepare a complaint by mid-December and provided it to him with a retainer agreement.

8. I did this after researching the matter, and concluding Judge Mora did not meet all the elements for tortious interference with business but did meet the elements of defamation.

9. To my knowledge, Judge Mora did not file his lawsuit because Ms. Koch complained about him to the Commission; rather the nature and false content of her complaint and her words and actions related by Michael Brown triggered the lawsuit.

10. At no point did I advise Judge Mora that this was a SLAPP suit, or that it could be a SLAPP suit. It was my professional opinion prior to suit, and still to this day, that it was not a SLAPP suit. SLAPP was not discussed until after Ms. Koch filed her motion to dismiss. Supreme Court granted Ms. Koch's absolute immunity argument. I wished to appeal and believed then, and I still do, that Supreme Court's decision was erroneous. Judge Mora declined to appeal and wished to resolve the matter as we eventually did.

11. I never advised Judge Mora that this suit was not viable. It was my professional opinion then, and continues to be, that the suit was viable and that absolute immunity should not apply to false statements made in bad faith, as I believe were the facts here.

12. The only email address that I communicated with Judge Mora was and is [redacted]@yahoo.com.

13. The first email communication between Judge Mora and myself from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference is dated December 8, 2022. I have reviewed that email, and all emails from that period, that are being submitted to the Commission by Mr. LaVeglia (a total of 14), and they are complete and accurate. Some emails have been redacted as they relate to non-Koch matters.

14. I have no text messages between Judge Mora and myself from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference. I know of no such text messages and rarely engage in text messages

about work-related issues with anyone.

15. Other than the retainer agreement, I know of no letters between Judge Mora and myself from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference. Likewise, I made no voice recordings of any conversation with Judge Mora at any time.

I affirm this day of May, 2024, under the penalties of perjury under the laws of the State of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Michael H. Sussman, Esq.

Caitlyn M. Higgins
NOTARY PUBLIC

My commission expires:

CAITLYN M HIGGINS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01H10021694
Qualified in Orange County
Commission Expires 03/28

Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 8, 2022 at 10:40 AM EST

Would you please represent me against Seeta Eye/Stacey Koch? We only have until 12/28/22 to file.

On Tuesday, December 6, 2022 at 10:23:21 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

of course.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, December 6, 2022 4:45 PM
To: Michael Sussman <[redacted]1@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

To see what is there, I have to access Pacer. Is it OK if I set up my own private account to do so?

On Tuesday, December 6, 2022 at 04:41:56 PM EST, Michael Sussman [redacted]@sussman.law> wrote:

FYI
Michael Sussman

From: NYSD_ECF_Pool@nysd.uscourts.gov <NYSD_ECF_Pool@nysd.uscourts.gov>
Sent: Tuesday, December 6, 2022 4:22 PM
To: CourtMail@nysd.uscourts.gov <CourtMail@nysd.uscourts.gov>
Subject: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of New York

Notice of Electronic Filing

The following transaction was entered by Sussman, Michael on 12/6/2022 at 4:22 PM EST and filed on 12/6/2022

Re: Demand for correction/retraction

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Cc: [redacted]@sussman.law

Date: Wednesday, December 14, 2022 at 01:24 PM EST

I am enclosing for your review the Koch complaint. Please review and make any suggestions so we may file this week. I will send you a retainer to cover this. Ms

Michael Sussman

Re: Demand for correction/retraction

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, December 14, 2022 at 03:30 PM EST

I will review...the elements of tortious interference do not exactly fit:

- The existence of a valid and binding contract between the plaintiff and a third party - assuming OCA is the third party, yes...
- The defendant's knowledge of the contract - yes..as she wrote knowing you were a judge.
- The defendant's intentional procurement of the third party's breach - yes, she sought your removal or the third party's breaking its contract with you BUT
- Actual breach of the contract - no, an invesitgation is not a breach of any contract you have with OCA and you remain employed...

I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:23 PM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: Demand for correction/retraction

I made some suggested changes and asked some questions in red.

We are not adding in a tortious interference claim?

How much are we suing for and are you doing this one on a contingency basis?

On Wednesday, December 14, 2022 at 01:24:57 PM EST, Michael Sussman [redacted]@sussman.law> wrote:

I am enclosing for your review the Koch complaint. Please review and make any suggestions so we may file this week. I will send you a retainer to cover this. Ms

Michael Sussman

Re: Demand for correction/retraction

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, December 14, 2022 at 03:47 PM EST

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

On Wednesday, December 14, 2022 at 03:30:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I will review...the elements of tortious interference do not exactly fit:

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I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:23 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: Demand for correction/retraction

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How much are we suing for and are you doing this one on a contingency basis?

Re: Demand for correction/retraction

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, December 14, 2022 at 04:41 PM EST

There is no private right of action under HIPAA; there is a state law invasion of privacy claim developed in my case, Juric v. Bergenstrasser which might be possible...but i am not sure we gain much from it.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:47 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Demand for correction/retraction

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

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I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:23 PM

retainer and revised complaint in Mora v. Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, December 14, 2022 at 05:28 PM EST

Per your request. Best to you -

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



DOC121422-006.pdf
586.5kB

Re: Demand for correction/retraction

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, December 14, 2022 at 10:21 PM EST

Should I file a HIPAA complaint with the government?

On Wednesday, December 14, 2022 at 04:41:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

There is no private right of action under HIPAA; there is a state law invasion of privacy claim developed in my case, Juric v. Bergenstrasser which might be possible...but i am not sure we gain much from it.

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:47 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Demand for correction/retraction

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

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I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Re: retainer and revised complaint in Mora v. Koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 15, 2022 at 08:17 AM EST

It looks good, but needs a few changes.

Retainer
- it is Stacey not Tracey

Complaint
5. change "he" to "the"

25. quotes are needed before huge scene" on 2nd line; remove County before Judge on 2nd to last line

26. change "Ceeta" to "Seeta"

On Wednesday, December 14, 2022 at 05:28:07 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Per your request. Best to you -

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: Demand for correction/retraction

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 15, 2022 at 09:28 AM EST

I see you are wishy-washy on that one.

On Thursday, December 15, 2022 at 09:15:03 AM EST, Michael Sussman [redacted]@sussman.law> wrote:

No

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 10:21:37 PM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: Demand for correction/retraction

Should I file a HIPAA complaint with the government?

On Wednesday, December 14, 2022 at 04:41:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

There is no private right of action under HIPAA; there is a state law invasion of privacy claim developed in my case, Juric v. Bergenstrasser which might be possible...but i am not sure we gain much from it.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:47 PM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: Demand for correction/retraction

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

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- The existence of a valid and binding contract between the plaintiff and a third party - assuming OCA is the third party, yes...

Re: retainer and revised complaint in Mora v. Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, December 15, 2022 at 05:06 PM EST

Ok changes made-please change name in retainer, sign and return and we file this Monday.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, December 15, 2022 8:17:37 AM
To: Michael Sussman <[redacted]L@sussman.law>
Subject: Re: retainer and revised complaint in Mora v. Koch

It looks good, but needs a few changes.

Retainer
- it is Stacey not Tracey

Complaint
5. change "he" to "the"

25. quotes are needed before huge scene" on 2nd line; remove County before Judge on 2nd to last line

26. change "Ceeta" to "Seeta"

On Wednesday, December 14, 2022 at 05:28:07 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Per your request. Best to you -

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

edits to final complaint

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, December 15, 2022 at 05:08 PM EST

I made the three spelling charges you noted...we will file the attached upon receipt of the retainer agreement and costs check, hopefully on or before Monday. Best to you.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



mora complaint re Seeta final 121522.docx
20.8kB

Re: edits to final complaint

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 15, 2022 at 09:21 PM EST

Michael,

Attached please find the signed retainer agreement, along with confirmation from TD Bank for issuance of the $500 retainer payment. This is through TD Bank Bill Pay and goes directly from the bank to you. As they say, the check is in the mail. As it has been issued, I hope you will file before you receive it. I think you know I'm good for it.

The word "County" still needs to be removed from the 2nd to last sentence in #25. Also in 25 (a), "caused" should be "cause."

Thank you.

Frank

On Thursday, December 15, 2022 at 05:08:51 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I made the three spelling charges you noted...we will file the attached upon receipt of the retainer agreement and costs check, hopefully on or before Monday. Best to you.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Koch lawsuit retainer agreement.pdf
2.2MB

Koch lawsuit retainer TD Bank check confirmation.pdf
57.9kB

Re: edits to final complaint

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, December 19, 2022 at 03:59 PM EST

Good afternoon.

Did you file the complaint against Koch?

[redacted]

On Thursday, December 15, 2022 at 09:21:42 PM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Michael,

Attached please find the signed retainer agreement, along with confirmation from TD Bank for issuance of the $500 retainer payment. This is through TD Bank Bill Pay and goes directly from the bank to you. As they say, the check is in the mail. As it has been issued, I hope you will file before you receive it. I think you know I'm good for it.

The word "County" still needs to be removed from the 2nd to last sentence in #25. Also in 25 (a), "caused" should be "cause."

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I made the three spelling charges you noted...we will file the attached upon receipt of the retainer agreement and costs check, hopefully on or before Monday. Best to you.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

RE: status

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, December 22, 2022 at 08:25 AM EST

It is fine, just wanted you to know we had filed and met the deadline of concern to you.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, December 22, 2022 8:20 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: status

I just checked on TD Bank's website and it shows the check should be there by today. Sorry for the delay, but they are competing with Christmas mailings.

Thanks for the update.

On Thursday, December 22, 2022 at 07:23:07 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

We did not receive your check for costs for the second case but, regardless, did file it yesterday.

[redacted]

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924

EXHIBIT 2

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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ALAN W. FRIEDBERG
SPECIAL COUNSEL

CONFIDENTIAL

April 8, 2024

Via Email: [redacted]@yoderlaveglia.com; [redacted]@cjllaw.org
Hon. Frank M. Mora
c/o Chad J. LaVeglia, Esq.
Yoder Laveglia LLP
626 RXR Plaza, Suite #613
Uniondale, New York 11566

Re: File Nos. 2021/N-1120 and 2023/N-0369

Dear Judge Mora:

In connection with its investigation into allegations that you refused to wear a face mask at Seeta Eye Center on December 28, 2021 (2021/N-1120) and brought a defamation lawsuit against Stacey Koch, *Frank Mora v Stacey Koch*, in retaliation for Ms. Koch filing a complaint against you with the Commission (2023/N-0369), the Commission requests the following information:

1. A list of any and all email addresses that you used between December 28, 2021, to the present, including but not limited to [redacted]@nycourts.gov and [redacted]@yahoo.com.

2. Copies of any and all emails between you and Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on

December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

3. Copies of any and all text messages between you Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

4. Copies of any and all letters between you Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

5. Copies of any and all voice recordings made by and between you and Michael H. Sussman, Esq., from December 28, 2021, to present, pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch,* and/or any discussion of defamation or tortious interference.

In addition to your responses to the foregoing, during your February 27, 2024, appearance at the Commission, you voluntarily testified about communications with your attorney, Michael H. Sussman, Esq., regarding the defamation lawsuit that you brought against Stacey Koch. In addition, in your letter dated March 12, 2024, supplementing the testimony that you gave at your appearance, you represented that you initiated the lawsuit against Ms. Koch "based on [Mr. Sussman]'s legal advice" and that Mr. Sussman "advised" you it "was a viable lawsuit." Having voluntarily testified about your communications with your attorney and having placed those communications at issue, you have waived the attorney-client privilege. *See*

e.g. Jakobleff v. Cerrato, Sweeney and Cohn, 97 AD2d 834, 835 (2d Dept 1983); *see also People v Patrick*, 182 NY 131, 175 (1905).

Please sign and return the enclosed Waiver of Confidential Communications permitting Michael H. Sussman, Esq., to provide communications, documents, information and testimony to the New York State Commission on Judicial Conduct related to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference.

Please respond in writing to this inquiry and sign and date the enclosed waiver and return it to the Commission on or before April 26, 2024.

Thank you for your continued attention to this matter.

Very truly yours,

MARK LEVINE
Deputy Administrator

Encl.

cc: Melissa DiPalo, Esq. – [redacted]@cjc.ny.gov

WAIVER OF CONFIDENTIAL COMMUNICATIONS

File Nos. 2021/N-1120, 2023/N-0369

I, FRANK M. MORA, a Judge of the Poughkeepsie City Court, Dutchess County, hereby waive the attorney-client privilege of confidentiality and give my attorney in *Frank Mora v Stacey Koch* (Index No. 2022-54141), Michael H. Sussman, Esq., permission to provide communications, documents, information and testimony to the New York State Commission on Judicial Conduct related to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference.

Dated:

_____

Hon. Frank M. Mora
Judge of the Poughkeepsie City Court

Outlook

COMMISSION EXHIBIT 20

Re: Draft letter to judicial commission's Nov 14 correspondence

From Frank Mora <[redacted]@yahoo.com>
Date Wed 11/23/2022 8:09 PM
To Michael Sussman <[redacted]@sussman.law>

Understood. When looking at it, are we able to just sue Stacey Koch, the manager of Seeta?

Enjoy the day tomorrow with your family.

On Wednesday, November 23, 2022 at 04:04:17 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I need a little more time to go back and review all of that and want first to focus on the OCA issue…Happy Holiday.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, November 23, 2022 4:02 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Draft letter to judicial commission's Nov 14 correspondence

Thank you. Please let me know if we can proceed against Seeta.

Happy Thanksgiving!

On Tuesday, November 22, 2022 at 10:16:54 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

my edits are embedded in the text.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, November 22, 2022 7:34 PM

Outlook

COMMISSION EXHIBIT 21

Re: Koch

From Frank Mora <[redacted]@yahoo.com>
Date Thu 2/2/2023 7:41 PM
To Michael Sussman <[redacted]@sussman.law>

Did you FOIL the police calls yet?

Since she knew almost a year before the confrontation that I did not medically tolerate the mask, I believe she had this all planned.

On Thursday, February 2, 2023 at 06:18:26 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

just received a motion to dismiss the Koch complaint...interesting...will share with you when i have a moment tomorrow. It is on line...

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Outlook

COMMISSION EXHIBIT 22

Happy Tuesday

From Frank Mora <[redacted]@yahoo.com>
Date Tue 2/7/2023 8:55 AM
To Michael Sussman <[redacted]@sussman.law>

2 attachments (17 MB)
Answer to Koch Motion to Dismiss.docx; 40Judicial Conduct Commission Reply with Exhibits 6-17-22.pdf;

Attached are some of my thoughts thus far. I hope they are in the right direction.

Any word on the federal preliminary injunction?

Also, should I be present at oral arguments on March 8? If so, do I ask for permission from my supervising judge?

On Sunday, February 5, 2023 at 09:50:55 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Here are the papers..."absolute" is not so "absolute" as my research is showing...our papers are due on 2/21 and I have two briefs to write before this...
but, I am thinking about it...ms

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

On January 29, 2021, when I was there with my son [redacted], Koch made no inquiry as to my medical condition, nor did she request documentation. She knew that I did not medically tolerate masks for 11 months before going there with my son [redacted] on December 28, 2021.

It does not seem right that Koch can use the judicial commission as a sword, then use the SLAPP statute as a shield. Regarding SLAPP, it should be stressed that it was Koch who caused the behavior. I did nothing wrong by presenting myself for my [redacted] son's eye exam, and following the regulations. Knowing that I do not medically tolerate masks, and not coming up with a plan (such as having me wait in the parking lot and call me in through the side door), was her inappropriate behavior. They are attempting to transfer her misdeeds to me.

Are individuals allowed to make a false report to the judicial commission with impunity? That's what the motion and their case law seem to state.

Seeta's ability to require masks derives from 10 NYCRR 2.60

Specifically, Section (a) states "any person ... able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering..."

I do not medically tolerate a mask, thus I wore a face-shield.

Interestingly, it states mask OR face covering, then gives three examples of face-coverings.

Section (e) – face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth. (emphasis added). I submit that a face shield meets this definition, as it completely cover's my nose and mouth.

See article https://www.faceshield.com/what-experts-say/face-shield-as-a-preferred-face-covering-over-a-mask-or-cloth/

I never failed to abide by the above regulation.

I think we should focus on Koch creating the entire scene, then reporting me for the scene that she created. I think the police call recordings are essential. If she acknowledges that she knows I was a judge on the police call, it shows she was lying about contacting the bar association. We can then show that she had no intention of following the mask regulation, even though she knew well ahead of the Dec visit that I did not tolerate masks.

Koch was determined not the let anyone in without a mask. She basically stated so when I asked her Jan 29, 2021 what they do for people who do not medically tolerate a mask. She advised that only one other patient could not wear a mask. I asked her how they handled it, and she said that patient decided to leave the practice. When you read between the lines, you see that Koch made her leave the practice. I told her I choose not to leave the practice, as my children and I like the doctors here. I also stated that she needs to have something in place for when I come back with my minor children, or for myself, for me to be able to wear the face

shield in lieu of the mask. I told her it is a violation of the American with Disabilities Act to not allow me in because of my medical condition.

Please re-read my response to the judicial commission which is attached (#40 in the batch of emails I sent to you), starting at page 27. I did not have the above paragraph in there, but I think it is needed in our answer to the motion. It shows she had 11 months to have something in place for when I returned. She had no intention of abiding by 10 NYCRR 2.60, although I did.

I think we should point out the governor's mandates that were a pre-cursor to this regulation, which forbade asking for medical documentation. This is all spelled out in my above response.

This lawsuit was not brought to harass or intimidate Koch from testifying before the commission. It was specifically brought after I found out she testified before the commission, and then bragged to her former co-worker Michael Brown that she told the commission that she felt threatened by me, and that she was going to get me removed from the bench. Brown's letter to the commission is Exhibit 20. Please let me know if you want to talk to him and I'll give him a heads-up and give you his cell number.

I would have gladly waited until the commission was through to bring suit against Koch, however, the one year SOL prevented that.

Regarding footnote 2 of the Motion, we can give them Minihan's email granting me access, and advise I had authorization from the administration to wear a shield due to my medical issues. Also, as you know, we did not challenge the vaccine requirement, we challenged the denial of my religious rights.

The paragraph regarding the police is complete nonsense. I knew the police were coming, and was waiting. It was after she called the 2nd time regarding the "emergency," that I left. I think we should spell this out exactly as in my response starting on page 31.

They specifically admit that Koch called M[redacted] Chiropractic for a diagnosis, which is a HIPAA violation. This should be pointed out.

We should also point out that I did not criticize masks. Both my sons were wearing masks on January 29, 2021, and December 28, 2021. If I was able to tolerate a mask, I would have been wearing one.

Regarding accommodating me, that is what they have to do. Just as if a 23 month old child was there, they could not force that child to wear a mask (or a shield), as the regulation is clear that it is for two year olds and up. The regulation is also clear that those who do not medically tolerate masks do not have to wear them. Seeta did not have to escort me in through a side door, that was their choice. No time when I was in the waiting room did I come within 6 feet of anyone. They make it sound like I am a leper. I had Covid in September 2021, and was completely healthy when I went there. Per Koch's instructions, I called when I was in the

parking lot, and Brown came out to let my son and I in through the side door. If she had done this from the beginning, there would have been no issues.

Outlook

COMMISSION EXHIBIT 23

Re: 2021/N-0723, etal.

From Frank Mora [redacted]@yahoo.com>
Date Wed 2/8/2023 9:34 PM
To Michael Sussman <[redacted]@sussman.law>

The corruption doesn't end!

On Wednesday, February 8, 2023 at 08:20:27 PM EST, Michael Sussman [redacted]@sussman.law> wrote:

they are plainly working in concert with each other...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, February 8, 2023 8:49 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Fw: 2021/N-0723, etal.

Judicial Commission will not turn over transcripts from Koch or Brown.

Outlook

COMMISSION EXHIBIT 24

Re: 2021/N-0723, etal.

From Frank Mora [redacted]@yahoo.com>
Date Wed 2/8/2023 9:51 PM
To Michael Sussman [redacted]@sussman.law>

You are correct. Even now that DiFiore is no longer a judge, they still will not reveal that there was an investigation against her. So, how are they giving all of the details of my investigation? They are not even supposed to acknowledge that I am under investigation.

Have you heard anything on the federal case? Their answer is due tomorrow, correct?

On Wednesday, February 8, 2023 at 09:45:12 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

it is interesting because the commission process is supposed to be confidential, no? it is one thing for you to reveal what you have; it is another thing for the commission itself to do so...i also note on its web site no pledge of confidentiality to those who file complaints and no requirements that complaints be sworn to...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, February 8, 2023 9:34 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: 2021/N-0723, etal.

The corruption doesn't end!

On Wednesday, February 8, 2023 at 08:20:27 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

they are plainly working in concert with each other...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, February 8, 2023 8:49 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Fw: 2021/N-0723, etal.

Judicial Commission will not turn over transcripts from Koch or Brown.

Outlook

COMMISSION EXHIBIT 25

Re: draft of response

From Frank Mora <[redacted]@yahoo.com>
Date Mon 2/13/2023 10:10 AM
To Michael Sussman <[redacted]@sussman.law>

Your draft reply is excellent. If I thought the process was going to be fair, I would not have brought the suit.

Even though I am stipulating to taking medicine/medical procedures, they still want 12 years of my medical records. They think I am making up homeschooling my children. They think I forged my kids' doctor's letter. This is a proverbial witch hunt. They are on a fishing expedition to see if there is anything that will stick to say, "look, he doesn't really believe the stuff he is saying!"

Please get the extension while I ponder this.

On Monday, February 13, 2023 at 08:14:45 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Thanks for your note. I think you should file a FOIL request for whatever you think pertinent. I can get another week or two if needed. You could also file a response and then withdraw. However, I do think withdrawing is a good idea, regardless of the legal merits of our position. It is just a bad look for a judge to sue the person who complains about him rather than to resolve the issues in the forum intended to resolve the complaint.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, February 13, 2023 8:11 AM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Jonathan R. Goldman [redacted]@sussman.law>
Subject: Re: draft of response

Michael,

Good morning. I was just going to send this email, and your below email came in.

I was the Lector yesterday at mass. I don't believe it was a coincidence that I was scheduled to read the readings yesterday, or that particular Gospel was proclaimed. I believe that God was speaking to me through both the readings and the Gospel. Here is a link if you would like to read them: https://bible.usccb.org/bible/readings/021223.cfm

I have been praying about this continuously through this morning.

Outlook

COMMISSION EXHIBIT 26

Re: NYSCEF Notification: Dutchess - Torts - Other - <MEMORANDUM OF LAW IN OPPOSITION> 2022-54141 (Frank Mora v. Stacey Koch)

From Frank Mora <[redacted]@yahoo.com>
Date Mon 3/6/2023 3:15 PM
To Michael Sussman <[redacted]@sussman.law>

1 attachments (255 KB)
36Judicial Commission denial to extend time to answer 4-12-22.pdf;

Maybe you can use Tembeckjian's own words against him at oral argument. When I asked for them to postpone the matter because I had a human rights case pending, they denied me saying their jurisdiction is independent from the the division of human rights and the civil courts. See attached letter.

On Monday, March 6, 2023 at 03:09:16 PM EST, Frank Mora [redacted]@yahoo.com> wrote:

Thank you!

On Monday, March 6, 2023 at 02:51:07 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Our reply was timely filed. ms

Michael Sussman

From: efile@nycourts.gov <efile@nycourts.gov>
Sent: Monday, March 6, 2023 10:42 AM
To: [redacted]@frontier.com <[redacted]@frontier.com>; Michael Sussman <[redacted]@sussman.law>; efile@nycourts.gov <efile@nycourts.gov>; [redacted]@ag.ny.gov <[redacted]@ag.ny.gov>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@frontiernet.net [redacted]@frontiernet.net>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@frontier.com [redacted]@frontier.com>
Subject: NYSCEF Notification: Dutchess - Torts - Other - <MEMORANDUM OF LAW IN OPPOSITION> 2022-54141 (Frank Mora v. Stacey Koch)

Dutchess County Supreme Court
Notification of Filing
03/06/2023

Outlook

COMMISSION EXHIBIT 27

Re: tomorrow - mora adv/ koch

From Frank Mora <[redacted]@yahoo.com>
Date Mon 4/3/2023 10:44 AM
To Michael Sussman <[redacted]@sussman.law>

I find it very interesting that the attorney for the commission, in open court, on the record, stated that I am being investigated for other matters. It is my understanding that this is a violation of their duty to keep it confidential. Judiciary Law Secs 44-46. I understand that I opened the door regarding the proceeding with Koch, but nothing else.

On Monday, April 3, 2023 at 07:34:14 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

As we are in Lent, and this is Holy Week, a time for penance and forgiveness, please let them know that I accept their original offer amount of $5,000.

On Monday, April 3, 2023 at 07:32:17 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

We can try, but they have a pending motion and demand for fees therein...so I do not think you can...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 3, 2023 7:27 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Am I able to withdraw the matter without their consent?

On Saturday, April 1, 2023 at 06:54:04 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

see below message...

Michael Sussman

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, March 31, 2023 11:37 PM
To: Michael Sussman [redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Outlook

COMMISSION EXHIBIT 28

Re: agreement with koch

From Frank Mora <[redacted]@yahoo.com>
Date Fri 5/12/2023 7:14 AM
To Michael Sussman <[redacted]@sussman.law>

1 attachments (30 KB)
Mora-Koch Settlement Agreement ms edits 51223 fmm edits 5-12-23.docx;

I changed 2a & 2b to 21 days. I tried to use track changes, but I don't know if it worked.

We also need consent of the commission, which can be as simple as a letter or email from them.

Thank you for sending the letter to Judge Rosa last night. You are correct, I am worried. The SLAPP decision makes me look like a complete idiot. Although it was not my intent to silence anyone, as her complaint was filed a year prior to the suit, and she had testified in front of the commission, no one knows that. It is readily apparent that the commission is trying to remove me as judge due to my religious beliefs. Since they seem to have hit a brick wall, they are trying to figure out how to get me out based on my inability to mask.

Thank you for understanding.

On Friday, May 12, 2023 at 05:42:09 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I have reviewed and edited the agreement. Upon your concurrence, I will forward to adversary counsel.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

COMMISSION EXHIBIT 29

12.29.21

I was in Exam Rm 3 when, Kristine entered the room asking me to go to the front lobby saying, there was a patient giving Stacey (our office manager) a hard time. When I arrived at the front lobby there was a gentleman with a face shield and no mask refusing to put a mask on, saying he had a doctors excuse not to wear one. Stacey asked this person to speak with his Doctor & if there was an exception. This person refused. Stacey offered this pt a mask, he refused. This person then refused to leave the building. Stacey then called the police to have this man removed from the office. Person still refused to leave. I then asked the person to leave before the police came. He then obliged and left.

Michael Brown

[redacted]

Employee who observed incident

LAW OFFICE OF CHAD J. LAVEGLIA PLLC

COMMISSION EXHIBIT 30

May 9, 2024

Via Electronic Mail
[redacted]@cjc.ny.gov, [redacted]@cjc.ny.gov

PERSONAL & CONFIDENTIAL
Mark Levine, Esq.
Deputy Administrator
Melissa DiPalo, Esq.
Senior Attorney
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, NY 10006

Re: File Nos. 2021/N-1120 and 2023/N-0369
Hon. Frank M. Mora

Dear Deputy Administrator Levine and Ms. DiPalo:

Thank you for the extension for Judge Mora to respond to your letter dated April 8, 2024, alleging that Judge Mora waived his attorney-client privilege. The following is provided to the best of Judge Mora's recollection. Judge Mora respectfully reserves the right to file supplemental information if necessary. Judge Mora has signed below, acknowledging that he has read this letter and adopts its contents.

Judge Mora disputes that he waived the attorney-client privilege when he testified in front of the Commission on February 27, 2024. Judge Mora's testimony was required per your letter dated October 13, 2023, in accordance with Section 44, subdivision 3, of the Judiciary Law. There is nothing voluntary about a Judge testifying before the Commission. In fact, if a Judge does not answer the Commission's questions, that Judge would be subject to a complaint for failing to cooperate with the Commission. Per the transcript, Page 2, Lines 13-16, Referee Goldstock advised Judge Mora that the rules of evidence do not apply. In addition, no warning was given to Judge Mora about possibly waiving the attorney-client privilege regarding his testimony about Mr. Sussman, as it was given to him on Page 85, Line 25 through Page 86, Line 6, when he was testifying about Michael Brown.

Notwithstanding the above, attached please find an Affirmation from Michael H. Sussman, Esq., and all Koch related emails from December 28, 2021, through the date of filing the Koch lawsuit (12/29/22).

Judge Mora only communicated with Mr. Sussman from [redacted]@yahoo.com.

The first email communication between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference is dated December 8, 2022. Judge Mora has reviewed that email, and all emails from that period, that are being submitted to the Commission (a total of 14), and they are complete and accurate. Some emails have been redacted as they relate to non-Koch matters.

There are no text messages between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

There are no letters between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

There are no voice recordings between Judge Mora and Mr. Sussman from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

Mr. Sussman's affirmation, and the emails provided, corroborate Judge Mora's testimony that the Koch defamation lawsuit was not brought in retaliation for Ms. Koch having filed a complaint against him with the Commission.

Thank you.

Chad J. LaVeglia Esq.

Hon. Frank Mora

AFFIRMATION OF MICHAEL H. SUSSMAN, ESQ.

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

Michael H. Sussman, Esq. states:

1. I am a 1978 honors graduate of Harvard Law School and have worked as a public interest lawyer for the last 46 years, first for the United States Department of Justice Civil Rights Division, then for the NAACP National Office and starting on January 1, 1986 in my own practice in this state. I focus on civil rights and constitutional and criminal law. I am duly licensed attorney in the State of New York, having been admitted on February 5, 1986. My office is now located at 1 Railroad Avenue, Goshen, New York.

2. I first met Judge Mora in or about 2019, as he was one of the plaintiffs in a class-action lawsuit regarding the State of New York's repeal of religious exemptions for school vaccinations.

3. I currently represent Judge Mora in his lawsuit against the New York State Unified Court System, et al, regarding his religious discrimination claims for denying him a religious exemption to the Covid-19 vaccination policy. Mr. Mora signed a retainer in that matter on November 12, 2022. We are currently awaiting argument in the Second Circuit on our appeal of the district's court's order granting defendants' motion to dismiss.

4. I have advised and counseled Judge Mora *pro-bono* regarding his pending matters before the New York State Commission on Judicial Conduct (hereafter "Commission") from on or about March 30, 2022, to present though I understand he has had his own primary counsel in that matter.

5. I represented Judge Mora in a defamation lawsuit against Stacey Koch which I filed in late 2022.

6. Although I was apprised of Ms. Koch's complaint and the Commission's proceedings from on or about April 12, 2022, through the present day, the first time Judge Mora and I spoke about taking legal action against Ms. Koch, was after Michael Brown appeared before the Commission in or about September 2022.

7. Sometime after September 2022, Judge Mora contacted me by telephone, relayed what Michael Brown told him, and asked if he had any legal recourse, specifically tortious interference with business. In this time period, I was working on preparing

the federal Complaint. In mid-November 2022, Mr. Mora requested that I work on the SEETA matter and I did prepare a complaint by mid-December and provided it to him with a retainer agreement.

8. I did this after researching the matter, and concluding Judge Mora did not meet all the elements for tortious interference with business but did meet the elements of defamation.

9. To my knowledge, Judge Mora did not file his lawsuit because Ms. Koch complained about him to the Commission; rather the nature and false content of her complaint and her words and actions related by Michael Brown triggered the lawsuit.

10. At no point did I advise Judge Mora that this was a SLAPP suit, or that it could be a SLAPP suit. It was my professional opinion prior to suit, and still to this day, that it was not a SLAPP suit. SLAPP was not discussed until after Ms. Koch filed her motion to dismiss. Supreme Court granted Ms. Koch's absolute immunity argument. I wished to appeal and believed then, and I still do, that Supreme Court's decision was erroneous. Judge Mora declined to appeal and wished to resolve the matter as we eventually did.

11. I never advised Judge Mora that this suit was not viable. It was my professional opinion then, and continues to be, that the suit was viable and that absolute immunity should not apply to false statements made in bad faith, as I believe were the facts here.

12. The only email address that I communicated with Judge Mora was and is [redacted]@yahoo.com.

13. The first email communication between Judge Mora and myself from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference is dated December 8, 2022. I have reviewed that email, and all emails from that period, that are being submitted to the Commission by Mr. LaVeglia (a total of 14), and they are complete and accurate. Some emails have been redacted as they relate to non-Koch matters.

14. I have no text messages between Judge Mora and myself from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference. I know of no such text messages and rarely engage in text messages

about work-related issues with anyone.

15. Other than the retainer agreement, I know of no letters between Judge Mora and myself from December 28, 2021, to the date of the *Koch* suit filing (12/29/22), that was exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference. Likewise, I made no voice recordings of any conversation with Judge Mora at any time.

I affirm this day of May, 2024, under the penalties of perjury under the laws of the State of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Michael H. Sussman, Esq.

Caitlyn M Higgins
NOTARY PUBLIC

My commission expires:

CAITLYN M HIGGINS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01H10021694
Qualified in Orange County
Commission Expires 03/28

Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 8, 2022 at 10:40 AM EST

Would you please represent me against Seeta Eye/Stacey Koch? We only have until 12/28/22 to file.

On Tuesday, December 6, 2022 at 10:23:21 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

of course.

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, December 6, 2022 4:45 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

To see what is there, I have to access Pacer. Is it OK if I set up my own private account to do so?

On Tuesday, December 6, 2022 at 04:41:56 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

FYI
Michael Sussman

From: NYSD_ECF_Pool@nysd.uscourts.gov <NYSD_ECF_Pool@nysd.uscourts.gov>
Sent: Tuesday, December 6, 2022 4:22 PM
To: CourtMail@nysd.uscourts.gov <CourtMail@nysd.uscourts.gov>
Subject: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS **Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court
Southern District of New York

Notice of Electronic Filing

The following transaction was entered by Sussman, Michael on 12/6/2022 at 4:22 PM EST and filed on 12/6/2022

Re: Demand for correction/retraction

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Cc: [redacted]@sussman.law

Date: Wednesday, December 14, 2022 at 01:24 PM EST

I am enclosing for your review the Koch complaint. Please review and make any suggestions so we may file this week. I will send you a retainer to cover this. Ms

Michael Sussman

Re: Demand for correction/retraction

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, December 14, 2022 at 03:30 PM EST

I will review...the elements of tortious interference do not exactly fit:

- The existence of a valid and binding contract between the plaintiff and a third party - assuming OCA is the third party, yes...
- The defendant's knowledge of the contract - yes..as she wrote knowing you were a judge.
- The defendant's intentional procurement of the third party's breach - yes, she sought your removal or the third party's breaking its contract with you BUT
- Actual breach of the contract - no, an invesitgation is not a breach of any contract you have with OCA and you remain employed...

I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:23 PM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: Demand for correction/retraction

I made some suggested changes and asked some questions in red.

We are not adding in a tortious interference claim?

How much are we suing for and are you doing this one on a contingency basis?

On Wednesday, December 14, 2022 at 01:24:57 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I am enclosing for your review the Koch complaint. Please review and make any suggestions so we may file this week. I will send you a retainer to cover this. Ms

Michael Sussman

Re: Demand for correction/retraction

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, December 14, 2022 at 03:47 PM EST

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

On Wednesday, December 14, 2022 at 03:30:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I will review...the elements of tortious interference do not exactly fit:

- The existence of a valid and binding contract between the plaintiff and a third party - assuming OCA is the third party, yes...
- The defendant's knowledge of the contract - yes..as she wrote knowing you were a judge.
- The defendant's intentional procurement of the third party's breach - yes, she sought your removal or the third party's breaking its contract with you BUT
- Actual breach of the contract - no, an invesitgation is not a breach of any contract you have with OCA and you remain employed...

I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:23 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Demand for correction/retraction

I made some suggested changes and asked some questions in red.

We are not adding in a tortious interference claim?

How much are we suing for and are you doing this one on a contingency basis?

Re: Demand for correction/retraction

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, December 14, 2022 at 04:41 PM EST

There is no private right of action under HIPAA; there is a state law invasion of privacy claim developed in my case, Juric v. Bergenstrasser which might be possible...but i am not sure we gain much from it.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:47 PM
To: Michael Sussman [redacted].@sussman.law>
Subject: Re: Demand for correction/retraction

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

On Wednesday, December 14, 2022 at 03:30:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

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I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Michael Sussman

From: Frank Mora[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:23 PM

retainer and revised complaint in Mora v. Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, December 14, 2022 at 05:28 PM EST

Per your request. Best to you -

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



DOC121422-006.pdf
586.5kB

Re: Demand for correction/retraction

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, December 14, 2022 at 10:21 PM EST

Should I file a HIPAA complaint with the government?

On Wednesday, December 14, 2022 at 04:41:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

There is no private right of action under HIPAA; there is a state law invasion of privacy claim developed in my case, Juric v. Bergenstrasser which might be possible...but i am not sure we gain much from it.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:47 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Demand for correction/retraction

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

On Wednesday, December 14, 2022 at 03:30:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

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- The defendant's intentional procurement of the third party's breach - yes, she sought your removal or the third party's breaking its contract with you BUT
- Actual breach of the contract - no, an invesitgation is not a breach of any contract you have with OCA and you remain employed...

I AM REVIEIWNG THE OTHER CHANGES...

I AM THINKING ABOUT 250K IN COMPENSATORY DAMAGES AND 175 IN PUNITIVES...

MS

Re: retainer and revised complaint in Mora v. Koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 15, 2022 at 08:17 AM EST

It looks good, but needs a few changes.

Retainer
- it is Stacey not Tracey

Complaint
5. change "he" to "the"

25. quotes are needed before huge scene" on 2nd line; remove County before Judge on 2nd to last line

26. change "Ceeta" to "Seeta"

On Wednesday, December 14, 2022 at 05:28:07 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Per your request. Best to you -

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: Demand for correction/retraction

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 15, 2022 at 09:28 AM EST

I see you are wishy-washy on that one.

On Thursday, December 15, 2022 at 09:15:03 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

No

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 10:21:37 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Demand for correction/retraction

Should I file a HIPAA complaint with the government?

On Wednesday, December 14, 2022 at 04:41:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

There is no private right of action under HIPAA; there is a state law invasion of privacy claim developed in my case, Juric v. Bergenstrasser which might be possible...but i am not sure we gain much from it.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, December 14, 2022 3:47 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: Demand for correction/retraction

Sounds good on all.

What about adding in HIPAA violations, as she was demanding a diagnosis from my chiropractor? Also, along those lines, my chiropractor wanted to file HIPAA charges against her since the date it happened, but I asked him to hold off. Should we go forward with those charges and have either him or I make a HIPAA complaint?

On Wednesday, December 14, 2022 at 03:30:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I will review...the elements of tortious interference do not exactly fit:

- The existence of a valid and binding contract between the plaintiff and a third party - assuming OCA is the third party, yes...

Re: retainer and revised complaint in Mora v. Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, December 15, 2022 at 05:06 PM EST

Ok changes made-please change name in retainer, sign and return and we file this Monday.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, December 15, 2022 8:17:37 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: retainer and revised complaint in Mora v. Koch

It looks good, but needs a few changes.

Retainer
- it is Stacey not Tracey

Complaint
5. change "he" to "the"

25. quotes are needed before huge scene" on 2nd line; remove County before Judge on 2nd to last line

26. change "Ceeta" to "Seeta"

On Wednesday, December 14, 2022 at 05:28:07 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Per your request. Best to you -

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

edits to final complaint

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, December 15, 2022 at 05:08 PM EST

I made the three spelling charges you noted...we will file the attached upon receipt of the retainer agreement and costs check, hopefully on or before Monday. Best to you.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



mora complaint re Seeta final 121522.docx
20.8kB

Re: edits to final complaint

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, December 15, 2022 at 09:21 PM EST

Michael,

Attached please find the signed retainer agreement, along with confirmation from TD Bank for issuance of the $500 retainer payment. This is through TD Bank Bill Pay and goes directly from the bank to you. As they say, the check is in the mail. As it has been issued, I hope you will file before you receive it. I think you know I'm good for it.

The word "County" still needs to be removed from the 2nd to last sentence in #25. Also in 25 (a), "caused" should be "cause."

Thank you.

Frank

On Thursday, December 15, 2022 at 05:08:51 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I made the three spelling charges you noted...we will file the attached upon receipt of the retainer agreement and costs check, hopefully on or before Monday. Best to you.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Koch lawsuit retainer agreement.pdf
2.2MB

Koch lawsuit retainer TD Bank check confirmation.pdf
57.9kB

Re: edits to final complaint

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, December 19, 2022 at 03:59 PM EST

Good afternoon.

Did you file the complaint against Koch?

[redacted]

On Thursday, December 15, 2022 at 09:21:42 PM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Michael,

Attached please find the signed retainer agreement, along with confirmation from TD Bank for issuance of the $500 retainer payment. This is through TD Bank Bill Pay and goes directly from the bank to you. As they say, the check is in the mail. As it has been issued, I hope you will file before you receive it. I think you know I'm good for it.

The word "County" still needs to be removed from the 2nd to last sentence in #25. Also in 25 (a), "caused" should be "cause."

Thank you.

Frank

On Thursday, December 15, 2022 at 05:08:51 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I made the three spelling charges you noted...we will file the attached upon receipt of the retainer agreement and costs check, hopefully on or before Monday. Best to you.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

RE: status

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, December 22, 2022 at 08:25 AM EST

It is fine, just wanted you to know we had filed and met the deadline of concern to you.

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Thursday, December 22, 2022 8:20 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: status

I just checked on TD Bank's website and it shows the check should be there by today. Sorry for the delay, but they are competing with Christmas mailings.

Thanks for the update.

On Thursday, December 22, 2022 at 07:23:07 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

We did not receive your check for costs for the second case but, regardless, did file it yesterday.

[redacted]

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924

LAW OFFICE OF CHAD J. LAVEGLIA PLLC

COMMISSION EXHIBIT 31

July 10, 2024

Via Electronic Mail
[redacted]@cjc.ny.gov, [redacted]@cjc.ny.gov

PERSONAL & CONFIDENTIAL
Mark Levine, Esq.
Deputy Administrator
Melissa DiPalo, Esq.
Senior Attorney
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, NY 10006

Re: File Nos. 2021/N-1120 and 2023/N-0369
Hon. Frank M. Mora

Dear Deputy Administrator Levine and Ms. DiPalo:

Thank you for the extension for Judge Mora to respond to your letter dated May 21, 2024. The following is provided to the best of Judge Mora's recollection. Judge Mora respectfully reserves the right to file supplemental information if necessary. Judge Mora has signed below, acknowledging that he has read this letter and adopts its contents.

Attached is a signed *Waiver of Confidential Communications.*

Attached are the remaining emails between Judge Mora and Mr. Sussman from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference. Some emails have been redacted as they relate to non-Koch matters. They are numbered 1 to 127 in the bottom right corner for ease of reference.

Attached also is an affirmation from Mr. Sussman.

There are no text messages between Judge Mora and Mr. Sussman from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

There are no letters between Judge Mora and Mr. Sussman from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye

Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference, other than the apology letters, the settlement agreement regarding attorney fees, and the retainer agreement, that the Commission has in its possession, and any letters that were filed in Supreme Court that are of public record.

There are no voice recordings between Judge Mora and Mr. Sussman from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

In reviewing the emails for submission, each one refreshed Judge Mora's recollection of the events from that period. Judge Mora notes that portions of his testimony regarding this complaint are inaccurate. As such, he corrects them below to the best of his ability.

CORRECTING PART OF THE RECORD

Judge Mora did not review any information about this complaint before his testimony and tried to recite facts from memory. (IA, p137, line 14).

There are three distinct time periods regarding the Koch suit. The time prior to Judge Rosa's decision, the time after her decision, and the time after Judge Mora read the Commission's rules, which was after he printed them from the website on January 2, 2024. Before reading the Rules, Judge Mora believed Koch would not be involved in any proceedings with the Commission. Meaning, Judge Mora believed that Ms. Koch would not have to testify. Thus, his lawsuit was not filed in retaliation for Koch filing a complaint with the Commission, nor was it an attempt to intimidate her into not testifying, but rather it was to get redress for his perceived harms for the alleged defamatory content of the complaint. (IA, p103, starting at line 11; and p160, starting at line 5; Emails 22, 56, 66, 79, 106, 122).

When Judge Mora first contacted Sussman to see if there was any legal action that could be taken regarding Koch, Sussman advised Judge Mora that "it does not look good for a judge to sue the person complaining about him." Judge Mora thought differently, and advised Sussman so prior to filing the suit, stating that Judge Mora was confident that a jury would see otherwise. [1] Although Judge Mora was willing to "take his chances in front of a jury," this is

[1] Judge Mora was at Seeta eleven (11) months prior presenting with the same issue of not being able to medically tolerate a mask (advising Koch of this fact); asking Koch to have in place an accommodation for when he comes back with his minor children or for himself; then waiting in the parking lot for his son [redacted]; then being allowed back into Seeta the same day to pay a co-pay wearing just his shield; not being advised that he would be required to present medical documentation when he came back in the future; speaking to Dr. [redacted] on the phone the same day while waiting in the parking lot for [redacted] and the mask issue not being mentioned; making an appointment for his son after this and not being told the issue was not resolved or that medical documentation would be required; Koch calling the police because Judge Mora could not medically tolerate wearing a mask; Koch demanding a diagnosis from Dr. M[redacted] in violation of HIPAA; Koch bragging to Michael Brown that she was threatened by or felt threatened by Judge Mora; and that Koch was going to get him fired.

different than the suit not being viable ab initio. Sussman advised Judge Mora from the beginning, throughout the suit, and after the suit (to this very day), that it was, and is, a viable suit.

Judge Mora was willing to wait for the Commission's proceedings to finish before filing a defamation suit. However, Sussman advised that there is no tolling provision, and that the Statute of Limitations (SOL) is one (1) year. Based on Sussman's advice that a defamation lawsuit was viable, the suit was then filed on the last day of the SOL. Again, Judge Mora believed his advice was correct. As testified to by Judge Mora, he now knows the advice was not correct.

Judge Mora was contemplating withdrawing the matter after being Lector at church. (IA, p136, starting at line 9; and Email 25). Any references to withdrawing because Judge Mora thought it was a SLAPP are mistakes (IA, p136, starting at line 11; p198, starting at line 16).

Judge Mora's statements on page 198, line 21, and on page 132, starting at line 24, relate specifically to Email 32. His statements were in-artfully, and inarticulately, worded. What he was attempting to convey was that after Sussman received that email, Sussman did not recommend to Judge Mora that he should accept the offer, or to make a counter-offer, but that they were going forward with the case. Judge Mora's reliance on Sussman's advice, and expertise, is why Judge Mora did not accept the offer, along with being hung up on the apology (IA, p 138, starting at line 11).

Thank you again for your consideration.

Chad J LaVeglia

Chad J. LaVeglia Esq.

Hon. Frank Mora

WAIVER OF CONFIDENTIAL COMMUNICATIONS

File Nos. 2021/N-1120, 2023/N-0369

I, FRANK M. MORA, a Judge of the Poughkeepsie City Court, Dutchess County, hereby waive the attorney-client privilege of confidentiality and give my attorney in *Frank Mora v Stacey Koch* (Index No. 2022-54141), Michael H. Sussman, Esq., permission to provide communications, documents, information and testimony to the New York State Commission on Judicial Conduct related to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference.

Dated: 7/10/24

Hon. Frank M. Mora
Judge of the Poughkeepsie City Court

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

Michael H. Sussman, Esq. states:

1. I have reviewed the remaining emails (numbered 1 to 127) being submitted to the Commission between Judge Mora and myself from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference. They are complete and accurate. Some emails have been redacted as they relate to non-Koch matters.

2. There are no text messages between Judge Mora and myself from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

3. There are no letters between Judge Mora and myself from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference, other than the apology letters, the settlement agreement regarding attorney fees, and the retainer agreement, that I have been advised that the Commission has in its possession, and any letters that were filed in Supreme Court that are of public record.

4. There are no voice recordings between Judge Mora and myself from December 30, 2022, to present, that were exchanged pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v. Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v. Koch*, and/or any discussion of defamation or tortious interference.

I affirm this 9th day of July, 2024, under the penalties of perjury under the laws of the State of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Michael H. Sussman, Esq.

Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, January 3, 2023 at 08:22 AM EST

Good morning. Attached is a copy of an article on the Koch lawsuit. It states it was filed on 12/29/22. Do they have the date wrong? Didn't it have to be filed on or before 12/28/22?

On Saturday, December 31, 2022 at 10:48:16 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

She will likely be served on Tuesday.[redacted]

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Saturday, December 31, 2022 10:38:50 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

Happy New Year!

Thanks for the update. Was Koch served?

[redacted]

On Saturday, December 31, 2022 at 10:15:01 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Just so you know, the case against CEETA was filed timely...I will be in further touch and wish you and yours the best new year.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, December 8, 2022 10:40 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

Would you please represent me against Seeta Eye/Stacey Koch? We only have until 12/28/22 to file.

On Tuesday, December 6, 2022 at 10:23:21 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, January 3, 2023 at 08:23 AM EST

Forgot to attach the article. Here it is.

On Tuesday, January 3, 2023 at 08:22:43 AM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Good morning. Attached is a copy of an article on the Koch lawsuit. It states it was filed on 12/29/22. Do they have the date wrong? Didn't it have to be filed on or before 12/28/22?

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To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

2

Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, January 3, 2023 at 08:28 AM EST

Got it, thanks!

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, January 3, 2023 8:23:11 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

Forgot to attach the article. Here it is.

On Tuesday, January 3, 2023 at 08:22:43 AM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Good morning. Attached is a copy of an article on the Koch lawsuit. It states it was filed on 12/29/22. Do they have the date wrong? Didn't it have to be filed on or before 12/28/22?

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Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, January 3, 2023 at 12:36 PM EST

Yes, you can do that.

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, January 3, 2023 12:19 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

Thanks.

[redacted] is in need of an eye exam, since his last exam was the event that caused all of this. My wife will not schedule the appointment, or take him, because of all of this (I cannot blame her).

Am I able to schedule the exam and bring him?

On Tuesday, January 3, 2023 at 11:31:49 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

yes and yes

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, January 3, 2023 9:29 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

I think I answered by own question. As she filed with the judicial commission on 12/29, that would be the date, correct? And, the last day to file is on the actual date, not the day before, correct?

On Tuesday, January 3, 2023 at 08:40:13 AM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Did we file timely?

Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, January 3, 2023 at 01:44 PM EST

Thank you.

On Tuesday, January 3, 2023 at 12:36:14 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Yes, you can do that.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, January 3, 2023 12:19 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322 Mora v. New York State Unified Court System et al Complaint

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On Tuesday, January 3, 2023 at 08:40:13 AM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Re: Mora v. NYS Unified Court Sys., Office of Court Admin.

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, January 10, 2023 at 04:05 PM EST

Other than my heart feeling like it was going to pop out of my chest because I was wearing my shield, [redacted]'s eye doctor appointment went without a hitch!

Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, January 19, 2023 at 04:53 PM EST

Good thing you're heavier then!

On Thursday, January 19, 2023, 4:02 PM, Michael Sussman <[redacted]@sussman.law> wrote:

Victor Kovner former NYC Corporation Counsel and a heavy weight...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, January 19, 2023 4:02 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

Who is her attorney?

On Thursday, January 19, 2023 at 03:31:37 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

yes. she has an attorney and we have been discussing scheduling...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, January 19, 2023 3:27 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

[redacted]

What is the status of the Koch suit. Does she have an attorney?

[redacted]

7

Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, January 19, 2023 at 05:37 PM EST

and I have been on a diet since mid-April...

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Thursday, January 19, 2023 4:53 PM
To: Michael Sussman [redacted]@sussman.law>
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From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, January 20, 2023 at 10:52 AM EST

I will ask him to request them. Regarding the calls Koch made to the police, should I inquire with them to see if they still have them available?

On Thursday, January 19, 2023 at 10:03:14 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

He should as he represents you in that soecifiroceecing

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From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, January 19, 2023 9:42:50 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

Thanks. Regarding the Koch suit, are we able to get a copy of the transcripts from her testimony and Mike Brown's testimony from the Judicial Commission? If so, should LaVeglia ask for a copy of them, or should you subpoena them?

[redacted]

On Thursday, January 19, 2023 at 05:37:16 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

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Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, January 20, 2023 at 12:44 PM EST

The town police said they do go back that far.

We are looking for the two calls that Koch made to them on 12/28/21 at approximately 3pm. It may be a little before that as I may have arrived earlier for [redacted]'s eye appointment.

A FOIL request needs to be done. Is it better that this comes from your office?

On Friday, January 20, 2023 at 11:05:09 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

on second point, sure...ms

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Friday, January 20, 2023 10:52 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

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To: [redacted]@yahoo.com

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To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

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He should as he represents you in that soecifiroceecing

Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, January 20, 2023 at 12:58 PM EST

I have a feeling the first call will show that she knew I was a judge at that time based on a response she made to the police. I do not know what was said to her, but I just have a hunch. If that is in there, then this is another lie in her complaint to the judicial commission that she did not know I was a judge.

The 2nd call will show how irrational she was when she told them it was an emergency because I did not have a mask on and was spreading germs on her.

On Friday, January 20, 2023 at 12:50:00 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

sure...

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Friday, January 20, 2023 12:44 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Activity in Case 7:22-cv-10322-VB Mora v. New York State Unified Court System et al Declaration in Support of Motion

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Michael Sussman

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Sent: Friday, January 20, 2023 10:52 AM
To: Michael Sussman <[redacted]@sussman.law>

Re: CLE

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, January 30, 2023 at 11:59 AM EST

Did you get a chance to FOIL the phone recordings on Koch?

Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, February 2, 2023 at 06:18 PM EST

just received a motion to dismiss the Koch complaint...interesting...will share with you when i have a moment tomorrow. It is on line...

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

bizarre

From: Michael Sussman [redacted] @sussman.law)

To: [redacted]@yahoo.com

Date: Saturday, February 4, 2023 at 12:34 PM EST

I am reading the motion papers in Koch, noting that the statement of facts takes Koch's statement to the judiciary commission as facts, not your allegations in the complaint, which is fundamentally improper. That does not resolve the legal issues, but is interesting to note...

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: cases

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Saturday, February 4, 2023 at 04:11 PM EST

Sounds good. Thanks.

On Saturday, February 4, 2023 at 04:05:31 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I thought I did last night..will do so first thing in am with additional thoughts.

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From: Frank Mora <[redacted]@yahoo.com>
Sent: Saturday, February 4, 2023 3:59:26 PM
To: Michael Sussman [redacted].@sussman.law>
Subject: Re: cases

I don't know. You haven't sent me the motion yet. Please send. 😁

On Saturday, February 4, 2023 at 12:42:39 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

None of the cited cases relate to the Judicial Commission, do they? I see none. His argument is one by analogy. We shall respond. ms

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: bizarre

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Saturday, February 4, 2023 at 04:45 PM EST

She does that in her papers

Get Outlook for iOS

From: Frank Mora [redacted]@yahoo.com>
Sent: Saturday, February 4, 2023 4:19:06 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: bizarre

I think we need to hear the voice recordings from when she called the police before we respond. If she lied about not knowing I was a judge at the time, I think that will go a long way.

On Saturday, February 4, 2023 at 12:34:48 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I am reading the motion papers in Koch, noting that the statement of facts takes Koch's statement to the judiciary commission as facts, not your allegations in the complaint, which is fundamentally improper. That does not resolve the legal issues, but is interesting to note...

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

[redacted]

Happy sunday

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Sunday, February 5, 2023 at 09:50 AM EST

Here are the papers..."absolute" is not so "absolute" as my research is showing...our papers are due on 2/21 and I have two briefs to write before this...
but, I am thinking about it...ms

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

DOC020523-006.pdf
2.4MB

Happy Tuesday

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, February 7, 2023 at 08:55 AM EST

Attached are some of my thoughts thus far. I hope they are in the right direction.

[redacted]

Also, should I be present at oral arguments on March 8? If so, do I ask for permission from my supervising judge?

On Sunday, February 5, 2023 at 09:50:55 AM EST, Michael Sussman [redacted]@sussman.law> wrote:

Here are the papers..."absolute" is not so "absolute" as my research is showing...our papers are due on 2/21 and I have two briefs to write before this...
but, I am thinking about it...ms

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Answer to Koch Motion to Dismiss.docx
16.5kB

[redacted]

Re: Happy Tuesday

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, February 7, 2023 at 09:16 AM EST

The motion also states they were following CDC guidelines. Those guidelines also state for those who can medically tolerate.

They are attempting to vilify me because of my unseen medical condition. Koch stated that her husband has [redacted] (maybe that is why she is so afraid). My point with that is you would think she would be compasionate as they seek medical accommodations for him (I know this because someone who knows Koch & her husband told me).

On Tuesday, February 7, 2023 at 08:55:18 AM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Attached are some of my thoughts thus far. I hope they are in the right direction.

[redacted]

Also, should I be present at oral arguments on March 8? If so, do I ask for permission from my supervising judge?

On Sunday, February 5, 2023 at 09:50:55 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Here are the papers..."absolute" is not so "absolute" as my research is showing...our papers are due on 2/21 and I have two briefs to write before this...
but, I am thinking about it...ms

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <LETTER/CORRESPONDENCE FROM COURT> 2022-54141 (Frank Mora v. Stacey Koch)

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, February 8, 2023 at 08:57 AM EST

no...just your brain but that can be otherwise focused until I provide a draft response...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, February 8, 2023 7:52 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <LETTER/CORRESPONDENCE FROM COURT> 2022-54141 (Frank Mora v. Stacey Koch)

Is there anything you need from me at this point?

On Wednesday, February 8, 2023 at 05:25:30 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Office of Court Administration has intervened in the Koch matter and is seeking to dismiss your case also. Wow...interesting. I will be writing on all of this this weekend. Stay tuned.

Michael Sussman

From: efile@nycourts.gov <efile@nycourts.gov>
Sent: Tuesday, February 7, 2023 3:00 PM
To: [redacted]@frontier.com <[redacted]@frontier.com>; efile@nycourts.gov <efile@nycourts.gov>; [redacted]@ag.ny.gov [redacted]@ag.ny.gov>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@frontiernet.net <[redacted]@frontiernet.net>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@frontier.com [redacted]@frontier.com>
Subject: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <LETTER/CORRESPONDENCE FROM COURT> 2022-54141 (Frank Mora v. Stacey Koch)

Dutchess County Supreme Court
Notification of Filing by Court
02/07/2023

On 02/07/2023, the NYSCEF System received the documents listed below from court user Maureen Moss . Please keep this notice as a confirmation of this filing.

[redacted]

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, February 9, 2023 9:03:30 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: 2021/N-0723, etal.

[redacted]

Regarding Koch, trying to silence the witness is just the opposite of the suit. We only filed the suit AFTER she testified before the commission. They will not even release her testimony to me. My suit would allow for discovery and cross examination of what she filed with, and told to, the commission.

draft of response

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Cc: [redacted]@sussman.law

Date: Monday, February 13, 2023 at 07:55 AM EST

This is due next Monday...please review and understand we will be adding to it, but it explains the basic issue...Jonathan Goldman will look at it this week and i will complete it next weekend with all comments considered.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



mora brief in opposition to motion to dismiss.docx
27.2kB

use this version please

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com; [redacted]@sussman.law

Date: Monday, February 13, 2023 at 08:10 AM EST

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



mora brief in opposition to motion to dismiss.docx
27.6kB

Re: draft of response

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Cc: [redacted]@sussman.law

Date: Monday, February 13, 2023 at 08:11 AM EST

Michael,

Good morning. I was just going to send this email, and your below email came in.

I was the Lector yesterday at mass. I don't believe it was a coincidence that I was scheduled to read the readings yesterday, or that particular Gospel was proclaimed. I believe that God was speaking to me through both the readings and the Gospel. Here is a link if you would like to read them: https://bible.usccb.org/bible/readings/021223.cfm

I have been praying about this continuously through this morning.

I am leaning towards withdrawing the Koch suit. Are you able to extend our time to answer? I want to read what you have put together. There are also a few caveats:

1. I want to listen to the police recordings so I need to get them. Do you want me to FOIL them?

2. I want to make sure that the commission knows that the suit was brought AFTER Koch testified, and that it in no way was brought to silence or intimidate a witness. As I am not allowed discovery in the commission case (they won't give me a transcript of her testimony), this is the route we chose to get discovery. I want to make sure that it will not be used against me in their proceeding.

3. If, or should I say when (as all the signs are on the wall), it goes to hearing with the commission, are we allowed to cross-exam Koch then?

4. No attorney fees.

Thank you for all of your hard work on my matters. I can't stress enough how much I appreciate it.

Frank

On Monday, February 13, 2023 at 07:55:17 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

This is due next Monday...please review and understand we will be adding to it, but it explains the basic issue...Jonathan Goldman will look at it this week and i will complete it next weekend with all comments considered.

Michael Sussman

Re: draft of response

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Monday, February 13, 2023 at 10:18 AM EST

Please call me at [redacted]

Get Outlook for iOS

From: Frank Mora [redacted]@yahoo.com>
Sent: Monday, February 13, 2023 10:10:51 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: draft of response

Your draft reply is excellent.

[redacted]

Please get the extension while I ponder this.

On Monday, February 13, 2023 at 08:14:45 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Thanks for your note. I think you should file a FOIL request for whatever you think pertinent. I can get another week or two if needed. You could also file a response and then withdraw. However, I do think withdrawing is a good idea, regardless of the legal merits of our position. It is just a bad look for a judge to sue the person who complains about him rather than to resolve the issues in the forum intended to resolve the complaint.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, February 13, 2023 8:11 AM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Jonathan R. Goldman <[redacted]@sussman.law>
Subject: Re: draft of response

Michael,

Good morning. I was just going to send this email, and your below email came in.

see attached letter

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Saturday, February 18, 2023 at 03:08 PM EST

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

DOC021823-005.pdf
60.7kB

Re: see attached letter

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Sunday, February 19, 2023 at 02:44 PM EST

If you didn't file this yet, you should change Margarita to Maria.

On Saturday, February 18, 2023 at 03:08:59 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: see attached letter

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, February 22, 2023 at 01:20 PM EST

I'm just waiting on the police recordings, which we should have soon.

On Wednesday, February 22, 2023 at 09:39:35 AM EST, Michael Sussman [redacted]@sussman.law> wrote:

[redacted] We did get the two-week extension on Koch submission; please advise on your thinking so I either can finalize my pleading or finalize withdrawal of the matter. The court has also set a settlement conference in that matter for 3/8...Thanks.

Michael Sussman

[redacted]

On Sunday, February 19, 2023 at 02:44:10 PM EST, Frank Mora <[redacted]@yahoo.com> wrote:

If you didn't file this yet, you should change Margarita to Maria.

On Saturday, February 18, 2023 at 03:08:59 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, February 28, 2023 at 08:25 AM EST

Good morning. Chad received the police recordings in the mail yesterday, but has not listened to them yet. He is in the Appellate Division today and will try to email them to me tomorrow. I will let you know as soon as I have listened to them, and then we can see how to proceed.

Re: Koch suit

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, March 2, 2023 at 04:23 PM EST

you cannot withdraw without prejudice as you cannot re-file due to the statute of limitations running out. So, you either dismiss or you litigate...I am unsure what the tapes of the call showed about Ms. Koch or whether this did influence you. I would like to understand that...mhs

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, March 2, 2023 9:00 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Koch suit

Good morning. After much contemplation, I am willing to withdraw the matter without prejudice.

Re: Mora v. Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@dwt.com

Cc: [redacted]@dwt.com

Date: Friday, March 3, 2023 at 04:18 PM EST

we brought the claim not you. Your client did not countersue . This is not happening. you either agree to his withdraw or we will litigate our claim.

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, March 3, 2023 4:04 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: Mora v. Koch

FOR SETTLEMENT PURPOSES ONLY

Thank you for your message. Ms. Koch has been significantly harmed by the stress and embarrassment caused by this SLAPP suit and resulting media coverage. Accordingly, Ms. Koch will only consent to the withdrawal if Judge Mora provides the following:

1. A public apology.
2. $5,000 in damages for her emotional distress.
3. An agreement to cease contact with Seeta Eye and Ms. Koch.

Please let us know if these terms are acceptable.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Date: March 2, 2023 at 6:03:56 PM EST
To: "Kovner, Victor" <[redacted]@dwt.com>
Subject: Mora v. Koch

[EXTERNAL]

I have briefed your motion and feel we can defeat it BUT my client has decided he wishes to withdraw his case against Ms. Koch assuming that we
can do so with here consent and each party bearing their own fees/costs. If not, he has authorized me to file my response. Please advise.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Fw: Mora v. Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Friday, March 3, 2023 at 04:42 PM EST

see exchange below. they are clearly demented in my opinion...

Michael Sussman

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, March 3, 2023 4:41 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: Mora v. Koch

FOR SETTLEMENT PURPOSES ONLY

As you know, the anti-SLAPP statute provides for a mandatory award of attorneys' fees and allows Ms. Koch to claim compensatory and punitive damages against Judge Mora. In our motion, we requested those fees and reserved her right to seek compensatory and punitive damages.
Accordingly, Ms. Koch is entitled to compensation for this SLAPP suit. We are likewise prepared to litigate this case.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Friday, March 3, 2023 4:18 PM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: Mora v. Koch

[EXTERNAL]

we brought the claim not you. Your client did not countersue . This is not happening. you either agree to his withdraw or we will litigate our claim.

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, March 3, 2023 4:04 PM

To: Michael Sussman [redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: Mora v. Koch

FOR SETTLEMENT PURPOSES ONLY

Thank you for your message. Ms. Koch has been significantly harmed by the stress and embarrassment caused by this SLAPP suit and resulting media coverage. Accordingly, Ms. Koch will only consent to the withdrawal if Judge Mora provides the following:

1. A public apology.
2. $5,000 in damages for her emotional distress.
3. An agreement to cease contact with Seeta Eye and Ms. Koch.

Please let us know if these terms are acceptable.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Date: March 2, 2023 at 6:03:56 PM EST
To: "Kovner, Victor" <[redacted]@dwt.com>
Subject: Mora v. Koch

[EXTERNAL]

I have briefed your motion and feel we can defeat it BUT my client has decided he wishes to withdraw his case against Ms. Koch assuming that we
can do so with here consent and each party bearing their own fees/costs. If not, he has authorized me to file my response. Please advise.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: Mora v. Koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, March 3, 2023 at 04:49 PM EST

Agreed. Here are the police recordings. I'm in the process of getting the 911 recordings, as from what I recall, the 2nd call into them is even worse than the first. She literally says she does not want to breathe my air in the first call which is attached.

On Friday, March 3, 2023 at 04:42:52 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

see exchange below. they are clearly demented in my opinion...

Michael Sussman

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, March 3, 2023 4:41 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: Mora v. Koch

FOR SETTLEMENT PURPOSES ONLY

As you know, the anti-SLAPP statute provides for a mandatory award of attorneys' fees and allows Ms. Koch to claim compensatory and punitive damages against Judge Mora. In our motion, we requested those fees and reserved her right to seek compensatory and punitive damages.

Accordingly, Ms. Koch is entitled to compensation for this SLAPP suit. We are likewise prepared to litigate this case.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Friday, March 3, 2023 4:18 PM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>

Re: Mora v. Koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Saturday, March 4, 2023 at 10:34 AM EST

Please email me the brief, as I would like to add some statements that they are muddying the waters by including the Law360 Article, my federal lawsuit, etc. I would like to have in there that I have a medical condition for not wearing a mask and received specific authorization to wear a shield at work, and had specific permission to be in the courthouse each and every time I was there.

On Friday, March 3, 2023 at 05:52:39 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

the court scheduled a settlement conference for 3/8 but I am tied up that day - I will try to move. I will file my brief on Monday...ms

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Friday, March 3, 2023 4:49 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Mora v. Koch

Agreed. Here are the police recordings. I'm in the process of getting the 911 recordings, as from what I recall, the 2nd call into them is even worse than the first. She literally says she does not want to breathe my air in the first call which is attached.

On Friday, March 3, 2023 at 04:42:52 PM EST, Michael Sussman [redacted]@sussman.law> wrote:

see exchange below. they are clearly demented in my opinion...

Michael Sussman

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, March 3, 2023 4:41 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: Mora v. Koch

FOR SETTLEMENT PURPOSES ONLY

Re: use this version please

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Saturday, March 4, 2023 at 08:10 PM EST

I added my suggestions. If you do not think they are appropriate, do as you see fit. I just think it is important to spell it out, as if I were the judge reading that false Law360 article, it would not sit well with me.

Thank you.

On Saturday, March 4, 2023 at 12:29:35 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I have edited the brief in preparation for its filing and you should edit this version. thanks. mhs

Michael Sussman

From: Michael Sussman <[redacted]@sussman.law>
Sent: Saturday, March 4, 2023 12:15 PM
To: Frank Mora <[redacted]@yahoo.com>
Subject: Fw: use this version please

This is the brief
Michael Sussman

From: Michael Sussman
Sent: Monday, February 13, 2023 8:10 AM
To: Frank Mora <[redacted]@yahoo.com>; Jonathan R. Goldman <[redacted]@sussman.law>
Subject: use this version please

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

mora brief in opposition to motion to dismiss FMM edits 3-4-23.docx
29.3kB

Re: NYSCEF Notification: Dutchess - Torts - Other - <MEMORANDUM OF LAW IN OPPOSITION> 2022-54141 (Frank Mora v. Stacey Koch)

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, March 6, 2023 at 03:09 PM EST

Thank you!

On Monday, March 6, 2023 at 02:51:07 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

Our reply was timely filed. ms

Michael Sussman

From: efile@nycourts.gov <efile@nycourts.gov>
Sent: Monday, March 6, 2023 10:42 AM
To: [redacted]@frontier.com <[redacted]@frontier.com>; Michael Sussman <[redacted].@sussman.law>; efile@nycourts.gov <efile@nycourts.gov>; [redacted]@ag.ny.gov <[redacted]@ag.ny.gov>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]1@frontiernet.net <[redacted]@frontiernet.net>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@frontier.com <[redacted]1@frontier.com>
Subject: NYSCEF Notification: Dutchess - Torts - Other - <MEMORANDUM OF LAW IN OPPOSITION> 2022-54141 (Frank Mora v. Stacey Koch)

Dutchess County Supreme Court Notification of Filing 03/06/2023

On 03/06/2023, the NYSCEF System received the documents listed below from filing user Michael Sussman . Please keep this notice as a confirmation of this filing.

Case Information

Index #: **2022-54141**
Caption: **Frank Mora v. Stacey Koch**
eFiling Status: **Full Participation Recorded**
Assigned Case Judge: **Maria G Rosa**

Working Copies By order of the Chief Administrative Judge (A0/267/20), the court shall NOT request working copies of documents filed electronically.

Documents Received

Re: Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, March 16, 2023 at 02:16 PM EDT

3/27/23 at 930 am

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, March 16, 2023 1:42 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

What is the date and time for the settlement conference?

On Tuesday, March 14, 2023 at 08:15:09 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Yes to both. I am at home due to snow but will confirm within 24 hours so you know date and time.

[redacted]

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, March 14, 2023 8:10 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Koch

Has a settlement conference been scheduled? Do you want me there?

Re: Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, March 21, 2023 at 02:11 PM EDT

930 am...

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, March 21, 2023 2:08 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: Koch

The email from last week states 9:30am. What time do you want me there?

On Monday, March 20, 2023 at 02:42:26 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

3/27 at 10 am - I wrote you this last week...[redacted]

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, March 20, 2023 12:30 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

Please let me know the date and time for the settlement conference.

[redacted]

On Thursday, March 16, 2023 at 01:42:17 PM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

What is the date and time for the settlement conference?

On Tuesday, March 14, 2023 at 08:15:09 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Yes to both. I am at home due to snow but will confirm within 24 hours so you know date and time.

[redacted]

Re: Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Sunday, March 26, 2023 at 08:31 PM EDT

Court starts At 930 not 1000 am tomorrow. I will be there by 920 am mhs
Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, March 21, 2023 2:12:42 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

Thanks.

On Tuesday, March 21, 2023 at 02:11:27 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

930 am...

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, March 21, 2023 2:08 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

The email from last week states 9:30am. What time do you want me there?

On Monday, March 20, 2023 at 02:42:26 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

3/27 at 10 am - I wrote you this last week...I will review the case you sent and advise...

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Monday, March 20, 2023 12:30 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

Please let me know the date and time for the settlement conference.

[redacted]

On Thursday, March 16, 2023 at 01:42:17 PM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

se attached and provide me with your comments

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Monday, March 27, 2023 at 03:32 PM EDT

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



mora statement to koch.docx
12.7kB

[redacted]

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, March 27, 2023 4:13 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: se attached and provide me with your comments

I will review it with my wife and get back to you tomorrow.

CEETA is Seeta. Also, my vaccination status is not part of this. Do we want that in there?

[redacted]

On Monday, March 27, 2023 at 03:32:09 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005

edited statement to consider

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Monday, March 27, 2023 at 06:53 PM EDT

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

mora statement to koch edited 327.docx
12.8kB

Re: edited statement to consider

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]sussman.law

Date: Monday, March 27, 2023 at 08:10 PM EDT

This is very good. Thank you.

On Monday, March 27, 2023 at 06:53:49 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Michael Sussman

Sussman & Associates

1 Railroad Ave., 3rd Floor

PO Box 1005

Goshen, NY 10924

[redacted]

Re: edited statement to consider

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, March 28, 2023 at 10:21 AM EDT

Yes.

On Tuesday, March 28, 2023 at 05:26:51 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

So. Are you on Board then with 1500 and this letter and a stay away between you and Koch business?

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, March 27, 2023 9:38:50 PM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: edited statement to consider

Yes. I presume that means the commission also, as we need them on board.

On Monday, March 27, 2023, 9:15 PM, Michael Sussman [redacted]@sussman.law> wrote:

Can I share this with adversary counsel or not?

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, March 27, 2023 8:10:57 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: edited statement to consider

This is very good. Thank you.

On Monday, March 27, 2023 at 06:53:49 PM EDT, Michael Sussman [redacted]@sussman.law> wrote:

Michael Sussman

Sussman & Associates

1 Railroad Ave., 3rd Floor

PO Box 1005

Re: tomorrow - mora adv/ koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, March 29, 2023 at 09:22 AM EDT

Defendant agreed, but not yet the commission?

On Wednesday, March 29, 2023 at 09:09:41 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

They have yet not agreed...I floated this and am awaiting a reply...ms

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:08 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Thank God! Thank you!

On Wednesday, March 29, 2023 at 09:08:35 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

yes sir...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:07 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

They consent to our offer to withdraw with prejudice, the apology, $1,500, me not going to Seeta, and the commission not using this suit against me?

On Wednesday, March 29, 2023 at 09:03:28 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

fyi

Michael Sussman

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, March 29, 2023 at 09:26 AM EDT

I JUST SENT this and no none yet agreed.

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:22 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Defendant agreed, but not yet the commission?

On Wednesday, March 29, 2023 at 09:09:41 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

They have yet not agreed...I floated this and am awaiting a reply...ms

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:08 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Thank God! Thank you!

On Wednesday, March 29, 2023 at 09:08:35 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

yes sir...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:07 AM
To: Michael Sussman [redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

They consent to our offer to withdraw with prejudice, the apology, $1,500, me not going to Seeta, and the commission not using this suit against me?

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, March 29, 2023 at 09:50 AM EDT

Oh, nothing was attached and there is nothing in the email other than fyi, so I do not know what was sent.

On Wednesday, March 29, 2023 at 09:26:00 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I JUST SENT this and no none yet agreed.

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:22 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Defendant agreed, but not yet the commission?

On Wednesday, March 29, 2023 at 09:09:41 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

They have yet not agreed...I floated this and am awaiting a reply...ms

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:08 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Thank God! Thank you!

On Wednesday, March 29, 2023 at 09:08:35 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

yes sir...

Michael Sussman

Re: tomorrow - mora adv/ koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Saturday, April 1, 2023 at 03:39 PM EDT

There is nothing here, or attached.

On Saturday, April 1, 2023 at 07:47:41 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Here is your answer from koch
Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:50:53 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Oh, nothing was attached and there is nothing in the email other than fyi, so I do not know what was sent.

On Wednesday, March 29, 2023 at 09:26:00 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I JUST SENT this and no none yet agreed.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:22 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Defendant agreed, but not yet the commission?

On Wednesday, March 29, 2023 at 09:09:41 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

They have yet not agreed...I floated this and am awaiting a reply...ms

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Wednesday, March 29, 2023 9:08 AM

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, April 3, 2023 at 07:27 AM EDT

Am I able to withdraw the matter without their consent?

On Saturday, April 1, 2023 at 06:54:04 PM EDT, Michael Sussman [redacted]@sussman.law> wrote:

see below message...

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, March 31, 2023 11:37 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Thank you for your message. My client has rejected your offer. I have also spoken with counsel for the Commission, and it is not acceptable to them either.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile [redacted] | Fax [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Wednesday, March 29, 2023 9:03 AM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

I have spoken with Judge Mora since our argument/settlement conference. He has authorized me to share the following:

1. he will pay $1500 to resolve the matter
2. he and his family will agree not to use the services offered by Ms. Koch's employer and to have no contact with her
3. he will email to her, through counsel, the attached document.
4. both sides will sign a settlement which disclaims liability to the other...
5. the commission will continue its investigation but not use this settlement against my client...

If this is acceptable to your client, my suggestion is that you speak with counsel for the Commission as it would have to agree to at least the last term.

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Tuesday, March 7, 2023 3:39 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: FW: tomorrow - mora adv/ koch

Mr. Sussman: We consent. In the future, please include both me and Victor on any correspondence.

Best,

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Tuesday, March 7, 2023 3:25 PM
To: Kovner, Victor <[redacted]@dwt.com>
Subject: tomorrow - mora adv/ koch

[EXTERNAL]

---

for reasons explained in my letter, i have depositions tomorrow and cannot make the settlement conference which appears useless ion any event.

kindly consent to its adjournment until argument date so we need not be in poughkeepsie twice. thanks. michael sussman

Michael Sussman

Sussman & Associates

1 Railroad Ave., 3rd Floor

PO Box 1005

Goshen, NY 10924

[redacted]

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, April 3, 2023 at 07:34 AM EDT

As we are in Lent, and this is Holy Week, a time for penance and forgiveness, please let them know that I accept their original offer amount of $5,000.

On Monday, April 3, 2023 at 07:32:17 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

We can try, but they have a pending motion and demand for fees therein...so I do not think you can...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 3, 2023 7:27 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Am I able to withdraw the matter without their consent?

On Saturday, April 1, 2023 at 06:54:04 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

see below message...

Michael Sussman

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, March 31, 2023 11:37 PM
To: Michael Sussman [redacted].@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email [redacted]dwt.com | Website: www.dwt.com

Re: tomorrow - mora adv/ koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, April 4, 2023 at 08:37 AM EDT

It they don't respond, or it is not acceptable, can we set up another settlement conference with Judge Rosa?

The first time I heard about the SLAPP law was when I read about it in their motion to dismiss. In my whole legal career, I did not handle defamation cases, nor did I come across SLAPP. We do not handle that in city court. I never had any intention of silencing Koch. Actually, as you know, it was just the opposite. I only brought the suit AFTER she testified before the commission, and then bragged to Mike Brown that she told them that she felt threatened by me, and that she was going to get me fired.

[redacted]

On Monday, April 3, 2023 at 07:34:14 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

As we are in Lent, and this is Holy Week, a time for penance and forgiveness, please let them know that I accept their original offer amount of $5,000.

On Monday, April 3, 2023 at 07:32:17 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

We can try, but they have a pending motion and demand for fees therein...so I do not think you can...

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Monday, April 3, 2023 7:27 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Am I able to withdraw the matter without their consent?

On Saturday, April 1, 2023 at 06:54:04 PM EDT, Michael Sussman [redacted]@sussman.law> wrote:

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, April 4, 2023 at 08:44 AM EDT

They have responded and rejected our settlement proposal. I am not sure what more the Judge can do. I believe that if you offered them $5k, they might accept, but their rejection was not specific. I assume they have issues with your "apology" though I do not..We can request that court's intercession again, but, I am not sure how much influence she really has over them or whether she is prepared to use it on this case...

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, April 4, 2023 8:37 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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The first time I heard about the SLAPP law was when I read about it in their motion to dismiss. In my whole legal career, I did not handle defamation cases, nor did I come across SLAPP. We do not handle that in city court. I never had any intention of silencing Koch. Actually, as you know, it was just the opposite. I only brought the suit AFTER she testified before the commission, and then bragged to Mike Brown that she told them that she felt threatened by me, and that she was going to get me fired.

[redacted]

On Monday, April 3, 2023 at 07:34:14 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

As we are in Lent, and this is Holy Week, a time for penance and forgiveness, please let them know that I accept their original offer amount of $5,000.

On Monday, April 3, 2023 at 07:32:17 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

We can try, but they have a pending motion and demand for fees therein...so I do not think you can...

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, April 4, 2023 at 08:46 AM EDT

Yesterday, I did authorize you to accept their offer of $5,000 (see below). Please convey that.

On Tuesday, April 4, 2023 at 08:44:15 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

They have responded and rejected our settlement proposal. I am not sure what more the Judge can do. I believe that if you offered them $5k, they might accept, but their rejection was not specific. I assume they have issues with your "apology" though I do not..We can request that court's intercession again, but, I am not sure how much influence she really has over them or whether she is prepared to use it on this case...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, April 4, 2023 8:37 AM
To: Michael Sussman [redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

It they don't respond, or it is not acceptable, can we set up another settlement conference with Judge Rosa?

The first time I heard about the SLAPP law was when I read about it in their motion to dismiss. In my whole legal career, I did not handle defamation cases, nor did I come across SLAPP. We do not handle that in city court. I never had any intention of silencing Koch. Actually, as you know, it was just the opposite. I only brought the suit AFTER she testified before the commission, and then bragged to Mike Brown that she told them that she felt threatened by me, and that she was going to get me fired.



On Monday, April 3, 2023 at 07:34:14 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

As we are in Lent, and this is Holy Week, a time for penance and forgiveness, please let them know that I accept their original offer amount of $5,000.

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, April 4, 2023 at 09:58 AM EDT

Thank you.

On Tuesday, April 4, 2023 at 09:05:15 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

ok. i did not see this yesterday. i will convey this.

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 3, 2023 7:34 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

As we are in Lent, and this is Holy Week, a time for penance and forgiveness, please let them know that I accept their original offer amount of $5,000.

On Monday, April 3, 2023 at 07:32:17 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

We can try, but they have a pending motion and demand for fees therein...so I do not think you can...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 3, 2023 7:27 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Am I able to withdraw the matter without their consent?

On Saturday, April 1, 2023 at 06:54:04 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

see below message...

Michael Sussman

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@dwt.com

Cc: [redacted]@dwt.com

Date: Wednesday, April 5, 2023 at 05:39 AM EDT

Good morning:

Judge Mora is interested in resolving the matter of attorneys' fees short of a hearing. He agreed previously to pay $5000 which was the figure you provided the court at last week's settlement conference. While the court's decision otherwise moots the apology he proposed and the injunctive relief related to his presence at your client's place of employment, as part of any consensual resolution, the Judge would adhere to those conditions. Kindly advise.

Michael Sussman

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, March 31, 2023 11:37 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Thank you for your message. My client has rejected your offer. I have also spoken with counsel for the Commission, and it is not acceptable to them either.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman <[redacted]@sussman.law>
Sent: Wednesday, March 29, 2023 9:03 AM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

I have spoken with Judge Mora since our argument/settlement conference. He has authorized me to share the following:

1. he will pay $1500 to resolve the matter

Fwd: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, April 5, 2023 at 10:47 PM EDT

This is nuts

Get Outlook for iOS

From: Michael Sussman <[redacted]@sussman.law>
Sent: Tuesday, April 4, 2023 9:05:20 AM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

My client has advised me that he will pay the 5k you sought in fees - please advise whether this is sufficient to resolve the matter. Thank you,

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, March 31, 2023 11:37 PM
To: Michael Sussman [redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman <[redacted]@sussman.law>
Sent: Wednesday, March 29, 2023 9:03 AM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

I have spoken with Judge Mora since our argument/settlement conference. He has authorized me to share the following:

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, April 6, 2023 at 08:15 AM EDT

There is nothing here or attached.

On Wednesday, April 5, 2023 at 10:47:45 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

This is nuts

Get Outlook for iOS

From: Michael Sussman <[redacted]@sussman.law>
Sent: Tuesday, April 4, 2023 9:05:20 AM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

My client has advised me that he will pay the 5k you sought in fees - please advise whether this is sufficient to resolve the matter. Thank you,

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, March 31, 2023 11:37 PM
To: Michael Sussman <s[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Thank you for your message. My client has rejected your offer. I have also spoken with counsel for the Commission, and it is not acceptable to them either.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Wednesday, March 29, 2023 9:03 AM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>

Fw: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, April 6, 2023 at 08:57 AM EDT

see the message below..

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Wednesday, April 5, 2023 8:34 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

FOR SETTLEMENT PURPOSES ONLY

Thank you for your message. The fees for my time on this matter at my standard hourly rate set by our firm are in excess of $120,000. At this time, we intend to apply to the Court to recover most, but not all, of my fees, and we will not seek to recover fees for any of the substantial time spent by Victor Kovner.

If you would like to resolve the issue of fees short of a hearing, you will need to offer substantially more than $5,000. Further, in addition to having no further contact with Ms. Koch or her employer, your client's letter (which only discussed the incident at the office) will also need to apologize for filing this SLAPP suit seeking $425,000 from Ms. Koch.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Wednesday, April 5, 2023 5:40 AM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Cc: Kovner, Victor <v[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

Good morning:

Judge Mora is interested in resolving the matter of attorneys' fees short of a hearing. He agreed previously to pay $5000 which was the figure you provided the court at last week's settlement conference. While the court's decision otherwise moots the apology he proposed and

Re: tomorrow - mora adv/ koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, April 6, 2023 at 09:21 AM EDT

Nuts would be an understatement. Did he add an extra zero by accident?

On Thursday, April 6, 2023 at 08:57:25 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

see the message below..

Michael Sussman

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Wednesday, April 5, 2023 8:34 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman [redacted]@sussman.law>
Sent: Wednesday, April 5, 2023 5:40 AM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>

Re: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, April 6, 2023 at 09:23 AM EDT

it went from 15k as total fees when we were in court to 120 after court...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, April 6, 2023 9:21 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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see the message below..

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To: Michael Sussman <[redacted].@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] Mobile: [redacted] | Fax [redacted]

Re: tomorrow - mora adv/ koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]sussman.law

Date: Thursday, April 6, 2023 at 09:35 AM EDT

As I explained to you, I did not even know what a SLAPP suit was. When we spoke on the phone on Tuesday, you said you did not tell me about SLAPP regarding my case because you did not believe this is a SLAPP suit. I absolutely know I did not bring a SLAPP suit. Are you still confident that this is not a SLAPP suit, meaning, should we appeal?

On Thursday, April 6, 2023 at 09:23:53 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

it went from 15k as total fees when we were in court to 120 after court...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, April 6, 2023 9:21 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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see the message below..

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Sent: Wednesday, April 5, 2023 8:34 PM
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Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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Re: Stacey Koch suit

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, April 6, 2023 at 11:00 AM EDT

Well said. Let's see if they print it.

On Thursday, April 6, 2023 at 10:54:49 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

The case was filed long after Stacey Koch testified before the NY State Commission on Judicial Conduct. It was never intended to inhibit her ability to testify. Indeed, my client filed the defamation case on the final day before the expiration of the statute of limitations.

The issue for us is that no person should be above the law, including civilians who would, as the lawsuit alleges, besmirch the character and reputation of a judge. This decision leaves no y accountability in such situations, in fact, excepting them from the laws of defamation even though the allegedly defamatory statements were made to people with tremendous authority and power over my client. The consequence of this extension of absolute immunity is significant because it authorizes all manner of false reporting without any consequence. And, of course, the underlying complaints are not filed under oath or even with a guarantee of confidentiality. No such guarantee appears on the Commission's web site.

We have tried to settle the matter without success and will take all measures possible and appropriate to protect our client's legal and reputational interests. No one should be persecuted for sincerely held religious beliefs and, at bottom, I believe this is the genesis of this entire controversy and the Commission's intervention in this civil lawsuit.

Michael Sussman

From: Elliot Weld [redacted]@law360.com>
Sent: Thursday, April 6, 2023 10:44 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Stacey Koch suit

Hi Mr. Sussman,
It's Elliot Weld at Law360 again. I am working on some coverage of the suit against Stacey Koch and was wondering if you'd seen Justice Rosa's dismissal of the suit, citing anti-SLAPP laws. I was wondering if you wanted to comment at all. Let me know.

Thanks as always,
Elliot Weld

--

Re: Stacey Koch suit

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, April 6, 2023 at 11:10 AM EDT

Thanks. ms

Michael Sussman

From: Frank Mora [redacted]@yahoo.com>
Sent: Thursday, April 6, 2023 11:00 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: Stacey Koch suit

Well said. Let's see if they print it.

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Michael Sussman

From: Elliot Weld <[redacted]@law360.com>
Sent: Thursday, April 6, 2023 10:44 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Stacey Koch suit

Hi Mr. Sussman,

Articles

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, April 7, 2023 at 11:02 AM EDT

Here are the articles I was telling you about.

One of them even has it wrong saying I have a religious belief about not wearing masks.

Do you have any of the cases you were mentioning that there is no award of attorney fees if pro bono?


Mid Hudson News - Defamation suit filed by Mora tossed ou...ave to pay defendant 4-7-23.pdf
152.5kB


New York Law Journal - 2 Losses for a NY Judge as Misconduct C... Becomes Public 4-7-23.pdf
844.2kB


Law360 Optician Beats NY Judge_s Defamation Suit Over Mask Dispute 4-7-23.pdf
188.9kB

Re: Articles

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, April 7, 2023 at 12:47 PM EDT

Thank you. Have a good weekend.

On Friday, April 7, 2023 at 11:46:11 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

Yes, I do.
I WILL REVIEW THAT brief this weekend and pull and send citations on what is necessary to get fees in NY

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Friday, April 7, 2023 11:02 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Articles

Here are the articles I was telling you about.

One of them even has it wrong saying I have a religious belief about not wearing masks.

Do you have any of the cases you were mentioning that there is no award of attorney fees if pro bono?

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@dwt.com

Cc: [redacted]@dwt.com

Date: Sunday, April 9, 2023 at 07:03 AM EDT

Good morning:

The court set April 27 for the attorneys' fees hearing, but I am in Atlanta between 4/26 and May 3 in court ordered depositions in a case down there. Please advise me whether May 11,May 22, 23, 25 or 26 works for you. I have trial commitments other days between now and June 12. I will then write the court and seek a mutually available date for this proceeding.

On another note, please provide your firm's retainer agreement [if any] with Ms. Koch and any bills provided her, records of your hours and CV/resumes you may introduce in support of your application for fees. If any court, federal or state, has set a fee for your service, kindly provide citation to such orders or decisions and if you intend to use any other attorney/expert in support of your hourly rate, kindly identify that person.

Thanks.

Michael Sussman

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Wednesday, April 5, 2023 8:34 PM
To: Michael Sussman <[redacted].@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

FOR SETTLEMENT PURPOSES ONLY

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If you would like to resolve the issue of fees short of a hearing, you will need to offer substantially more than $5,000. Further, in addition to having no further contact with Ms. Koch or her employer, your client's letter (which only discussed the incident at the office) will also need to apologize for filing this SLAPP suit seeking $425,000 from Ms. Koch.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Monday, April 10, 2023 at 09:20 AM EDT

Sure please send me his number

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 10, 2023 9:09:48 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Should I reach out to him and tell him to expect a call from you?

On Monday, April 10, 2023 at 08:56:57 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

It makes sense

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 10, 2023 7:56:51 AM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Does it make any sense to get an affidavit from Mike Brown, Koch's former co-worker, that Koch told him after she testified before the commission that she basically made up that she felt threatened by me, and that she was bragging that she is going to get me fired? We could then file for a rehearing. This would show Judge Rosa that my suit was not to silence Koch at all, but was just the opposite, to get redress for the harms she was causing me. Or, does none of this matter, as the case law seems to suggest that a complainant can say anything without fear of being held accountable?

On Sunday, April 9, 2023 at 07:03:03 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Good morning:

The court set April 27 for the attorneys' fees hearing, but I am in Atlanta between 4/26 and May 3 in court ordered depositions in a case down there. Please advise me whether May 11,May 22, 23, 25 or 26 works for you. I have trial commitments other days between now and June 12. I will then write the court and seek a mutually available date for this proceeding.

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, April 10, 2023 at 09:48 AM EDT

That's the amazing part. Before the 12/28/21 incident, I had never seen him before. I don't know him at all, except from Seeta, and when he signed his letter for me. This is from #40 of the docs I first sent to you, page 33:

Most people are not capable of exhibiting the type of restraint Judge Mora exhibited. Clearly, Ms. Koch has a problem and was trying to degrade Judge Mora as much as possible. But the Commission does not have to just take Judge Mora's word for it. An employee of Seeta, Michael Brown, witnessed the encounter and describes what really occurred. His recitation is attached as Exhibit 20. In addition, Dr. M[redacted]'s encounter with Ms. Koch is detailed in a statement attached as Exhibit 21. Notably, Mr. Brown does not know Judge Mora. He offered to provide the letter—despite the repercussion he may face—because how Ms. Koch treated Judge Mora was egregious. That is, Mr. Brown is putting his job on the line to avail this Commission of the truth. And his gesture speaks volumes about how Judge Mora conducted himself. Further, Judge Mora left such a good impression with Mr. Brown that he decided Judge Mora was worth the risk.

On Monday, April 10, 2023 at 09:42:22 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

How well do you know him?

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 10, 2023 9:41:22 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Michael Brown - [redacted]

On Monday, April 10, 2023 at 09:20:22 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Sure please send me his number

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, April 10, 2023 9:09:48 AM

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, April 11, 2023 at 06:04 PM EDT

I found this on attorney fees: https://www.paulweiss.com/practices/pro-bono/news/paul-weiss-secures-significant-attorneys-fees-award-for-pro-bono-client?id=39474

It does not look good.

On Tuesday, April 11, 2023 at 12:20:03 PM EDT, Frank Mora [redacted]@yahoo.com> wrote:

I found the motion to dismiss. I did not receive their reply. Please send that and the case law on attorney fees.

On Tuesday, April 11, 2023 at 09:11:52 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

I told a friend of mine who is an attorney how Kovner is a former commissioner of the judicial commission, and that his firm is representing Koch pro-bono, and she said it does not pass the smell test. She thinks that Judge Rosa needs to hear this for the application on attorney fees. Your thoughts?

Please forward to me the case law when you have time regarding not awarding attorney fees to a pro-bono attorney. Also, I can't find their motion to dismiss. Would you please email that to me again?

On Monday, April 10, 2023 at 02:07:50 PM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

He actually told me he quit on the spot when she told him this, as he told her he could not work for a person that could do something like this. He said he told the commission everything when he testified before them. They asked him questions for 45 minutes to an hour, and were asking such things as, did Judge Mora coerce you in to writing the letter?

On Monday, April 10, 2023 at 09:48:18 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

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Re: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, April 12, 2023 at 05:17 AM EDT

When you write, "it doesn't look good," you are presuming Judge Rosa's decision was correct and that she will award exorbitant fees. I will send you what I have to date on fees and the reply papers when I return from mediation in White Plains later today.

Michael Sussman

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To: [redacted]@sussman.law

Date: Wednesday, April 12, 2023 at 08:17 AM EDT

I meant that it appears that attorney fees can be awarded on a pro-bono case. I am nervous that she will do just that regarding exorbitant fees.

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Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, April 12, 2023 at 08:24 AM EDT

I will.

On Wednesday, April 12, 2023 at 08:19:56 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Please call me if you can between 840-930 – [redacted]...

Michael Sussman

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, April 12, 2023 8:17 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Fw: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <COURT NOTICE> 2022-54141 (Frank Mora v. Stacey Koch)

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, April 20, 2023 at 06:57 AM EDT

The issue before us is whether to have a hearing on their fee application or whether to proceed on papers...I am dubious about paper submissions with no
opportunity to question, especially since they get the last word on papers. If you have an opinion, please share it. Thanks.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted])
[redacted].@sussman.law

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Wednesday, April 19, 2023 5:16 PM
To: Michael Sussman <[redacted].@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: FW: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <COURT NOTICE> 2022-54141 (Frank Mora v. Stacey Koch)

Good afternoon: Per the Court's notice, we agree to proceed on papers only, under the previously agreed schedule.

Best,

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: efile@nycourts.gov <efile@nycourts.gov>
Sent: Wednesday, April 19, 2023 4:41 PM
To: [redacted]@frontier.com; [redacted]@sussman.law; efile@nycourts.gov; Kovner, Victor [redacted]@dwt.com>; NYC Docket <[redacted]@dwt.com>; [redacted]@frontiernet.net; [redacted]@cjc.ny.gov; Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>; [redacted].@frontier.com

Re: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <COURT NOTICE> 2022-54141 (Frank Mora v. Stacey Koch)

From: Michael Sussman [redacted]sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, April 20, 2023 at 09:01 AM EDT

we can discuss...not sure it would be best to place you under oath or for you to so defend the filing...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]
[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, April 20, 2023 8:11 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <COURT NOTICE> 2022-54141 (Frank Mora v. Stacey Koch)

I agree that we are going to need a hearing.

Looking at NY CLS Civ R Sec 70-a, it states that attorney fees are awarded from any person who "commenced or continued such action..." Would it be prudent to show that I had never handled a defamation case in my entire career, had never heard of SLAPP until reading it in their motion to dismiss, brought the suit on the last day of the SOL only after hearing from Mike Brown that Koch was bragging about making up feeling threatened and going to get my job, and then attempting to withdraw the matter before the decision?

Would it be a good idea to put me under oath at a hearing regarding all of this, and getting that affidavit from Brown?

On Thursday, April 20, 2023 at 06:57:23 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

The issue before us is whether to have a hearing on their fee application or whether to proceed on papers...I am dubious about paper submissions with no
opportunity to question, especially since they get the last word on papers. If you have an opinion, please share it. Thanks.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue

Re: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <COURT NOTICE> 2022-54141 (Frank Mora v. Stacey Koch)

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, April 24, 2023 at 12:04 PM EDT

Please email me the case law that you have regarding no attorney fees for pro-bono attorneys.

On Thursday, April 20, 2023 at 09:01:29 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

we can discuss...not sure it would be best to place you under oath or for you to so defend the filing...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]
[redacted].@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, April 20, 2023 8:11 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: NYSCEF Notification: Dutchess - Torts - Other - Notification from Court <COURT NOTICE> 2022-54141 (Frank Mora v. Stacey Koch)

I agree that we are going to need a hearing.

Looking at NY CLS Civ R Sec 70-a, it states that attorney fees are awarded from any person who "commenced or continued such action..." Would it be prudent to show that I had never handled a defamation case in my entire career, had never heard of SLAPP until reading it in their motion to dismiss, brought the suit on the last day of the SOL only after hearing from Mike Brown that Koch was bragging about making up feeling threatened and going to get my job, and then attempting to withdraw the matter before the decision?

Would it be a good idea to put me under oath at a hearing regarding all of this, and getting that affidavit from Brown?

On Thursday, April 20, 2023 at 06:57:23 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

The issue before us is whether to have a hearing on their fee application or whether to proceed on papers...I am dubious about paper submissions with no

Re: status

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, April 25, 2023 at 08:59 AM EDT

Thank you.

On Tuesday, April 25, 2023 at 08:58:10 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

She left us no choice. She is being unreasonable and a record of that exists. Not much let I can do. Let's see what they submit and create the best record we can in response.

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From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, April 25, 2023 8:56:01 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: status

After reading your letter to Justice Rosa, this should not be done on papers. We need an evidentiary hearing, so we can cross-examine them. It is apparent that she has already made up her mind, and she is going to hammer me with attorney fees.

On Tuesday, April 25, 2023 at 08:29:33 AM EDT, Frank Mora [redacted]@yahoo.com> wrote:

Thank you. Good luck in Georgia.

On Tuesday, April 25, 2023 at 08:27:30 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I have to write on the attorneys fees issues in may and will pull together all cases [from prior research] then. I am still with a jury deliberation in my manslaughter case and leaving for Georgia tonight. I will be away nine days.

Judge Rosa is being extremely difficult in the Koch case and has refused to even entertain the idea of an evidentiary hearing if we submit papers. I do not understand her attitude, but she is quite hostile.
I have sent her the following letter today on this issue. Best regards.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: Fwd: NYSCEF Notification: Dutchess - Torts - Other - <AFFIRMATION OF ATTORNEY FEES> 2022-54141 (Frank Mora v. Stacey Koch)

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law; [redacted]@sussman.law

Date: Thursday, April 27, 2023 at 06:57 PM EDT

No need to send to me. I have it all, and ready to discuss. Another sleepless night tonight.

On Thursday, April 27, 2023, 6:54 PM, Michael Sussman <[redacted]@sussman.law> wrote:

Monica - Please print this and email to judge mora.

ThAnks

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From: efile@nycourts.gov <efile@nycourts.gov>
Sent: Thursday, April 27, 2023 12:59:34 PM
To: [redacted]@frontier.com [redacted]@frontier.com>; Michael Sussman [redacted]@sussman.law>; efile@nycourts.gov <efile@nycourts.gov>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@dwt.com <[redacted]dwt.com>; [redacted]@frontiernet.net <[redacted]@frontiernet.net>; [redacted]@cjc.ny.gov [redacted]@cjc.ny.gov>; [redacted]@dwt.com <[redacted]@dwt.com>; [redacted]@frontier.com <[redacted]@frontier.com>
Subject: NYSCEF Notification: Dutchess - Torts - Other - <AFFIRMATION OF ATTORNEY FEES> 2022-54141 (Frank Mora v. Stacey Koch)

Dutchess County Supreme Court
Notification of Filing
04/27/2023

On 04/27/2023, the NYSCEF System received the documents listed below from filing user RAPHAEL HOLOSZYC-PIMENTEL . Please keep this notice as a confirmation of this filing.

Case Information

Index #: **2022-54141**
Caption: **Frank Mora v. Stacey Koch**
eFiling Status: **Full Participation Recorded**
Assigned Case Judge: **Maria G Rosa**

Working Copies

By order of the Chief Administrative Judge (AO/267/20), the court shall NOT request working copies of documents filed electronically.

82

attorneys fees

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Monday, May 1, 2023 at 03:28 AM EDT

I will be drafting our reply on Saturday. If you have any comments, please let me have by the end of the week. Thanks. Mhs

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Re: Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, May 2, 2023 at 08:57 AM EDT

Write out your apology and I will send them A new proposal

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 2, 2023 8:34:26 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

They want a specific apology for bringing the SLAPP suit, which I am willingly to give. I am also offering 15k, not 5k.

On Monday, May 1, 2023, 8:57 PM, Michael Sussman <[redacted]@sussman.law> wrote:

We made this offer, and it was rejected. I told you I was working on this this weekend and I will write on it then. I will not appeal.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, May 1, 2023 5:06:50 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Koch

Michael,

Please do not appeal Judge Rosa's decision. There is no way to win it, and both you and I will be subject to sanctions and attorney fees.

You mentioned in an April 6th email that their attorney fees "went from 15k as total fees when we were in court to 120 after court..."

Did they give that figure to Judge Rosa, and then she relayed it to you? If not, where did that figure come from?

In any event, please offer them the $15,000 immediately, I will issue an apology, and stay away from Seeta.

Thank you.

Frank

Re: Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, May 2, 2023 at 12:55 PM EDT

Call my cell when you have time ty

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 2, 2023 10:37:18 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

I will work on it.

On Tuesday, May 2, 2023 at 09:51:06 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I think we should provide the apology as part of any proposal.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 2, 2023 9:29:47 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

Please see if that is acceptable, and then I will write it.

1. $15,000;
2. Apology for the SLAPP suit; and
3. I will stay away from Seeta.

On Tuesday, May 2, 2023 at 08:57:25 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Write out your apology and I will send them A new proposal

Get Outlook for iOS

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, May 2, 2023 8:34:26 AM
To: Michael Sussman [redacted].@sussman.law>
Subject: Re: Koch

They want a specific apology for bringing the SLAPP suit, which I am willingly to give. I am also offering 15k, not 5k.

Re: Koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Wednesday, May 3, 2023 at 05:47 PM EDT

this is very personal and i really have no opinion. the only thing that matters is that this be resolved in a manner you more acceptable than less acceptable. if you are comfortable with its content, I will send to the other counsel.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]
[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Wednesday, May 3, 2023 3:49 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: Koch

Attached is the apology. What do you think?

On Tuesday, May 2, 2023 at 10:37:18 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

I will work on it.

On Tuesday, May 2, 2023 at 09:51:06 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I think we should provide the apology as part of any proposal.

Get Outlook for iOS

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, May 2, 2023 9:29:47 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Koch

Please see if that is acceptable, and then I will write it.

1. $15,000;
2. Apology for the SLAPP suit; and

Re: Koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, May 4, 2023 at 04:01 PM EDT

Were you able to send the proposal?

On Thursday, May 4, 2023 at 08:45:25 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

I will send them your proposal today copying you. Ms

Michael Sussman

Sussman & Goldman

1 Railroad Avenue

Goshen, NY 10924

[redacted]

[redacted] fx)

[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, May 4, 2023 8:27 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: Koch

I took out the part about my wife. Please use this one.

On Wednesday, May 3, 2023 at 05:47:53 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

this is very personal and i really have no opinion. the only thing that matters is that this be resolved in a manner you more acceptable than less acceptable. if you are comfortable with its content, I will send to the other counsel.

Re: Koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, May 4, 2023 at 05:53 PM EDT

yes I was. hours ago. ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, May 4, 2023 4:01 PM
To: Michael Sussman [redacted].@sussman.law>
Subject: Re: Koch

Were you able to send the proposal?

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I will send them your proposal today copying you. Ms

Michael Sussman

Sussman & Goldman

1 Railroad Avenue

Goshen, NY 10924

[redacted]

[redacted] (fx)

[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, May 4, 2023 8:27 AM

Fw: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, May 4, 2023 at 05:54 PM EDT

fyi

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]1@sussman.law

From: Michael Sussman <[redacted]1@sussman.law>
Sent: Thursday, May 4, 2023 11:36 AM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

Without prejudice, My client wishes to propose a resolution again:

Enclosed apology letter to your client
Payment of $15,000 in fees
Agreement to not patronize her business establishment.

Kindly advise.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]1@sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Wednesday, April 12, 2023 3:15 PM
To: Michael Sussman <[redacted]1@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Re: attorneys fees issues

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, May 5, 2023 at 11:13 AM EDT

Just some thoughts:

For the attorney fees, should we put in there that I accepted their terms on April 3rd, but you did not see my email until the next day, you advised them first thing on April 4th, but before they could respond, the decision was issued?

Maybe also put something like you were going to write the court to advise it was being withdrawn as as soon as you heard from them, but again, the decision came out the same day?

On Friday, May 5, 2023 at 08:55:43 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

Please look at Judge Rosa's case Kenneth Gottlieb v. Christine Colonel Index No. 50650/2016. This wasn't Gottlieb's first SLAPP suit, and the attorney fees were moderate, and he is an attorney.

[redacted]

On Friday, May 5, 2023 at 08:09:29 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

As I have written before, I intend to brief the attorneys fee issues this weekend, focusing on the relative simplicity of their argument, our efforts to compromise this far before much of these hours were spent and the lack of merit to the notion that fees are warranted...I will send my papers for your review and if you have anything you wish to add, will certainly consider.

I have heard nothing back from adversary counsel after forwarding my settlement proposal yesterday morning. As i had told you, I doubt they bite...

[redacted]

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Re: attorneys fees issues

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Friday, May 5, 2023 at 01:28 PM EDT

Yes the entire chronology should be there

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From: Frank Mora <[redacted]@yahoo.com>
Sent: Friday, May 5, 2023 11:13:17 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: attorneys fees issues

Just some thoughts:

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[redacted]

Fwd: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Friday, May 5, 2023 at 01:43 PM EDT

Fyi let me know your position we could counter at 20k

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From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, May 5, 2023 1:41:43 PM
To: Michael Sussman [redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

FOR SETTLEMENT PURPOSES ONLY

Thank you for your message. We can agree to resolve the issue of fees for $25,000. Also, we assume the last provision means no contact with Seeta Eye nor Ms. Koch, but please confirm.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman [redacted]@sussman.law>
Sent: Thursday, May 4, 2023 11:36 AM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

Without prejudice, My client wishes to propose a resolution again:

Enclosed apology letter to your client
Payment of $15,000 in fees
Agreement to not patronize her business establishment.

Kindly advise.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]

Re: tomorrow - mora adv/ koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, May 5, 2023 at 01:56 PM EDT

What do you think about $17,500, advising them that it is $2,500 more than they told Rosa they wanted?

On Friday, May 5, 2023 at 01:43:21 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Fyi let me know your position we could counter at 20k

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From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, May 5, 2023 1:41:43 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

FOR SETTLEMENT PURPOSES ONLY

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1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman [redacted]@sussman.law>
Sent: Thursday, May 4, 2023 11:36 AM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

Without prejudice, My client wishes to propose a resolution again:

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, May 5, 2023 at 02:05 PM EDT

Ok.

On Friday, May 5, 2023 at 02:00:05 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I think we go back with 20 and try to end it. Much time has passed since they made a representation of 15.

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From: Frank Mora <[redacted]@yahoo.com>
Sent: Friday, May 5, 2023 1:56:00 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

What do you think about $17,500, advising them that it is $2,500 more than they told Rosa they wanted?

On Friday, May 5, 2023 at 01:43:21 PM EDT, Michael Sussman [redacted]@sussman.law> wrote:

Fyi let me know your position we could counter at 20k

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From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, May 5, 2023 1:41:43 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

FOR SETTLEMENT PURPOSES ONLY

Thank you for your message. We can agree to resolve the issue of fees for $25,000. Also, we assume the last provision means no contact with Seeta Eye nor Ms. Koch, but please confirm.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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Fwd: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Saturday, May 6, 2023 at 02:06 AM EDT

Get Outlook for iOS

From: Michael Sussman [redacted]@sussman.law>
Sent: Friday, May 5, 2023 5:28 PM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

We can agree to 20k as compromise

Get Outlook for iOS

From: Michael Sussman <[redacted]@sussman.law>
Sent: Thursday, May 4, 2023 11:36 AM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

Without prejudice, My client wishes to propose a resolution again:

Enclosed apology letter to your client
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Agreement to not patronize her business establishment.

Kindly advise.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Wednesday, April 12, 2023 3:15 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Looks good to me. Thanks

Re: attorneys fees issues

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Monday, May 8, 2023 at 04:35 PM EDT

not as of yet...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted](fx)
[redacted]@sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Monday, May 8, 2023 3:23 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: attorneys fees issues

Any word?

On Sunday, May 7, 2023 at 05:00:11 PM EDT, Frank Mora [redacted]@yahoo.com> wrote:

I know. Just preparing.

On Sunday, May 7, 2023 at 04:58:35 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I am awaiting a response to our settlement proposal.

Get Outlook for iOS

From: Frank Mora [redacted]@yahoo.com>
Sent: Sunday, May 7, 2023 4:49:38 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: attorneys fees issues

Back to the attorney fees issue. In Gottlieb, Judge Rosa awarded $5,800. At $290 per hour, that comes to 20 hours. In my case, they are seeking $350 per hour. At 20 hours, that is $7,000. Gottieb had no court appearances, we had one. Tacking on another 10 hours for that, that is $10,500. Even adding another 10 hours, for a total of 40 hours, that is $14,000.

On Saturday, May 6, 2023 at 07:08:11 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@dwt.com

Cc: [redacted]@dwt.com

Date: Tuesday, May 9, 2023 at 03:20 PM EDT

Resolved thank you.

Get Outlook for iOS

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Tuesday, May 9, 2023 2:53:10 PM
To: Michael Sussman [redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Thank you for confirming. We can resolve the SLAPP fee award for $20k and the other discussed terms contained in a mutually acceptable agreement. We will prepare draft settlement papers, which I hope to send you tomorrow.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Tuesday, May 9, 2023 1:03 PM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

Yes, no contact with either, and I had suggested compromising this for 20k but have not heard back from you.
Kindly advise if that will resolve this matter.

Thanks.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)

Re: tomorrow - mora adv/ koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]sussman.law

Date: Tuesday, May 9, 2023 at 03:25 PM EDT

Please let Judge Rosa know so she does not award attorney fees.

At least there is certainty with this resolution.

On Tuesday, May 9, 2023 at 03:20:37 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Resolved thank you.

Get Outlook for iOS

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Tuesday, May 9, 2023 2:53:10 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman <[redacted]@sussman.law>
Sent: Tuesday, May 9, 2023 1:03 PM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

Yes, no contact with either, and I had suggested compromising this for 20k but have not heard back from you.

Re: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, May 9, 2023 at 03:30 PM EDT

I agree and we shall our papers are not due until Thursday and they have time to reply. So the judge is not doing anything.

Get Outlook for iOS

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, May 9, 2023 3:25:30 PM
To: Michael Sussman <[redacted].@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
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To: Michael Sussman [redacted].@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman <[redacted]@sussman.law>
Sent: Tuesday, May 9, 2023 1:03 PM

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, May 11, 2023 at 05:39 PM EDT

Did they, or you, contact the court stating we are settling the attorney fee issue?

On Thursday, May 11, 2023 at 08:22:52 AM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

Did we get anything yet? If not, maybe you should suggest they contact the court, on consent of the commission and us, that we are settling the matter.

On Tuesday, May 9, 2023 at 04:29:17 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

We will see what he proposes but I expect so.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 9, 2023 3:58:30 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Are we able to have this sealed or marked confidential, so the press doesn't get it?

On Tuesday, May 9, 2023 at 03:30:46 PM EDT, Michael Sussman [redacted]@sussman.law> wrote:

I agree and we shall our papers are not due until Thursday and they have time to reply. So the judge is not doing anything.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 9, 2023 3:25:30 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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On Tuesday, May 9, 2023 at 03:20:37 PM EDT, Michael Sussman [redacted]@sussman.law> wrote:

Re: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, May 11, 2023 at 05:52 PM EDT

I will send that letter first thing in the morning. I am sending you their proposed settlement now before I contact the court...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, May 11, 2023 5:39 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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We will see what he proposes but I expect so.

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From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 9, 2023 3:58:30 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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On Tuesday, May 9, 2023 at 03:30:46 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, May 11, 2023 at 06:08 PM EDT

Also, as Judge Rosa is a stickler for dates, shouldn't a letter be sent today, as today is our deadline to file a reply to their attorney fee papers?

On Thursday, May 11, 2023 at 06:07:06 PM EDT, Frank Mora [redacted]@yahoo.com> wrote:

The agreement needs to state that it is confidential, and will not be filed with the court.

The apology letter is for her, as it has my personal medical info in it.

The 2nd whereas needs to be changed from unwillingness to inability.

Do you have any other comments or suggested changes?

On Thursday, May 11, 2023 at 05:54:53 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Thursday, May 11, 2023 4:12 PM
To: Michael Sussman [redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Thanks for your patience. Attached are the settlement papers.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, May 11, 2023 at 07:16 PM EDT

I just completed writing a brief and will read it tomorrow. I am not concerned about the judge and the settlement. I understand everything worries you. I do understand.

Get Outlook for iOS

From: Frank Mora [redacted]@yahoo.com>
Sent: Thursday, May 11, 2023 6:08:29 PM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

Also, as Judge Rosa is a stickler for dates, shouldn't a letter be sent today, as today is our deadline to file a reply to their attorney fee papers?

On Thursday, May 11, 2023 at 06:07:06 PM EDT, Frank Mora [redacted]@yahoo.com> wrote:

The agreement needs to state that it is confidential, and will not be filed with the court.

The apology letter is for her, as it has my personal medical info in it.

The 2nd whereas needs to be changed from unwillingness to inability.

Do you have any other comments or suggested changes?

On Thursday, May 11, 2023 at 05:54:53 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]1@sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Thursday, May 11, 2023 4:12 PM
To: Michael Sussman <[redacted]1@sussman.law>

(No Subject)

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, May 11, 2023 at 07:31 PM EDT

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

DOC051123-019.pdf
131.9kB

agreement with koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Cc: [redacted]@sussman.law

Date: Friday, May 12, 2023 at 05:42 AM EDT

I have reviewed and edited the agreement. Upon your concurrence, I will forward to adversary counsel.

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]



Mora-Koch Settlement Agreement ms edits 51223.docx
27.8kB

Re: agreement with koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Friday, May 12, 2023 at 07:27 AM EDT

I do not agree that we need the consent of the commission. My understanding is that the commission has consented to this through its liaison, Mr. Kovner, and I see no need to press the issue. I am not sure if you need to change this from 14 to 21 days. if so, fine; if not, why bother...there are other more important amendments to make in this agreement...I would stick with 14 days and seek the other changes...ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Friday, May 12, 2023 7:12 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: agreement with koch

I changed 2a & 2b to 21 days. I tried to use track changes, but I don't know if it worked.

We also need consent of the commission, which can be as simple as a letter or email from them.

Thank you for sending the letter to Judge Rosa last night. You are correct, I am worried. The SLAPP decision makes me look like a complete idiot. Although it was not my intent to silence anyone, as her complaint was filed a year prior to the suit, and she had testified in front of the commission, no one knows that. [redacted]

Thank you for understanding.

On Friday, May 12, 2023 at 05:42:09 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I have reviewed and edited the agreement. Upon your concurrence, I will forward to adversary counsel.

Michael Sussman
Sussman & Associates

Re: agreement with koch

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, May 12, 2023 at 07:29 AM EDT

OK.

On Friday, May 12, 2023 at 07:27:56 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I do not agree that we need the consent of the commission. My understanding is that the commission has consented to this through its liaison, Mr. Kovner, and I see no need to press the issue. I am not sure if you need to change this from 14 to 21 days. if so, fine; if not, why bother...there are other more important amendments to make in this agreement...I would stick with 14 days and seek the other changes...ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Friday, May 12, 2023 7:12 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: agreement with koch

I changed 2a & 2b to 21 days. I tried to use track changes, but I don't know if it worked.

We also need consent of the commission, which can be as simple as a letter or email from them.

Thank you for sending the letter to Judge Rosa last night. You are correct, I am worried. The SLAPP decision makes me look like a complete idiot. Although it was not my intent to silence anyone, as her complaint was filed a year prior to the suit, and she had testified in front of the commission, no one knows that. [redacted]

Thank you for understanding.

On Friday, May 12, 2023 at 05:42:09 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, May 12, 2023 at 07:40 AM EDT

Looks good with the addition of the commission. Thank you.

On Friday, May 12, 2023, 7:37 AM, Michael Sussman <[redacted]@sussman.law> wrote:

I am providing you with my track edits. Please review and advise. Thanks.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Thursday, May 11, 2023 4:12 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Thanks for your patience. Attached are the settlement papers.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Wednesday, May 10, 2023 7:00 PM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

I will notify court because my papers are due tomorrow...ms

Michael Sussman

Re: agreement with koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Friday, May 12, 2023 at 07:41 AM EDT

I have assed your issues regardless of my perspective...on their necessity...and, it's your money so I added the 20 days.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Friday, May 12, 2023 7:29 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: agreement with koch

OK.

On Friday, May 12, 2023 at 07:27:56 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I do not agree that we need the consent of the commission. My understanding is that the commission has consented to this through its liaison, Mr. Kovner, and I see no need to press the issue. I am not sure if you need to change this from 14 to 21 days. if so, fine; if not, why bother...there are other more important amendments to make in this agreement...I would stick with 14 days and seek the other changes...ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]@sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Friday, May 12, 2023 7:12 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: agreement with koch

Re: court response

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Friday, May 12, 2023 at 03:23 PM EDT

Haha. You mean Justice Rosa.

On Friday, May 12, 2023 at 03:21:14 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Other than ordering that you be subjected to ten public lashings, Justice Mora gave us until 5/26 to submit a stipulation...she set no date, time or place for the public whipping...

Michael Sussman
Sussman & Associates
1 Railroad Ave., 3rd Floor
PO Box 1005
Goshen, NY 10924
[redacted]

Fw: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Friday, May 12, 2023 at 04:22 PM EDT

see this...and advise.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, May 12, 2023 4:19 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Mr. Sussman:

We did not agree to confidentiality, and have made that clear since our initial offer on March 3. We also did not agree to, and do not see the point of, the Commission's sign-off since the fee motion is not their motion. I have deleted those provisions and made a few small edits to your other proposed changes. Please review and let me know if your client accepts by noon on Monday. If not, we will go back to the Court and ask to put the fee motion back on schedule.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] Mobile: [redacted] | Fax: [redacted]
Email [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman [redacted]@sussman.law>
Sent: Friday, May 12, 2023 7:38 AM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

I am providing you with my track edits. Please review and advise. Thanks.

Fw: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]sussman.law)

To: [redacted]@yahoo.com

Date: Friday, May 12, 2023 at 05:46 PM EDT

this seems reasonable. ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, May 12, 2023 5:18 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

We can agree to keep the content of the apology, but not the fact of it, confidential. Let me know if the attached version is acceptable.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman [redacted]@sussman.law>
Sent: Friday, May 12, 2023 4:24 PM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

my principal issue is that his letter of apology includes personal, medical information intended for your client, not the rest of the world. the balance of this need not be confidential, but the content of that should be at least in the referenced regard.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, May 15, 2023 at 03:20 PM EDT

Any word?

On Saturday, May 13, 2023 at 05:00:58 PM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

I was at a DWI seminar In Glens Falls yesterday. Attached are my changes. Even with a diagnosis from a mental health professional, they refuse to accept the fact of my disability. I deleted "alleged." I also added, "Neither this settlement agreement, nor any exhibits, shall be filed with the court."

Thank you.

On Saturday, May 13, 2023 at 06:48:26 AM EDT, Michael Sussman [redacted]@sussman.law> wrote:

I sent this to you when I received it. They have agreed to maintain the confidentiality of the apology letter, but not of other terms of the agreement. The agreement will not be filed with or in the court.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Friday, May 12, 2023 5:18 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

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Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Re: tomorrow - mora adv/ koch

From: Michael Sussman [redacted]@sussman.law)

To: [redacted]@dwt.com

Date: Monday, May 15, 2023 at 07:34 PM EDT

I think this is fine then...my client will have to live with alleged as that has not really been adjudicated...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Monday, May 15, 2023 7:06 PM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

We're fine with not filing the agreement with the court. But we need to put "alleged" inability back in, or change it back to "unwillingness" which is the language the court used. Finally, we assume you are not appealing and added a clause to that effect.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted]@sussman.law>
Sent: Saturday, May 13, 2023 5:07 PM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

I think we are almost there. I am enclosing the final edits on our side of this...please see whether you can live with this and end the matter. Thanks.

Michael Sussman
Sussman & Goldman

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, May 16, 2023 at 07:40 AM EDT

Do you want me to add the acknowledgement language to sign before a notary?

After I sign, I will mail it to you with a check payable to Michael Sussman, as attorney, correct?

On Monday, May 15, 2023 at 07:34:58 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

kindly sign this before a notary and return to me. thanks. ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Monday, May 15, 2023 7:06 PM
To: Michael Sussman <[redacted]1@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

We're fine with not filing the agreement with the court. But we need to put "alleged" inability back in, or change it back to "unwillingness" which is the language the court used. Finally, we assume you are not appealing and added a clause to that effect.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman <[redacted]@sussman.law>
Sent: Saturday, May 13, 2023 5:07 PM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, May 16, 2023 at 08:22 AM EDT

So, I am just signing it, and sending it to you without it being notarized?

On Tuesday, May 16, 2023 at 07:56:53 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

no and yes...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, May 16, 2023 7:40 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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kindly sign this before a notary and return to me. thanks. ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

Re: tomorrow - mora adv/ koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Tuesday, May 16, 2023 at 08:33 AM EDT

My secretary can notarize. I'm confused, as there is no notary info at the bottom, and you do not want me to add it. How do I get it notarized if that is not there?

On Tuesday, May 16, 2023 at 08:30:41 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I can notarize if you send me a copy of your driver's license.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 16, 2023 8:22 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

So, I am just signing it, and sending it to you without it being notarized?

On Tuesday, May 16, 2023 at 07:56:53 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

no and yes...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, May 16, 2023 7:40 AM

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Tuesday, May 16, 2023 at 08:38 AM EDT

they apparently do not care if it is notarized so that is why I told you to leave it alone. if they want it notarized, i can always do it ...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Tuesday, May 16, 2023 8:33 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

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On Tuesday, May 16, 2023 at 08:30:41 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I can notarize if you send me a copy of your driver's license.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, May 16, 2023 8:22 AM
To: Michael Sussman [redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

So, I am just signing it, and sending it to you without it being notarized?

Fw: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, May 18, 2023 at 10:44 AM EDT

Please sign and return the last version of the agreement you received. Thanks.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted].@sussman.law

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Thursday, May 18, 2023 10:24 AM
To: Michael Sussman [redacted].@sussman.law>
Cc: Kovner, Victor [redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Just checking in to see if you've obtained final signoff from your client. If so, I will prepare execution copies.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Michael Sussman <[redacted].@sussman.law>
Sent: Monday, May 15, 2023 7:34 PM
To: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

I think this is fine then...my client will have to live with alleged as that has not really been adjudicated...

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]@sussman.law)

To: [redacted]@yahoo.com

Date: Thursday, May 18, 2023 at 11:13 AM EDT

Thaks. ms

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora [redacted]@yahoo.com>
Sent: Thursday, May 18, 2023 10:47 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: tomorrow - mora adv/ koch

I signed and mailed it to you, along with the check on 5/16/23.

On Thursday, May 18, 2023 at 10:44:51 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

Please sign and return the last version of the agreement you received. Thanks.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael <[redacted]@dwt.com>
Sent: Thursday, May 18, 2023 10:24 AM
To: Michael Sussman <[redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Just checking in to see if you've obtained final signoff from your client. If so, I will prepare execution copies.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]

Re: tomorrow - mora adv/ koch

From: Michael Sussman ([redacted]sussman.law)

To: [redacted]@dwt.com

Date: Saturday, May 27, 2023 at 08:42 AM EDT

Kindly confirm your firm's receipt of the wired funds and, when timely, advise the court that our agreement has been consummate and the matter should be closed. Thanks.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]@sussman.law

From: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Sent: Friday, May 26, 2023 3:37 PM
To: Michael Sussman [redacted]@sussman.law>
Cc: Kovner, Victor <[redacted]@dwt.com>
Subject: RE: tomorrow - mora adv/ koch

Thank you for the update. Have a good Memorial Day weekend.

Raphael Holoszyc-Pimentel | Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor | New York, NY 10020
Tel: [redacted] | Mobile: [redacted] | Fax: [redacted]
Email: [redacted]@dwt.com | Website: www.dwt.com

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From: Michael Sussman [redacted]@sussman.law>
Sent: Friday, May 26, 2023 3:35 PM
To: Holoszyc-Pimentel, Raphael [redacted]@dwt.com>
Subject: Re: tomorrow - mora adv/ koch

[EXTERNAL]

My bank will wire the funds before cob today.

Michael Sussman
Sussman & Goldman
1 Railroad Avenue
Goshen, NY 10924
[redacted]

[redacted]

On Monday, October 16, 2023 at 05:20:36 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I am not going to conflate the two cases. [redacted]

I am not interested in being blamed for the state case. I expressed reluctance about that case and felt it should settle when we had that chance we tried but the defendant by then was empowered by the courts apparent hostility to our case. ou felt strongly about the matter and I continue to disagree that filing the case violated any dispositive legal doctrine as Supreme Court ruled.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, October 16, 2023 3:16:28 PM
To: Michael Sussman [redacted].@sussman.law>
Subject: Re: documents filed re appeal

Good morning.

[redacted] The reason I thought that is because of the Koch case. Paying that $20,500 really set me back. It was a mistake bringing that case. Mistakes happen, as we are all human. When I consulted with you to sue her, I thought we were bringing a viable suit. Just like when I consulted about suing Law360 for their blatantly false article, you advised that we are not able to sue, as the press is immune from suit. Although I was not happy about that, I moved on. If I had been advised about SLAPP, and that attorneys/judges are not allowed to sue their accusers even if the complaint is false and malicious, I would not have pursued it. I know you are a fair and honorable man, and if I misunderstood, please let me know.

Thank you.

Re: Judicial Commission new complaint Koch

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Wednesday, November 1, 2023 at 10:39 AM EDT

I will forward Chad this email exchange and see what he thinks.

Thank you.

On Wednesday, November 1, 2023 at 08:46:01 AM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

I am not sure how much attorney/client privileged information is appropriate to share in this instance and your note below invites me to share quite a bit of that. I would certainly be a witness at any proceeding in these regards but am not sure whether a letter from me will be of any use. Perhaps I should speak about the content of any such letter with the lawyer handling this disciplinary proceeding on your behalf. Let me know...

Michael Sussman, Esq.
Sussman & Goldman
PO Box 1005
1 Railroad Avenue, Ste 3.
Goshen, NY 10924
[redacted]
[redacted]fx)
[redacted]sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, October 31, 2023 8:00 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Judicial Commission new complaint Koch

Good morning.

Attached is the newest complaint from the Commission which I recently received. Would you write a letter stating whatever you deem appropriate, such that it is not retaliation, that it was brought in good faith, that I was not advised about SLAPP, that you don't think it is SLAPP, that you wanted me to appeal, etc.?

Re: my comment on judicial commission charge

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Thursday, November 2, 2023 at 11:34 AM EDT

If you recall, the main impetus for me going forward came after Mike Brown's call to me, stating that Koch told him she testified to the commission that she felt threatened by me and was bragging that she was going to get me fired. He said he quit on the spot when she said that.

I'll run this by Chad and let you know.

Thanks for putting that together.

On Wednesday, November 1, 2023 at 03:13:07 PM EDT, Michael Sussman [redacted]@sussman.law> wrote:

This is how I understand this. michael

Michael Sussman

Sussman & Associates

1 Railroad Ave., 3rd Floor

PO Box 1005

Goshen, NY 10924

[redacted]

Re: Proposed opening on Koch lawsuit for my testimony tomorrow 2/27/24

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Monday, February 26, 2024 at 07:38 PM EST

Thank you. I will let Chad know.

On Monday, February 26, 2024 at 06:01:19 PM EST, Michael Sussman [redacted]@sussman.law> wrote:

You go further than I would in acknowledging the lawsuit was not viable. I still disagree with that conclusion and
believe the laws remains open on this. It seems to me that you and chad might want to call me as a witness...i feel the claim is viable and that the privilege issue is defeated by bad faith which is what your adversary/defamer showed...that remains my view.

Michael Sussman, Esq.
Sussman & Goldman
PO Box 1005
1 Railroad Avenue, Ste 3.
Goshen, NY 10924
[redacted]
[redacted] (fx)
[redacted]@sussman.law

From: Frank Mora <[redacted]@yahoo.com>
Sent: Monday, February 26, 2024 4:33 PM
To: Michael Sussman [redacted]@sussman.law>
Subject: Proposed opening on Koch lawsuit for my testimony tomorrow 2/27/24

I'm not sure how much of this Chad will use with the Judicial Commission in our opening, but wanted you to see it. Any thoughts?

Judges, just like any other individual, are allowed to bring lawsuits. Judge Mora confirmed this with Laura Smith, Chief Counsel of The Advisory Committee on Judicial Ethics. For the commission's review, we are submitting nine (9) advisory opinions which state just that. As the commission is aware, he was represented by a very reputable attorney, Michael Sussman, who has been handling these types of matters for over 45 years. Prior to this lawsuit, Judge Mora had NEVER been involved in a defamation case, neither in his professional capacity as a lawyer or judge, or as an individual. Judge Mora sought advice from a highly skilled and successful attorney, who advised Judge Mora that this was a viable lawsuit, and a retainer agreement was entered into. Although it turned out not to be a viable claim, that is of no consequence to Judge Mora being allowed to bring the suit, upon his attorney's advice. Judge Mora was represented, advised, counseled, and instructed that it was proper – he believed it! He was not acting pro-se. I submit that a Judge who in good-faith brings a lawsuit based on his attorney's legal advice, necessarily acts ethically, even though it is later determined not to be a viable suit. To find otherwise would be contrary to public policy.

Re: Proposed opening on Koch lawsuit for my testimony tomorrow 2/27/24

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Saturday, March 23, 2024 at 12:18 PM EDT

Please let me know about the SLAPP issue, in case they raise it again with me.

On Thursday, March 14, 2024 at 04:26:47 PM EDT, Frank Mora <[redacted]@yahoo.com> wrote:

Any word on the SLAPP issue?

On Thursday, February 29, 2024 at 11:03:21 AM EST, Frank Mora <[redacted]@yahoo.com> wrote:

Thank you.

On Thursday, February 29, 2024 at 10:57:15 AM EST, Michael Sussman <[redacted]@sussman.law> wrote:

I will review all papers and advise. I am sure it was argued.

Get Outlook for iOS

From: Frank Mora <[redacted]@yahoo.com>
Sent: Thursday, February 29, 2024 10:34:09 AM
To: Michael Sussman <[redacted]@sussman.law>
Subject: Re: Proposed opening on Koch lawsuit for my testimony tomorrow 2/27/24

The Commission referee asked me a questions that I could not answer the other day. He asked that if my attorney (meaning you) believed that it was not a SLAPP suit, why wasn't that argued in our papers regarding the motion to dismiss?

On Monday, February 26, 2024 at 06:01:19 PM EST, Michael Sussman <[redacted]@sussman.law> wrote:

You go further than I would in acknowledging the lawsuit was not viable. I still disagree with that conclusion and
believe the laws remains open on this. It seems to me that you and chad might want to call me as a witness...i feel the claim is viable and that the privilege issue is defeated by bad faith which is what your adversary/defamer showed...that remains my view.

Michael Sussman, Esq.
Sussman & Goldman
PO Box 1005
1 Railroad Avenue, Ste 3.
Goshen, NY 10924

Re: Federal Appeal

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@sussman.law

Date: Saturday, March 23, 2024 at 12:25 PM EDT

Thank you.

Have a good weekend.

On Saturday, March 23, 2024 at 12:24:15 PM EDT, Michael Sussman <[redacted]@sussman.law> wrote:

The issue was addressed in my briefing by and the demonstration that the suit was viable and well founded. Such a suit cannot by definition be a slapp suit which characterization suggests there is no legitimate basis for the suit and merely a desire to vex and harass. No oral argument date has yet been provided for your second circuit case. I will advise as soon as noticed. Mhs

Get Outlook for iOS



SENT VIA EMAIL
[redacted]@cjc.ny.gov, [redacted]@cjc.ny.gov

PERSONAL & CONFIDENTIAL
Mark Levine, Esq.
Deputy Administrator
Melissa DiPalo
Senior Attorney
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, NY 10006

June 17, 2022

Re: File Nos. 2021/N-1176, 2021/N-0723, and 2021/N-1120
Hon. Frank M. Mora

Dear Deputy Administrator Levine and Ms. DiPalo:

As I advised, I represent the Honorable Frank M. Mora in the above-captioned matters. Thank you for your professional courtesy by extending the time in which to submit this response to the Commission's March 30, 2022, and April 12, 2022, letters regarding the above-captioned matters. Judge Mora has signed below, acknowledging that he has read this letter and adopts its contents.

Judge Mora understands the seriousness of the allegations against him and is eager to cooperate with all requests by the Commission. Judge Mora is a humble, public servant who presides over cases in the small city of Poughkeepsie. As discussed further *inter alia,* Judge Mora never intended to defy Chief Administrative Judge Lawrence K. Marks' or any of the administrative mandates issued by UCS. The following information is provided to the best of Judge Mora's recollection. Judge Mora respectfully reserves the right to file supplemental information if necessary.

Prior to addressing the specific allegations, we respectfully ask the Commission to review the information provided below regarding Judge Mora's background. To the greatest extent possible, it will give the Commission greater insight into who Judge Mora is; in both his professional and personal lives. This information is relevant to assist the Commission in the proper disposition of this matter.

Judge Mora's Background

Judge Mora is a devoted family man. He has been married for over 20 years to his wife, Sheri. They have three children together: [redacted] (just turned [redacted] on May 29th), [redacted] ([redacted]), and [redacted] ([redacted]). His fondest memories are of the precious times he has spent with his family. Judge Mora feels blessed. He is proud of his children's accomplishments and always tries to be there to pick them back up when they falter. While balancing work and life is a difficult endeavor in our profession, Judge Mora has done an excellent job at striking that balance.

Judge Mora is a devout Catholic. His moral compass is guided by his faith. Values such as forgiveness, civility, respect for others regardless of their plot in life, empathy, patience, understanding, and doing good deeds, are but a few tenants that encompass his system of beliefs. Judge Mora strives to improve his community and improve the lives of the people he encounters. His faith guides him to make the right decisions. It is deeply embedded into every fiber of his being. So much so, that he would be lost without it.

The Hon. Frank M. Mora is a Judge of the Poughkeepsie City Court and has been a member of the bar for approximately twenty-five (25) years. Mayor John Tkazyik appointed him to the bench for a ten-year term in 2011. Mayor Robert Rolison then re-appointed Judge Mora in 2021. His term will expire in 2030. Prior to re-appointing Judge Mora, Mayor Rolison noted that in checking with the community, he had not heard of one negative comment

regarding Judge Mora's tenure on the bench. Mayor Rolison found Judge Mora to be well respected by both the criminal prosecution and defense bars, as well as the bar in general.

Judge Mora is one of two full-time Judges who currently preside in the Poughkeepsie City Court. Judge Mora is responsible for providing justice to the City's residents involving disputes covering a wide array of different areas of the law. Along with his co-judge, and prior to being ordered to preside over his calendars virtually commencing January 4, 2022, he presided over matters as follows:

* Criminal Calendars: there is a criminal part every day, where they handle arraignments, felony hearings, jury, and bench trials. Depending on the rotation, Judge Mora presided over the criminal calendar either two or three times per week;

* Small Claims and Commercial Claims Court, twice or three times per week depending on the rotation;

* Landlord-Tenant Court, once per week;

* Jury Pre-trial for civil matters with jurisdiction over claims up to $15,000, twice per week; and

* Traffic Court - twice per week

Judge Mora is dedicated to being proficient in these different areas of the law to afford litigants fair and just outcomes. He takes great pride in his work and the enormous responsibilities that come with it. He treats all parties with the respect and courtesy that is expected of a jurist. Ultimately, Judge Mora helps provide the people of Poughkeepsie with a forum they trust for the fair administration of justice.

Prior to taking the bench, Judge Mora was a lawyer for thirteen (13) years from 1997 through 2010. Judge Mora owned a small, general, local practice in Poughkeepsie. In 1997, he was admitted to the New York State Bar by the Appellate Division for the Second Judicial Department as well as the United States District Court for the Southern District of New York.

Prior to his admission, Judge Mora earned his Juris Doctor from the University of Memphis, Cecil C. Humphreys Law School, in 1996. There, he received the Dean's Award for Academic Excellence for the highest grade in Business Organizations I (1994), the Humphreys Law Fellowship (1995-1996), and was a pupil in the Leo Bearman, Sr. American Inns of Court (1995-1996). Judge Mora earned his Bachelor of Science/Bachelor of Arts from Marist College in 1992, where he was on the Dean's List of Honor Students (1990-1992).

Judge Mora is well-known in the legal community, as well as the community at large. In the spirit of a true public servant, Judge Mora happily dedicates his time to endeavors that further the legal and general community. He is, or has been, a member of the following organizations:

* Member, New York State Association of City Court Judges

* Member, Dutchess County Bar Association

* Member, Dutchess County Magistrates Association

* Councilmember, 1st Ward City of Poughkeepsie, January 2000 to December 2005 (Chairman January 2004 to December 2005)

* Member, Poughkeepsie's Joint Water Board, January 2000 to December 2010 (Chairman 2005, 2007, and 2009)

* Trustee, Our Lady of Mount Carmel Church, April 2008 to March 2012

* Lector, Our Lady of Mount Carmel Church

* Trustee, Church of the Holy Trinity

* Lector, Church of the Holy Trinity

* Secretary, Dutchess County Bar Association, May 2011 to May 2012

* Vice-President, Dutchess County Bar Association May 2012 to May 2013

* President-Elect, Dutchess County Bar Association May 2013 to May 2014

* President, Dutchess County Bar Association May 2014 to May 2015

* Immediate Past-President, DC Bar Association May 2015 to May 2016

Judge Mora has an unblemished reputation. Other than receiving a letter of dismissal and caution by this Commission dated January 31, 2019 (for attending a political event outside of his "Window Period"), Judge Mora has never been disciplined as a judge or a lawyer. Nor has he ever been sanctioned by any Court.

Judge Mora takes his ethical responsibilities extremely seriously. He does not leave anything to chance when placed in a situation where it is not clear what is ethically proper. Notably, over the past twelve (12) years, both prior to and since becoming a Judge, Judge Mora has sought advice formally and informally from the Judicial Advisory Committee (JAC), and its long-time former Co-chair, the Honorable George Marlow. Judge Mora also speaks regularly with Laura Smith, Esq., the JAC's Chief Counsel, whenever an issue arises that he has questions about. Thus, Judge Mora is mindful of and careful to adhere to the Rules of Judicial Conduct. Copies of his approximately twenty (20) letters as well as the JAC Opinions will be provided upon request.

Although it is not possible to give this Committee a full idea of who Judge Mora is, in a few pages, the information will hopefully inform this Committee about who Judge Mora is not.

He is not an activist, disrupter, or rogue jurist. Indeed, Judge Mora has demonstrated his commitment to adhering to the highest ethical standards in practicing law, and as a jurist. Disobedience and insubordination are not among his many characteristics. Judge Mora acknowledges the extremely difficult circumstances thrust upon the UCS because of the pandemic. He very much respects the herculean challenges Chief Judge DiFiore and UCS staff faced to keep the courts open. Judge Mora complied with the mandates to the greatest extent he possibly could.

As explained below, Judge Mora's conduct resulted from a conflict with his core religious beliefs as well as a recently diagnosed anxiety disorder. Religious beliefs are very personal to the individual holding them. Members of the same religion have their own unique connection to God. As lawyers, we operate in a world of logic and facts. Spirituality evades logic. It is intangible to everyone but the person holding it. To them, it is as tangible and real as the law itself. Judge Mora's religious beliefs are more than just beliefs; they are fused into his soul.

Please find answers to Inquiries as set forth below based on each letter and file number, in the same chronology as the Commissions' questions.

File No. 2021/N-1176

1. Judge Mora is familiar with Judge Marks' Administrative Order 275/2021, which required that by September 27, 2021, all judges, and employees of the Unified Court System (UCS) either be fully vaccinated against COVID-19, or submit a request for an exemption on medical or religious grounds.

2. Judge Mora submitted a request for a religious exemption from the COVID-19 vaccination to the UCS. Please find copies of (i) his request, and (ii) all written or electronic communications between himself and UCS regarding his exemption request attached as Exhibit 1.

3. The UCS Vaccination Exemption Committee (Vaccination Committee) denied Judge Mora's request for an exemption on December 23, 2021, and directed him to submit proof of a first dose of the COVID-19 vaccination within 10 days from the date of notification. The email did not state it was 10 business days.

A. Judge Mora did not submit proof of a first vaccination dose on or before January 10, 2022. He did not submit such proof because doing so is repugnant to his religious beliefs. Just as killing another human being and stealing are against his religious beliefs. Respectfully, what was Judge Mora supposed to do? Imagine, being required to take something that violates every particle of your being. Judge Mora sincerely believes that God has guided his conscience to not get vaccinated. How can a devout man or woman disobey God? This is not hyperbole. Judge Mora would not be able to live, knowing he disobeyed God's directive. For many people this is hard to comprehend and easy to dismiss. But for Judge Mora, taking the Vaccine would permanently damage his soul and relationship with God. Indeed, Judge Mora would not be in this position had he just given in. In that sense, it would be easy to get vaccinated, but Judge Mora's religious beliefs are so sincere, that he is suffering the resulting consequences.

B. Judge Mora did not receive a vaccination dose at any time after December 23, 2021.

C. Judge Mora has not, and cannot, receive the COVID-19 vaccination, or any vaccinations. Respectfully, Judge Mora has done everything in his power to comply with AO 275/2021. While the Vaccination Committee's decision is not appealable, mistakes are made by humans in all affairs of life. The Vaccination Committee is no different. Judge Mora is restrained from pulling the proverbial trigger. It is no different than requiring him to break the law. He cannot do it. Under these circumstances, it is not possible for Judge Mora to completely abandon his religious beliefs. We implore you to read the UCS's response to Judge Mora's discrimination claim, Memorandum of Law, and Judge Mora's rebuttal, which we incorporate into this response, and request that you make a part hereof. These three (3) documents are separately attached to the email that this letter is being submitted with to keep the page numbers accurate that Judge Mora references in his rebuttal. Respectively, they are *UCS Response 10214957 to religious discrimination claim 3-2-22, Memorandum of Law Northern District of NY Ferrelli 22-CV-0068 dated 2-4-22, and NYS Division of Human Rights rebuttal to court response 3-21-22*. Judge Mora respectfully requests the Commission review these documents, since they demonstrate how deeply held his religious beliefs are. Indeed, it is quite difficult to draw a conclusion to the contrary.

4. A. No, Judge Mora has not physically appeared for work at the Poughkeepsie City Court from January 4, 2022, through the present. Although the question states January 10, 2022, Judge Mora was ordered by the 9th JD Administrative Judge, Hon. Anne Minihan, to work virtually commencing January 4, 2022, which he has done. A copy of Judge Minihan's email is attached as Exhibit 2.

B. Judge Mora is fully performing all his assigned judicial duties virtually, through Microsoft Teams. Judge Mora is fully complying with Judge Minihan's Administrative Order 9-ADMJ-1-31-22, a copy of which is attached as Exhibit 3. That order allows Judge Mora to preside over *Civil matters in which the litigants mutually consent to proceed with the Judge appearing remotely, and The issuance of Decisions related to criminal matters which arise from motions submitted on criminal matters where no appearances are required.* Judge Mora is handling the Civil Calendar for the entire Poughkeepsie City Court every day, which includes Small Claims, Commercial Claims, Civil Claims, and Summary Proceedings (Landlord-Tenant matters). Judge Mora also handles all of the trials of these matters, up to several times per week. In addition, Judge Mora handles Decisions and Orders related to Criminal Matters for the entire Poughkeepsie City Court.

5. Respectfully, Judge Mora does consider his conduct to be consistent with Section 100.1 of the Rules Governing Judicial Conduct (Rules). Judges are frequently exposed to outside pressure; whether it be public opinion, or political sentiments. The integrity of the judiciary requires judges to follow the law and remain impartial. There is an adage

which says, “let justice be done though the heavens may fall.” It means that justice must be done regardless of the personal consequences a judge faces. Analogously, Judge Mora is not abandoning his religious beliefs despite the personal consequences he faces. Further, Judge Mora is not allowing external pressure or outside forces to influence him to change his religious convictions. Judge Mora’s conduct is more than consistent with the Rule—it exemplifies it. Judge Mora’s steadfast commitment to his religious beliefs demonstrate that he would never abandon the law in the face of external pressure. Surely, few things, if any, promote the public’s confidence in the integrity of the judiciary than Judge Mora’s conduct here.

6. Judge Mora’s conduct is consistent with Section 100.2(A) of the Rules. Respectfully, this Rule is not applicable here. It is intended to ensure that judges respect and follow the law, just as they expect of the litigants before them. Moreover, while presiding over cases, it is essential for judges to respect the applicable law whether they agree with it or not. Otherwise, the forum in which our society resolves disputes would be subject to disparate outcomes, and the controlling law would be meaningless. Further, in a judge’s personal life it is imperative to act in a lawful manner because it demonstrates that judges are not superior to the public. They must follow the same rules as everyone else. Here, the mandates are not laws. Even more, no one else but UCS staff are required to be vaccinated. In regard to the procedures required by AO 275/2021, Judge Mora followed them. He submitted all the documents requested and completed everything he was asked to. As far as the integrity of the judiciary, Judge Mora furthered it as set forth in the response to question 5 above.

7. Judge Mora's conduct was consistent with Section 100.3(C)(1) of the Rules because Judge Mora did everything in his power to be cooperative. Judge Mora made sure that he did not create a risk to others by using portable plexiglass around the bench and always remaining at least 15 feet away from other parties. Judge Mora did not hinder the administration of court business. Despite the difficulty of virtual court proceedings, Judge Mora continued to preside over cases virtually and fully performed his judicial responsibilities. Indeed, Judge Mora did not allow the circumstances to impede his judicial responsibilities, nor did he impose undue burdens on his co-judge. Judge Mora tried to accommodate staff and court officials whenever possible.

Accordingly, it is respectfully submitted that there is no evidence that Judge Mora did anything wrong. As he did not engage in any improper conduct, the instant complaint warrants dismissal.

Please do not hesitate to contact us if the Commission requires additional information.

File No. 2021/N-0723

BACKGROUND

Judge Mora has suffered significantly from anxiety over the past two years. It has been debilitating. Amazingly, Judge Mora has been able to prevent it from crippling him entirely. This background is relevant to the masking inquiries that follow. As Judge Mora's attorney, I can attest that Judge Mora was very reluctant to inform me of his battle with anxiety. Our profession is extremely stressful. While significant strides have been made to assist lawyers and

judges with mental health issues, the stigma around it still exists. Further, we are expected to push forward and work regardless of the toll its takes on our mental health.

Despite these serious allegations, Judge Mora still came very close to ignoring what he was experiencing. The unfortunate stigma surrounding mental health nearly caused Judge Mora to ignore his debilitating anxiety. But he thanks God that he has not ignored it. Now, he is getting the help he needs.

Judge Mora has been suffering silently these past two years with mental health issues regarding COVID-19, masks, and face shields. Judge Mora feels, and felt, embarrassed, ashamed, and broken, because of his condition. Judge Mora only decided to reach out for help after receiving an email, by chance. The email's subject line was: "I Felt Afraid to Ask: Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations." The email and article are attached as Exhibit 4. Judge Mora thought that if these law students had the courage to face their disabilities, and to get the help they needed, then he too, could find the courage needed to do so, for himself, and his family. Judge Mora received the above email on April 27, 2022. He reached out to his Pastor and received referrals for therapists. After reading the above article, Judge Mora called a therapist on April 27, 2022, and scheduled his first appointment for April 30, 2022. The first appointment, however, almost did not take place. Because of the stigma of mental health issues, Judge Mora came very close to canceling his first appointment.

Judge Mora intended to call his soon-to-be therapist on April 28th after lunch and cancel the appointment. Remarkably, at lunchtime on April 28th, the UCS had a live event titled, 2022 UCS Diversity & Inclusion Summit. A segment of that Summit addressed disabilities. One of

the presenters was Walei Sabry, the Disability Coordinator for the NYC Mayor's Office for People with Disabilities. Mr. Sabry identifies as blind. Judge Mora was so impressed with how Mr. Sabry has overcome his disability and has made real and positive differences, that Judge Mora finally had the courage to go through with his scheduled therapy appointment.

Upon meeting with his therapist—K[redacted] R[redacted] [redacted], LCSW—Judge Mora learned that he suffers with severe anxiety; more specifically, object phobia. Please see the letter from Judge Mora's therapist, K[redacted] R[redacted] [redacted], LCSW, which is attached as Exhibit 5.

SUFFERING IN SILENCE

In March 2020, well before the Governor first issued mask mandates commencing on April 17, 2020, Judge Mora was wearing a mask just about everywhere he went. As the Commission in now aware, Judge Mora is very religious. His wife even bought a black mask with a golden cross embroidered on it. Judge Mora proudly wore this mask which portrayed that he is a Christian.

However, in mid-April, something began to change. Judge Mora was having neck pain, and experiencing prolonged headaches, and anxiety, which he had not experienced prior. Judge Mora thought his headaches were caused by his neck issues. He had no idea where his anxiety was coming from. Judge Mora was treating with his Chiropractor, Dr. G[redacted] M[redacted]. During the time prior to July 20, 2020 (this is the date Judge Mora received approval to wear a face shield which is addressed below), when Dr. M[redacted] could find no structural issues that were causing the neck pain and headaches, he explored further. Dr. M[redacted] asked how often Judge Mora was wearing a mask. Judge Mora advised it was practically everywhere he went.

Dr. M[redacted] suggested not wearing a mask, and see if the headaches improve. Dr. M[redacted] advised that some patients cannot medically tolerate masks. Judge Mora reluctantly told Dr. M[redacted] about his anxiety, and Dr. M[redacted] advised Judge Mora that he is not able to treat mental health issues, as he is not qualified in that field. Dr. M[redacted] advised Judge Mora to seek a professional in that area. Please see Dr. M[redacted]'s letter which is attached as Exhibit 6.

The Court system implemented the *9th Judicial District Return to In-Person Operations Plan (RIOP) Phase IV To Commence July 9, 2020*. Until this time, matters were handled virtually - at first, matters were handled virtually from home, then from the judges' private chambers. Prior to July 21, 2020, Judge Mora wore a mask when in the court facilities. Although Judge Mora had anxiety, and object phobia, he managed to wear the mask until he entered his private chambers.

However, the first day he was going to be physically in-person on the bench for a full calendar was July 21, 2020. With his mental health issues, Judge Mora knew that he was not going to be able to handle it. On July 13, 2020, Judge Mora reached out to his then Administrative Judge, Hon. Kathie Davidson to ask permission to wear a face shield in lieu of a mask, as a face shield was provided to Judge Mora by court officers. On July 20, 2020, Judge Mora informed Judge Davidson that his request to use a face shield was due to health concerns. Judge Mora received approval as a medical accommodation to wear a face shield in lieu of a mask, from Judge Davidson, with permission from then Deputy Chief Administrative Judge for Courts Outside New York City, Hon. Vito C. Caruso. Judge Mora then wore a face shield in

lieu of a mask, and was mindful of the social distancing rules. A copy of the approval email is attached as Exhibit 7.

A few days after Judge Mora completely stopped wearing a mask, his headaches were gone. He felt relieved to be free of physical pain. Judge Mora was very thankful that Judges Davidson and Caruso granted a medical accommodation to wear a face shield, in lieu of a mask. He was also thankful that he did not have to disclose the anxiety he was experiencing. Judge Mora has seen over the last twenty years how those with mental health issues have been treated, not only by the court system, but society in general. Again, Judge Mora was ashamed and embarrassed that he was not able to wear a mask; handling and wearing a mask is so much easier than a cumbersome face shield. While some people may suffer from discomfort from wearing a mask, Judge Mora's symptoms far exceeded mere discomfort.

Judge Mora decided that he would just live with his anxiety, wear the shield, and struggle through life at work. Judge Mora mistakenly thought he could get by until the masking mandate was lifted. But that did not happen. After several months, even with the shield, Judge Mora's anxiety intensified. He silently struggled just to get through the morning calendar. As soon as Judge Mora would finish the morning calendar, he would quickly return to his chambers, and remove his shield. His chambers became his haven. There, his heart stopped pounding, his nerves slowly quieted, and he stopped sweating. This went on day, after day, after day. Notably, Judge Mora fulfilled his obligations despite experiencing severe anxiety. He still followed the mandates. He still presided over matters with integrity and impartiality.

The above information pertaining to Judge Mora's mental health challenges provide context. Judge Mora was not defying the mandates or protesting them. He was trying to

survive the best he could. Answers to the Inquiries are set forth below based on each letter and file number, in the same chronology as the questions.

THE ANONYMOUS LETTER

From the outset, the anonymous, unsigned letter dated August 20, 2021, is intrinsically flawed. Importantly, Judiciary Law §44 states that "a complaint shall be in writing and signed by the complainant." This is not discretionary. Ostensibly, it is mandated prior to the Commission's decision to conduct an investigation so the Commission can determine the veracity of the allegations. A corollary reason why the complainant must be named and sign the complaint, is so the accused has an adequate opportunity to present a defense. Here, neither Judge Mora, nor the Commission can ascertain the veracity of the anonymous allegation. Surely, fairness militates against this type of complaint.

The author of this two and a half paragraph letter appears to be a court employee, but anyone could have written it. Furthermore, the author is not concerned, the author is angry. A concerned person would ask this Commission to perhaps speak with Judge Mora about wearing a mask. Instead, this author wants punitive measures to be taken. Thus, this individual has an ulterior motive. A misguided desire for punitive measures plus the absence of accountability for making a false statement are the ingredients fabrications are made of.

The author does not even set forth facts showing Judge Mora placed anyone in danger or acted recklessly. For example, the author simply concludes that Judge Mora was endangering others. The author does not claim that Judge Mora was not respecting social distancing. This is important because the CDC determined that six feet of distance is safe. If the masking requirement is intended to protect others, then that end is accomplished by maintaining social

distancing. If Judge Mora's conduct was completely in line with the spirit of the mask requirement, then where does misconduct lie?

Furthermore, the letter is devoid of facts. It is all conclusory and speculative. How does this person claim to know what Judge Mora believes? Moreover, the person simply claims Judge Mora "refuses to wear any type of protective mask." The person does not specify the hallmarks of a truthful account, such as when and where the person observed Judge Mora. No one can discern what this person's alleged basis of knowledge is. Even worse, the person hides behind the generic "fear of repraisals [*sic*]" for remaining anonymous. These words ring hollow, as does the entire letter. Lastly, Judge Mora was neither taking a stand nor engaging in civil disobedience like Rosa Parks. As such, the allegations in the letter are invalid on its face. This Commission should not give it any credence. Nevertheless, Judge Mora will respond as the Commission requested.

While it appears that Judge Mora has been provided with the actual complaint, it is unclear as to whether any additional documents may have been provided in support of the allegations and we respectfully request any such information as it is necessary so that Judge Mora may fully respond to the allegations.

Prior to the date of the anonymous letter, August 20, 2021, Judge Mora had been wearing his approved face shield on the bench for over one year, without any incidents. However, at or about this time, Judge Mora's anxiety had intensified to a very troubling level. He was struggling to get through the morning calendars. Judge Mora remembered seeing a portable plexiglass shield in one of the back offices. Judge Mora inquired of his Chief Clerk about the purpose of this shield. Judge Mora was told that it was to be used as they saw fit.

Around this time, Judge Mora occasionally used the portable plexiglass shield in lieu of his face shield while on the bench. Judge Mora is at least 15 feet away from the nearest court user when he is on the bench. Judge Mora has a staunch work ethic. For his first ten (10) years on the bench, he did not take one sick day. By using the portable plexiglass shield, Judge Mora thought he came up with a solution to his issues. The plexiglass plus fifteen feet of separation ensured that everyone within the courtroom was safe. Arguably, these measures were superior to a mask or face shield. Further, Judge Mora could preside over cases without experiencing intense, harsh anxiety. Thus, Judge Mora's conduct struck a perfect balance.

He had no malice or mal-intent; just the opposite - Judge Mora intended to continue serving while obeying the purpose of the masking requirement. All seemed to be going well, until an attorney expressed concerns to Judge Mora on or about August 17, 2021, that he was not wearing his face shield on the bench. Judge Mora's morning calendar was almost complete when the attorney commented to Judge Mora. Just the thought of having to put on the face shield on that particular day, caused Judge Mora to suffer a panic attack. Judge Mora did not argue with the attorney, nor make any comments. Judge Mora stated the calendar was being adjourned, he walked off the bench, and went directly into his private chambers, where he remained the rest of the day to calm his anxiety down. Please see a letter from Jermaine Dublin, one of the court officers assigned to Judge Mora's courtroom, which is attached as Exhibit 8.

Also around this time, after Judge Mora's morning calendars, when the anxiety got to be too much, and he needed to get or drop off files, he would walk in the back offices without his shield, always mindful of the 6-foot social distancing rules. Judge Mora admits that this was not the ideal situation, but it allowed everyone to be safe, and Judge Mora to function.

Unlike the anonymous letter's purporting that Judge Mora was endangering everyone who works and appears in that court, the opposite is actually the case. Again, Judge Mora was at least 15 feet away from the nearest court user when he was on the bench. Further, Judge Mora did not conduct bench conferences or breach this distance. Because of his condition, Judge Mora was hyper-sensitive to the 6-foot social distancing rule when he was both on and off the bench.

Judge Mora adamantly denies "making any type of stand, a la Rosa Parks and/or Martin Luther King, Jr. To the contrary, as noted previously, at the start of the pandemic, Judge Mora wore a mask just about everywhere he went. Judge Mora is not an activist. Judge Mora was attempting to function in society and at work the best way he could, given the state of his mental health.

Judge Mora received an email from his Supervising Judge, Hon. Sam Walker, on August 19, 2021. Judge Mora then received a phone call from Judge Walker, on or about August 20, 2021. Judge Mora explained to Judge Walker how Judge Mora was using the portable plexiglass shield in lieu of his face shield. Judge Walker advised Judge Mora that he had to use the face shield. Judge Mora advised Judge Walker that he was not doing well using the shield. Judge Walker advised Judge Mora that is how it has to be, as it is OCA's policy. Judge Mora did not push the issue, as he was fearful that the face shield accommodation would be taken away (it actually was taken away in January 2022, as will be pointed out below).

Judge Mora then sent an email to Judge Walker on August 20, 2021, with the hope that the entire policy would be looked at, and changed. Judge Mora reasoned that if the policy was changed for everyone, he would no longer have to suffer with wearing a shield. Considering the

anxiety Judge Mora was dealing with, it was reasonable for him to advocate for himself. The positions taken in his email exchange with Judge Walker were intended to bring about change. Judge Mora simply wanted to be relieved of the pain and suffering. What Judge Mora experienced is akin to forcing someone with a phobia of heights to work from the top of the Empire State Building.

However, the reply Judge Mora received from Judge Walker on August 23, 2021, was not what he expected - Judge Mora was basically told to comply, or get another job, and that OCA says so, and that's it. Now, Judge Mora was even more afraid. He dared not bring up further that he was struggling with the face shield, or any of these issues again. After the response from Judge Walker on August 23, 2021, and although suffering tremendously, Judge Mora went back to using the face shield. This flies in the face of the anonymous letter's accusation that Judge Mora is some sort of activist and "taking a stand." It is in actuality, just the opposite. A copy of Judge Mora's email to Judge Walker is attached as Exhibit 9. Judge Walker's reply is attached as Exhibit 10.

1. Judge Mora is familiar with Exhibits C, D, E, F, and G, which require, *inter alia*, that all unvaccinated judges and non-judicial personnel who are permitted to enter a UCS courthouse wear face masks in most areas of the courthouse. Judge Mora does not recall when he first became aware of them.
2. Judge Mora considers that the UCS mask mandate applied to him until July 20, 2020, when he received approval to wear a face shield in lieu of a mask, from his then Administrative Judge, Hon. Kathie Davidson, with permission from then Deputy Chief Administrative Judge for Courts Outside New York City, Hon. Vito

C. Caruso. Judge Mora then wore a face shield in lieu of a mask, and was always mindful of the social distancing rules. See Exhibit 7.

3. Based upon the above email allowing Judge Mora to wear a face shield in lieu of a mask, Judge Mora was exempt from the mask requirement commencing July 20, 2020. Judge Mora then wore a face shield in lieu of a mask, except for the days mentioned above in August 2021, and was always mindful of the social distancing rules.

4. From May 29, 2020, to July 20, 2020, Judge Mora wore a mask when he was outside of his private office. Although Judge Mora does not recollect any specific dates, there have been times when he was outside of his chambers without a mask. Although Judge Mora spent most of his time in his chambers, some days, based on his headaches, and anxiety, he would try to avoid wearing a mask. He was very mindful of the social distancing rules. After July 20, 2020, Judge Mora wore a face shield when he was outside of his chambers, and he continued to be mindful of the social distancing rules. Again, on those days that it just became too intolerable, Judge Mora would keep 6-feet away from everyone. Judge Mora is remorseful if this caused anyone any angst, as he did not mean for that. As he was social distancing, he thought that just passing through an area would be acceptable. Like most people on the planet these past two years, Judge Mora did his best to cope with his issues, all the while being mindful of the 6-foot rule.

5. Judge Mora does not recollect expressing his disagreement with the UCS mask mandate to any specific UCS employee or in any written or oral statement to members of the general public. The only email Judge Mora recalls sending was the one mentioned above to Judge Walker, however, it was sent for the purpose of trying to get the UCS to modify its policies, which would have brought relief to Judge Mora's mental health condition.

Before moving on to the next question, Judge Mora would like to address material falsehoods in the Law360 article (Exhibit H)1 and the circumstances in which the information was obtained. Having this information is relevant to the Commission's investigation.

The article was posted online on January 20, 2022. On January 18th, Judge Mora's secretary, Lori Kiernan, advised Judge Mora that the reporter, Frank Runyeon, came to the court to speak with Judge Mora. Judge Mora asked Ms. Kiernan to send an email to Lucian Chalfen, the Public Relations Director, regarding how to handle the reporter. Ms. Kiernan was instructed to refer Mr. Runyeon to Mr. Chalfen. Please see the email exchange attached as Exhibit 11.

On January 19, 2022, the reporter left a voicemail message for Judge Mora on Judge Mora's private cell phone. Judge Mora does not know how the reporter obtained his private number. Judge Mora texted the reporter stating that the reporter should address his inquiries to Mr. Chalfen. The reporter texted Judge Mora the following, "Thank you Judge. I do believe you can better speak to why you were at the courthouse on an almost daily basis after being denied the vaccine exemption, why you don't wear a mask there, and why you conducted

1 The Commissions letter dated April 12, 2022, mistakenly identified the Law360 article as Exhibit G.

arraignments virtually. Chalfen says you were in violation of the administration's orders on all counts." Judge Mora tried calling Mr. Chalfen to find out what was said, but Judge Mora could not reach Mr. Chalfen. On January 20, 2022, after the article was published online, Judge Mora still could not reach Mr. Chalfen by phone, so Judge Mora emailed him. See Exhibit 12 attached.

Mr. Chalfen immediately called Judge Mora after receiving the email. Mr. Chalfen confirmed to Judge Mora that broad statements were made about policy, but Judge Mora was not addressed personally. Judge Mora told Mr. Chalfen that his comments created an appearance that Judge Mora was in violation. Just the opposite, Judge Mora was complying since he had approval from Judge Minihan. When Judge Mora asked Mr. Chalfen why he did not call Judge Mora to advise what the reporter was alleging, and to find out why Judge Mora was in the back offices, Mr. Chalfen had no answer. Judge Mora told Mr. Chalfen that by giving the reporter the information he did, while leaving out that Judge Mora had approval to be there, it appeared that Judge Mora was in violation, when in fact, he was not. Again, Mr. Chalfen had no answer. Thus, Mr. Chalfen inadvertently created the impression that Judge Mora was flouting the rules, even though the opposite is true. This was the first falsehood.

The article stated, "It's a violation of our policy. You're not supposed to be there, said state courts spokesman Lucian Chalfen, speaking broadly about the policy for unvaccinated judges denied an exemption. They are not allowed into the courthouse, into their chambers, or any other nonpublic area." As the article goes on to state, Mr. Chalfen declined to comment specifically on Judge Mora's behavior. As stated above, this created a false impression. All of

which could have been avoided had Mr. Chalfen reached out to Judge Mora first. Instead, Mr. Chalfen spoke prematurely and without all the facts.

The next statement in the article is, “On Tuesday morning in Judge Mora's courtroom, he appeared via video link to arraign a young woman dressed in pink scrubs and yellow croc sandals on a single count of criminal mischief.” That statement is true. The next statements are the second and third falsehoods, “In fact, the judge was not working remotely but had been inside the courthouse, according to a source and a photograph of the judge taken after the hearing. The photograph shows the judge in the court's back offices not wearing a mask, holding a face shield in one hand and a stack of court files in the other.” Those statements are false. Judge Mora was working remotely from his home, and then came into the office to get his personal files. The unauthorized photo was taken of Judge Mora when he was walking into what he thought was his secretary’s unoccupied office. He was not holding court files, but was in fact gathering his personal files to take home. This is corroborated by his secretary, Lori Kiernan, who has provided a letter, which is attached as Exhibit 13.

The article goes on to say that there are repercussions for judges who flout the administration’s orders, suggesting that Judge Mora was doing so. Judge Mora was doing no such thing. Judge Mora had full authorization to be there, as will be shown in the questions below. The final falsehood in the article is towards the end when Mr. Runyeon states that Judge Mora joked, “Isn’t it nowadays that everyone has COVID.” This was taken out of context. Judge Mora was not joking. He was stating a fact that approximately two thirds of the jail had COVID-19, as well as many people he personally knew. Judge Mora was thereby acknowledging the seriousness of the pandemic.

6. A. Judge Mora physically appeared in Poughkeepsie City Court's back offices in or around January 2022, after receiving specific permission on January 5, 2022, from his Administrative Judge, Hon. Anne Minihan. After receiving the approval, Judge Mora went to the back offices on a few occasions to retrieve items he was allowed to retrieve per the email. On January 18, 2022, the reporter, Frank Runyeon, FOILED Judge Mora's card access history which shows the dates Judge Mora was in the back offices. A copy is attached as Exhibit 14. This shows that Judge Mora was there on January 5, 6, 10, 11, 13, and 18. Judge Mora was retrieving his personal belongings and that is why he accessed the facility 2-3 times on some days, as he was bringing the items to his vehicle. Judge Mora was also picking up and dropping off copies of docket cards for the first few days, as he was not completely set up for entering data virtually for a couple of weeks. Judge Mora's secretary dropped off court documents to his home on a few occasions. On January 10, 2022, Judge Mora entered the access door at 8:27:29, picked up copies of docket cards, dropped off others that needed to be returned, then left the premises to handle his morning calendar virtually from his home at 9am (he lives 10 minutes from the court). Judge Mora has not physically worked in Poughkeepsie City Court since January 3, 2022. Please note the times that Judge Mora entered the access door, except for on January 10th mentioned above, are **ALL** after his morning calendar was completed virtually from his home. The reporter has this information, and has not corrected the falsehoods in the article, even after Judge Mora pointed it out to him. A copy of the email allowing Judge

Mora access is attached as Exhibit 15. Letters from Judge Mora's Chief Clerk Lori Conners, and his secretary Lori Kiernan, are attached as Exhibit 16. These letters confirm that Judge Mora has not physically worked there since January 3, 2022.

B. See 6 (A) above.

C. On each occasion, Judge Mora wore his face shield while inside the courthouse, per his approval to do so by Judge Davidson, as explained in No. 2 above. If you look closely at the picture in the article, you will note that as soon as Judge Mora saw others were in his secretary's office, he was raising his shield to put it on. Again, this is confirmed by Ms. Kiernan in her letter.

D. Judge Mora wore his face shield on each date that he appeared in the Courthouse, per his approval to do so by Judge Davidson, as explained in No. 2 above.

(i) Judge Mora believes that wearing a face shield complies with the UCS face mask requirement as he obtained specific approval from Judge Davidson, as explained in No. 2 above.

(ii) This is answered in No. 2 above.

(iii) On January 18, 2022, Judge Minihan, without stating any grounds or basis, revoked Judge Mora's medical accommodation to wear a face shield in lieu of a mask. Judge Mora has not been inside the courthouse since receiving this email. A copy of the email is attached as Exhibit 17.

Things are not always what they appear to be. The Law360 article made for a good headline, but it was based on inaccurate and incomplete information. Mr. Runyeon recklessly stretched the little information he had to the point of fabrication. Surely, the headline "Unvaxxed NY Judge Defies Courthouses Ban As Others Ousted" is a sensational one. If Mr. Runyeon had integrity, he would have published the truth. But the truth is not as interesting as the fiction he created. It cannot be iterated enough, Judge Mora did not purposefully defy the Administrative Orders, nor did he believe that he was immune from the rules because he is a judge. Moreover, the exhibits provided show that Judge Mora was in no way receiving preferential treatment, nor asking for preferential treatment. They also show that Judge Mora fully complied under the conditions. Judge Mora apologies to the Commission for any embarrassment the article created. He did his best to prevent such inaccuracies from being published.

File No. 2021/N-1120

7. Judge Mora is aware that on December 13, 2021, New York State Governor Kathy Hochul issued a mandate requiring that masks be worn at all indoor public places, which includes private businesses, for those "medically able to tolerate a face covering." A copy of the mandate with the above section bracketed and underlined is attached as Exhibit 18.

8. Yes, Judge Mora Visited Seeta Eye Center (Seeta) on December 28, 2021.

A. The purpose of Judge Mora's visit was to bring his then [redacted]-year-old son, [redacted] for a scheduled eye exam.

B. Judge Mora was only with his son.

C. Judge Mora did not see a sign posted at the entrance to Seeta stating that face

masks are required for entry, but his son walked in ahead of him and the sign may have been on the open door; he does not dispute that a sign was there.

SEETA BACKGROUND

Please find the following background as context for the questions that follow. The context is relevant for the Commission to better understand Judge Mora's answers. Dr. Modi, one of the founders of Seeta, performed [redacted] on Judge Mora over 20 years ago. Ms. Koch was with Dr. Modi at that time, and has known Judge Mora since then. Ms. Koch's claim that she did not know Judge Mora was a judge is untenable. Furthermore, Judge Mora's children are also patients at Seeta.

Approximately a year prior to the December 28, 2021, incident, Judge Mora took his then [redacted]-year-old son, [redacted], in for a scheduled eye exam on January 29, 2021. Judge Mora was wearing a face shield at the time, and the receptionist said he had to wear a mask. He explained that he does not medically tolerate a mask. The receptionist called Ms. Koch to the waiting area, and Judge Mora and Ms. Koch walked over to the side of the room, where other patients could not hear. Judge Mora explained that he does not medically tolerate a mask. Instead of arguing, Judge Mora sought an amicable resolution. He suggested that [redacted] go in by himself, as he was turning [redacted] in only four months, and Judge Mora would wait outside.

Judge Mora then waited for his son in his vehicle in the parking lot. At the end of the exam, [redacted]'s doctor, Dr. G[redacted], called Judge Mora and went over his findings with him on the phone. Judge Mora thanked Dr. G[redacted] for calling him as Judge Mora thought it best that Judge Mora wait outside, and Dr. G[redacted] said he would see Judge Mora the next time in the exam room. [redacted] then went to check out at the reception desk, but was told his Dad had to

come back in to pay. [redacted] called his Dad and asked him to come back inside. Judge Mora had [redacted] inquire about his face shield, and he was told to come back in wearing it. Judge Mora went back in, wearing only the face shield, paid the invoice, and left with no issues. Both the waiting room and reception/payment counter are in the same area. Oddly, the face shield was okay when Judge Mora had to pay at the counter, but it was not acceptable when he was in the waiting room prior to this.

Several months later, prior to the December 28, 2021, incident, Judge Mora called and made an eye doctor appointment for his son [redacted]. Judge Mora made this appointment with the understanding that everything was resolved. He had explained that he could not medically tolerate the mask and was able to go in and pay with just the face shield. Furthermore, Dr. G[redacted] had told Judge Mora that he would see him next time in the exam room.

8 D. Judge Mora entered Seeta wearing a face shield, in lieu of a mask, as he does not medically tolerate masks.

(i) After entering Seeta, the receptionist requested that Judge Mora put on a mask. She did not ask Judge Mora to put on a mask or leave. Judge Mora advised the receptionist that he did not medically tolerate masks. The receptionist asked Judge Mora to wait for Ms. Koch to come out and speak with him. The receptionist did not ask Judge Mora to leave.

(ii) Stacey Koch did ask Judge Mora to put on a mask. Judge Mora did not put on a mask, as he does not medically tolerate masks. While he did not know it at the time, he suffered from anxiety caused by object phobia. Judge Mora initially did not comply because he believed there was a misunderstanding. He tried to

resolve it. Judge Mora is a patient there as well. Judge Mora started to explain to Ms. Koch that they both spoke in January about this issue. Ms. Koch became extremely irate and aggressive. Instead of speaking to a patient with respect, she began yelling at Judge Mora to put on a mask. Judge Mora started to feel weak and lightheaded, his heart was racing, and he began to sweat. After composing himself, Judge Mora attempted again to explain. Ms. Koch unlawfully demanded that Judge Mora provide medical documentation. Although Judge Mora knew that no documentation was required, he took the higher ground. He was not going to prove a point, or engage in a debate. Judge Mora was simply trying to bring his son to his eye examination. In fact, Judge Mora's son was wearing a mask. If Judge Mora had an agenda, his son would have been maskless. The December determination clearly stated that only people who could medically tolerate masks had to wear them. In addition, the Governor's *Interim Guidance on Executive Orders 202.17 and 202.18 Requiring Face Coverings in Public During the COVID-19 Outbreak*, dated April 17, 2020, specifically stated, "If a face covering would inhibit or otherwise impair an individual's health ...an individual is not required to wear or use such a covering." Further, essential business operators and enforcement authorities are "**prohibited from requesting or requiring medical or other documentation from an individual who declines to wear a face covering due to a medical or other health condition that prevents such usage**." A copy of the Interim Guidance with the above section bracketed and underlined is attached as Exhibit 19. Judge

Mora asked that [redacted] please be seen, and he would try to get her medical documentation even though he was not required to give it from the outset.

Ms. Koch continued yelling at Judge Mora, and said he would have to leave if he did not put on a mask. Her behavior was completely irrational and unprofessional. But Judge Mora maintained his composure, nevertheless. Judge Mora thought she meant that he would have to wait outside, like he did back in January for his other son. But Judge Mora tried explaining that he could not leave [redacted] his then minor [redacted] year-old alone. Ms. Koch however was there to prove a point. She continued to berate Judge Mora and spoke over him. Ms. Koch then walked over to the telephone. Judge Mora thought she was calling Dr. G[redacted]. If she had, it would have cleared up the whole matter. However, she called the police. Such a measure was completely unnecessary and uncalled for under the circumstances. When Ms. Koch advised Judge Mora that she was on the phone with the police, Judge Mora said, we will talk with them when they arrive. At no point did Judge Mora say that the police wouldn't come. Such an accusation is preposterous. Being a Judge for over a decade, Judge Mora knows full well that the police would come. He also knew that he did nothing wrong. When Ms. Koch hung up the phone with the police, she stated, you are upsetting the other patients. Rather, Ms. Koch was upsetting other patients by attacking Judge Mora for no reason.

An elderly woman then stood up and stated, I am upset. I'm not upset about him (pointing at Judge Mora), I'm upset that I have been waiting for over a

half hour and have not been seen yet. Judge Mora then stated to the lady, thank you Ma'am. I would be more upset about that than someone 10- 15 feet away from everyone wearing a face shield. While waiting for the police to arrive, Judge Mora again calmly tried asking for [redacted] to be seen, and Judge Mora said he would call his doctor to see about getting the documentation.

Ms. Koch escalated the situation further by yelling at Judge Mora. She told him to stop talking! Judge Mora said, Excuse me? Ms. Koch commanded him to stop talking, claiming he was spreading his germs on her. Judge Mora asked Ms. Koch how far he was away from her, and she said far. In fact, Judge Mora was at least 10 feet away from her. Standing there with his face shield on, ten feet away, Judge Mora was not spreading germs anywhere. Furthermore, Judge Mora was not sick. Ms. Koch's reaction was completely disproportionate to the exchange. What was supposed to be a routine eye exam turned into a one-sided boxing match, with Ms. Koch throwing all the punches. Ms. Koch then picked up the phone again. Instead of calling Dr. G[redacted], Ms. Koch called the police back, telling them there was an emergency. She claimed that Judge Mora was wearing just a face shield, would not stop talking, and was spreading his germs on her. At that point, Judge Mora realized he was not dealing with a rational person. While Ms. Koch was still on the phone, Judge Mora politely asked her if she would like him to go and try to get medical documentation from his doctor. She said yes. Judge Mora said he would try to get it. Ms. Koch then told the police that Judge Mora was leaving, which he did. Judge Mora

immediately called his doctor, Dr. M[redacted], who stopped everything and emailed Judge Mora documentation, which he emailed to Ms. Koch. Ms. Koch then had Judge Mora and [redacted] come back later that afternoon, and [redacted] was seen without incident.

Most people are not capable of exhibiting the type of restraint Judge Mora exhibited. Clearly, Ms. Koch has a problem and was trying to degrade Judge Mora as much as possible. But the Commission does not have to just take Judge Mora's word for it. An employee of Seeta, Michael Brown, witnessed the encounter and describes what really occurred. His recitation is attached as Exhibit 20. In addition, Dr. M[redacted]'s encounter with Ms. Koch is detailed in a statement attached as Exhibit 21. Notably, Mr. Brown does not know Judge Mora. He offered to provide the letter—despite the repercussion he may face—because how Ms. Koch treated Judge Mora was egregious. That is, Mr. Brown is putting his job on the line to avail this Commission of the truth. And his gesture speaks volumes about how Judge Mora conducted himself. Further, Judge Mora left such a good impression with Mr. Brown that he decided Judge Mora was worth the risk.

(iii) Please see (ii) above. Judge Mora remained calm and respectful the entire time, he did not raise his voice, and his facial expressions were neutral. His tone was calm and respectful. Judge Mora did not make any offensive facial expression or gestures.

(iv) Please see (ii) above. Judge Mora was not asked, nor did he state his medical condition. Indeed, Ms. Koch was not lawfully entitled to request medical documentation.

(v) Please see (ii) above. Judge Mora could not leave his minor child in the office. Ms, Koch did not ask Judge Mora and his son to leave.

(vi) Please see (ii) above.

(vii) Judge Mora's demeanor was calm and professional the entire time.

(viii) Please see (ii) above. Judge Mora voluntarily offered to leave to diffuse the Situation. Or rather, give Ms. Koch an opportunity to calm down.

(ix) Judge Mora did not refuse to leave the premises. Furthermore, Judge Mora did not believe he may have been committing the crime of criminal trespass.2 And Judge Mora had not committed trespass. Seeta is a Public Accommodation, as defined by 42 USC, Chapter 126. Section 12181(F) lists, among many other establishments, a professional office of a health care provider. As Judge Mora had a license to be there (his appointment for his son's eye exam), he was not trespassing. When Judge Mora entered the public accommodation, he did so with license and privilege. This means that Judge Mora had a legal right to be there. Moreover, to the extent Ms. Koch claims to have ordered Judge Mora to leave, such an order would not be lawful. First, Judge Mora could not abandon

2 Trespass pursuant to PL § 140.05 is a violation. And the varying degrees of criminal trespass pursuant to Article 140 of the Penal Law are not cognizable under these circumstances.

his son. Doing so could constitute endangering the welfare of a child pursuant to PL §260.10. Second, it would not be lawful because Judge Mora had not done anything illegal. Assuming that Ms. Koch had the authority to even make such an order pursuant to PL §140.00, Judge Mora was following the letter of the law set forth in the Commissioner's determination. That is, Ms. Koch's inquiry had to end when Judge Mora said he couldn't medically tolerate a mask. Indeed, 10 NYCRR §2.60 exempts people who cannot medically tolerate masks, from wearing them. There is nothing in 10 NYCRR §2.60 stating that one must show proof or medical documentation. Furthermore, a violation of the regulation permits the agency enforcing it to fine a non-compliant entity. It does not give an angry office administrator the right to eject anyone she wants to. As such, it would not be a lawful order. Additionally, Judge Mora was entitled to be maskless. Instead, he went beyond the mandate by wearing a face shield. This demonstrates that he is not an activist nor was he trying to make a statement.

9. Judge Mora's chiropractor emailed Judge Mora, who then emailed Seeta, stating that Judge Mora suffers from a medical condition that prevents him from wearing a mask. A copy of the email is attached as Exhibit 22.

A. The email was submitted so Judge Mora's son, [redacted], would be allowed to have his eyes examined. Judge Mora was faced with an irrational, angry employee who was not going to permit his son to see the eye doctor unless Judge Mora pacified her. She had no authority to request a doctor's note from the outset. Judge Mora's only concern was that [redacted] have his much-needed eye

exam. To accomplish this end, Judge Mora asked his chiropractor to submit a letter on his behalf. He took the path of least resistance for his son's health. No one should be treated the way Judge Mora was treated. Ms. Koch's behavior is inexcusable.

B. Judge Mora's chiropractor did not identify what medical condition prevents Judge Mora from wearing a mask. Judge Mora was not trying to prove to Ms. Koch that he could not tolerate a mask. As stated, she had no grounds to require documentation and Judge Mora had no duty to provide documentation. The letter from the chiropractor is completely unrelated to the subject of this investigation. It was submitted to an office manager on a onetime basis just so Judge Mora could avoid the unreasonable confrontation she created, and hurdle the unlawful barrier to medical treatment she placed in front of him. Moreover, Judge Mora knew he could not tolerate masks because of the severe anxiety it provoked. This information is personal, confidential, and under no circumstances something Ms. Koch was entitled to know.

C. Please see B above. In addition, Judge Mora was not seeking a medical exemption note. A medical exemption is not applicable to these circumstances.

D. As previously stated, Judge Mora was excused on July 20, 2020, from the UCS masking requirement on medical grounds by Judge Davidson. See Exhibit 7. No documentation was requested by the UCS. Otherwise, Judge Mora has not sought a medical exemption. As stated, he was recently diagnosed for the first time with an anxiety disorder, specifically, object phobia.

10. Judge Mora's chiropractor was not providing Judge Mora with a letter exempting him from wearing a mask, as discussed above. Judge Mora's current therapist advised him that he suffers from a medical condition that exempts him from wearing a mask. Please note, Judge Mora did not have to be advised by a health care provider for his son to be seen by a doctor. Judge Mora knows all too well how he has been suffering, and that he does not tolerate masks. No other business or establishment has ever given Judge Mora a problem about not medically tolerating a mask. From the time Judge Mora stopped wearing a mask, he has been entering businesses and establishments without wearing a mask. On a few occasions, when pressed about the issue, Judge Mora did go out to his vehicle, and went back in with his shield. Again, although not required to do so, and despite his object phobia, Judge Mora did so just to be able to function in society without causing a scene. This, again, shows he is not an activist.

A. Judge Mora's therapist is K[redacted] R[redacted] B[redacted], LCSW.

B. See Exhibit 5.

11. Although Judge Mora fully admits that his actions did not comply with the strict letter of the mandates of the UCS, his actions did comply with the spirit of the mandates. By staying at least 6-feet away from others, Judge Mora fulfilled the sole goal of the mandates - Keep everyone safe. In addition to keeping everyone safe by observing the 6-foot rule, Judge Mora was attempting to keep himself safe, and trying to avoid further mental distress. Indeed, Judge Mora would not be fulfilling his ethical obligations that require him to preside over matters with competence and diligence if he did not address his mental distress as best as possible. Furthermore, Judge Mora knowingly sacrificed

his own wellbeing to comply. He wore a mask and face shield despite the toll it took. He did it knowing that it would be painful for him each and every time. Judge Mora's conduct went above and beyond the standard espoused in Section 100.1 of the Rules. Based on all of the above, Judge Mora considers his conduct consistent with Section 100.1 of the Rules in that he has maintained high standards of conduct so that the judiciary is preserved.

12. Respectfully, Judge Mora's conduct was consistent with the tenants of Section 100.2(A) of the Rules. Particularly, Judge Mora promoted public confidence in the integrity of the judiciary by doing whatever was physically possible to adhere to the mask mandates. As stated, even when it caused panic attacks. If Judge Mora did not respect the law and the Chief Administrative Judge, he would not have taken any of the numerous precautions to follow the spirit of the mandates. Judge Mora sincerely regrets, and apologizes, for any appearances to the contrary.

13. For the same reasons stated in 11 above, Judge Mora considers his conduct consistent with Section 100.3(C)(1) of the Rules. Judge Mora cooperated with other judges and court officials in the administration of court business to the best of his mental ability. Judge Mora ensured that he fulfilled his administrative obligations when the court was not in session. He endeavored to keep the court functioning. He did not inconvenience others or put himself before court staff. To the contrary, he tried as best as humanly possible to balance his obligations while respecting others.

14. Judge Mora's conduct during the encounter in the Seeta Eye Center was more than consistent with Section 100.4(A)(2) of the Rules. Judge Mora conducted his extra-

judicial activity that day in such a manner as to not detract from the dignity of judicial office. Despite the inhuman, degrading, hostile way he was being treated, Judge Mora remained calm and respectful the entire time; he did not raise his voice, and his facial expressions were neutral.

As such, Judge Mora exemplified the gold standard of the type of temperament expected of jurists. Even more so considering the multitude of challenges Judge Mora was facing at the time. In every instance that Judge Mora was internally battling with anxiety, he managed to sever it from influencing his temperament and treatment of others. There are few other circumstances that demonstrate such strong character and commitment to upholding the highest ethical standards. Put simply, Judge Mora conducted himself with the utmost professionalism regardless of how he was treated or the intense anxiety he experienced.

CONCLUSION

Judge Mora acted ethically and responsibly by complying to the best of his ability with the mandates. He has fully and transparently responded to the Commission's inquiries and hopes that the information provides the Commission with a full picture. Judge Mora has an unblemished reputation in the legal community. He has served and continues to serve the public and the Bar with the proper decorum expected of a judge, as well as a lawyer.

This was a very dark time for Judge Mora. With the help of his therapist, Judge Mora is doing all that he can do to get well and overcome his anxiety and object phobia. Prior to experiencing his own mental health issues, Judge Mora knew that individuals experienced them. However, Judge Mora had no idea as to how debilitating they could be. This entire experience

has made Judge Mora more patient, sensitive, and kind to all who come before him. It has truly been humbling. Judge Mora apologizes to this Commission, the Honorable Judge Marks, and the Honorable Chief Judge DiFiore for any appearance of defiance or insubordination. Judge Mora only intended to do the right thing amid very difficult circumstances. Accordingly, we respectfully request that these complaints be dismissed in the interests of justice.

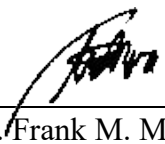
Judge Mora remains ready to fully cooperate with all additional requests by the Commission. Myself, and Judge Mora, would like to thank the Commission for the opportunity to respond to all of the inquiries and consideration of this matter.

Thank you.

Respectfully submitted,



Chad J. LaVeglia, Esq.



Hon. Frank M. Mora

EXHIBIT 1

Hon. Frank M Mora

From: NYCourts
Sent: Tuesday, September 21, 2021 12:48 PM
To: Hon. Frank M Mora
Subject: Religious Request for COVID-19 Vaccine Exemption – Submitted Successfully

Your Religious Request for COVID-19 Vaccine Exemption has been received and is being reviewed by the committee.

You will receive a separate email with the decision or if additional information is needed.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I ~~swear or~~ affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I ~~swear or~~ affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

See attached statement made a part hereof, dated September 21, 2021. (Form)

I ~~swear or~~ affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: 9/21/21

Print Name: Frank Mora

Email: [redacted]@nycourts.gov

Phone: [redacted]

Sworn and subscribed before me
This 21st day of September, 2021

Lori A. Kiernan
Notary Public

My commission expires: April 9, 2022

LORI A. KIERNAN
Notary Public - State of New York
No. 01KI6002119
Qualified in Dutchess County
My Commission Expires April 09, 2022

September 21, 2021

My name is Frank Mora. I claim exemption from immunizations/vaccinations based on my sincere and genuine religious convictions and beliefs. I was baptized a Roman Catholic at Our Lady of Mount Carmel Church on December 29, 1970. I was a member of the Church's Pastoral Council, a Lector, and a Trustee for four (4) years. Mount Carmel was my parish since my birth until switching to my current parish. My family members are now parishioners of Holy Trinity Church, where we regularly attend mass. I am a Trustee at Holy Trinity, a member of the Finance Council, and a Lector.

I, as a parent entrusted by God for the care of [redacted], [redacted], and [redacted], have claimed exemption from immunizations/vaccinations from my childrens' births, until they were unethically kicked out of school in 2019 by the NYS Legislature and former disgraced Governor. My children are [redacted] and [redacted] years old, respectively. I have studied Sacred Scripture (the Bible) for many years, the Catechism of the Catholic Church (CCC), as well as Canon Law, and other Church documents. I am opposed to <u>all</u> immunizations.

When we have politicians such as Assemblyman Dinowitz saying my religious beliefs are "Utter Garbage!," we, as a country, have seriously lost our way. Our founding fathers are turning over in their graves. Our country was founded on religious freedom. Many brave men and women died for this inalienable right. When we as a society demand that parents, and now adults, prove they have "sincere religious beliefs," we truly are going down a slippery slope. When we as a society force parents to choose between a mandatory public education for their children and for adults to go to work, or to stand firm in their religious beliefs, we have failed!

The Catechism of the Catholic Church, which is the supreme teaching authority of the Catholic Church, as illumined by Sacred Scripture and Apostolic Tradition, under the Magisterium of the Church and the Apostolic Authority of our Holy Father, the Pope, along with Canon Law, illumines by beliefs.

The Catechism of the Catholic Church defers to moral conscience as the guideline that states, "In all he says and does, man is obliged to follow faithfully what he knows to be just and right." **1778**

The Catechism of the Catholic Church teaches us the following (see pages 438-441):

> Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice ever calling him to love and to do what is good and to avoid evil, sounds in his heart at the right moment... For man has in his heart a law inscribed by God... His conscience is man's most secret core and sanctuary. There he is alone with God whose voice echoes in his depths. **1776**

Moral conscience, present at the heart of the person, enjoins him at the appropriate moment to do good and to avoid evil. It also judges particular choices, approving those that are good and denouncing those that are evil. It bears witness to the authority of truth in reference to the supreme Good to which the human person is drawn, and it welcomes the commandments. When he listens to his conscience, the prudent man can hear God speaking. **1777**

Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescriptions of divine law. **1778**

Man has the right to act in conscience and in freedom so as personally to make moral decisions. He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters. **1782**

Conscience must be informed and moral judgment enlightened. A well-formed conscience is upright and truthful. It formulates judgments according to reason, in conformity with the true good willed by the wisdom of the Creator. The education of conscience is indispensable for human beings who are subjected to negative influences and tempted by sin to prefer their own judgment and to reject authoritative teachings. **1783**

Faced with a moral choice, conscience can make either a right judgment in accordance with reason and the divine law or, on the contrary, an erroneous judgment that departs from them. **1786**

Man is sometimes confronted by situations that can make moral judgments less assured and decision difficult. But he must always seriously seek what is right and good and discern the will of God expressed in divine law. **1787**

Some rules apply in every case: One must never do evil so that good may result from it; The Golden Rule: Whatever you wish that men would do to you, do so for them; and Charity always proceeds by way of respect for one's neighbor and his conscience: Thus sinning against your brethren and wounding their conscience...you sin against Christ. (1 Cor 8:12). **1789**

Sacred Scripture tells us that we have been created in the image and likeness of God. It is God who has infused and charged us with dominion over all of the birds of the sky, the fish of the sea, the cattle on the land, and every creeping thing that creeps

on the earth. Our bodies have been miraculously and wonderfully made, and as such, are equipped to grow and be healthy, naturally, as God intended. God is our Creator and our Healer. He has created us to thrive naturally, and we honor God's way of health.

"Truly you have formed my inmost being; you knit me in my mother's womb. I give you thanks that I am fearfully, wonderfully made; wonderful are your works." **Psalm 139:13-14**

"Trust in the Lord with all your heart, on your own intelligence rely not; In all your ways be mindful of him, and he will make straight your paths." **Proverbs 3: 5-6**

"Guide me in your truth and teach me, for you are God my savior, and for you I wait all the day." **Psalm 25: 4-5**

"I will instruct you and show you the way you should walk; I will counsel you, keeping my eye on you." **Psalm 32: 8**

"If you really listen to the voice of the Lord, your God," he told them, "and do what is right in his eyes: if you heed his commandments and keep all his precepts, I will not afflict you with any of the diseases with which I afflicted the Egyptians; for I, the Lord, am your healer." **Exodus: 26**

The Book of Exodus further holds that it is "The Lord, your God, you shall worship: then I will bless your food and drink, and I will remove all sickness from your midst; no woman in your land will be barren or miscarry; and I will give you a full span of life." **Exodus 23:25-26**

The Book of Job reveals how God allowed Satan to inflict all sorts of diseases and evil upon Job, to show Satan that Job would not turn from God, no matter what befell him. No matter what human beings may have injected Job with (if in fact immunizations were around at that time), it would not have mattered, as God gave Satan authority over Job to inflict him. And no matter what diseases and evil Satan inflicted Job with, the Book of Job further tells us that God has placed a hedge of protection around His people to protect against disease. **Job 1:10, 12**

The Book of Leviticus tells us that the life of a living body is in its blood ... and the blood is the seat of life. **Leviticus 17:11**

"You must know that your body is a temple of the Holy Spirit, who is within - the Spirit you have received from God. You are not your own. You have been purchased, and at a price. So glorify God in your body." **1 Corinthians 6: 19-20**

"People who are in good health do not need a doctor; sick people do." **Matthew 12**

"People who are healthy do not need a doctor; sick people do." **Mark 2:17**

2 Timothy 3:12-14 says it very well, "Anyone who wants to live a godly life in Christ Jesus can expect to be persecuted. But all the while evil men and charlatans will go from bad to worse, deceiving others, themselves deceived."

I do not wish to interfere with God's natural way. To inject foreign substances (immunizations) into our blood, in order to hopefully protect against a possible disease, is contrary to God's law, and is against my conscience.

To vaccinate would be an act of violence against my conscience, and thus, an evil. It is my sincere religious conviction and belief that God has created us whole, with everything we need to grow according to His natural ways, and to vaccinate is a violation of God's way. The Book of James tells us that if there is anyone sick among us, he should ask for the presbyters of the Church. They in turn will pray over him, anointing him with oil in the Name of the Lord. This prayer uttered in faith will reclaim the one who is ill, and the Lord will restore him to health. **James 5:4-15**

My spiritual health is much more important than my physical health. I'm not discounting physical health, on the contrary, by the Grace of God, I had the Covid and have completely recovered and am abundantly physically healthy. My spiritual health far surpasses the physical. Our life here on Earth is but a twinkle of the eye compared to our eternal life that awaits. My main job here on Earth is to prepare and guide my wife and children (and whoever else I can help along the way), to Heaven, to be with the One True God - Father, Son, and Holy Spirit!

You serve who you want! "But as for me and my household, we will serve the Lord." **Joshua 24:15**

Very truly yours,

Frank M. Mora

Hon. Frank M Mora

From:	NYCourts
Sent:	Thursday, November 4, 2021 8:26 PM
To:	Hon. Frank M Mora
Cc:	Omar Cumberbatch; James McAllister; Ellen Palazzo; Vanessa Kanelopoulos; Richard L. Hauser
Subject:	Request for Exemption – Additional Information Needed
Attachments:	Additional Information Required.pdf; Religious Exemption from COVID-19 Vaccination Supplemental Form.pdf

Your request has been reviewed by the UCS Vaccine Exemption Committee and requires additional information. Please review the attached letter for details and further instructions.

You must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/ until you receive a final decision.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

UCS VACCINATION EXEMPTION COMMITTEE

11/4/2021

Dear Frank Mora,

Your request for a religious exemption to the UCS Vaccination Mandate was considered by the UCS Vaccination Exemption Committee and the Committee requires more information before it can make a final determination.

The Committee requires the following additional information – Please complete section B of the attached "Religious Exemption from COVID-19 Vaccination Supplemental Form." Please read the instructions carefully.

You must submit this additional information through the UCS Employees Web Portal on https://portal.nycourts.gov/ExemptionCOVID19Vaccination/ by the close of business on 11/18/2021. If you feel you have additional information to support your exemption request, please provide it through the UCS Employee Web Portal along with the information specifically requested.

Please be advised you must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/.

Signed,

UCS Vaccination Exemption Committee

Hon. Frank M Mora

From: Mindy Jeng
Sent: Wednesday, November 10, 2021 10:29 AM
To: NYCourts; Hon. Frank M Mora
Subject: RE: Request for Exemption – Additional Information Needed

Dear Judge Mora:

My name is Mindy Jeng, and I am counsel to the Vaccine Exemption Committee. I wanted to provide a few clarifications and answers to your questions.

The individuals (Omar Cumberbatch, James McAllister, Ellen Pallazzo, Vanessa Kanelopoulos, Richard Hauser) cc'd are in Human Resources or the Administrative Judge's office and do not have access to your submissions and statements relating to the religious and medical exemption requests. They are kept informed about who needs to keep testing. Only the Vaccine Exemption Committee are reviewing the exemption submissions, and all names are redacted from the files before they go before the Committee. (There are some technology people who oversee the system, and individuals doing the redactions who also have to review the submissions. They are all informed that these materials are to be kept in the strictest confidence.) Here is some more information on the Vaccine Exemption Committee:

UCS Vaccination Exemption Review Committee:

- The UCS Vaccination Exemption Review Committee (Committee) will initially meet as a full group. As necessary, the Committee may be divided into two working groups, as indicated below, i.e., A and B Groups, to handle the expected volume of exemption requests.
    - **Note**: as of this morning, we have received 1,131 requests for exemptions from nonjudicial employees statewide [605 NYC, 526 ONYC] - I do not have a breakdown of how many are religious v. medical.

- The Committee consists of professionals from diverse background and areas of expertise which include executive, human resources, legal, Americans with Disabilities (ADA) and/or management experience [or some combination thereof].

- In the event of a full Committee meeting, quorum will be five voting members.

- Working groups will consist of five or six voting members. A minimum of three voting members are required for a working group to make a determination upon any exemption request.

- Meetings will be conducted by videoconference unless otherwise indicated by the chair.

- All materials submitted by requestors, Committee discussions and Committee communications are confidential. Materials will not be disseminated, nor their contents disclosed, outside of the Committee.

- Each exemption request will be anonymized by Counsel to the Committee or the Committee Administrator before presentation/review by the Committee through assignment of a unique, non-identifying control number and redaction of any identifying information such as name, title and address, or other information as necessary that could be identifying.

- All requestors will receive written notification of determination from the Committee's Administrator or Counsel and/or where applicable, notification that additional information is needed to consider their request/render a determination.

- The determination of the Committee is final, i.e., there is no administrative/internal mechanism for appealing the determination of the Committee.

UCS Vaccination Exemption Review Committee Members

Justin Barry, Co-Chair	(Working Group A)
Nancy Barry, Co-Chair	(Working Group B)
Rosemary Martinez-Burges	(Working Group B)
Jennifer DiLallo	(Working Group A)
Shawn Kerby	(Working Group B)
Keith Miller	(Working Group A)
Linda Dunlap-Miller	(Working Group B)
Scott Murphy	(Working Group B)
Michelle Smith	(Working Group A)
John Sullivan	(Working Group A)
Dan Weitz	(Working Group B)

The standards applied to religious and medical exemption requests are the standards for vaccine exemption in the Second Circuit, under federal employment law and the First Amendment.

Best regards,
Mindy Jeng

Mindy M. Jeng, Esq.
Administrative Counsel
New York State Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004
[redacted]
[redacted]@nycourts.gov
Pronouns: she/her/hers

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Monday, November 8, 2021 2:22 PM
To: NYCourts[redacted]@nycourts.gov>
Subject: RE: Request for Exemption – Additional Information Needed

Please advise the specific person that this email is coming from.

There are five (5) people cc'd on the below email. Why do all of these people have access to my personal medical information and my personal deeply held and sincere religious beliefs?

Please advise the specific people that are on the "committee" that is empowered to decide if my personal deeply held and sincere religious beliefs meet their standards.

How many people in total have access to my info?

What are the specific and objective standards that are applied to my personal deeply held and sincere religious beliefs?

From: NYCourts <[redacted]@nycourts.gov>
Sent: Thursday, November 4, 2021 8:26 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Omar Cumberbatch [redacted]@nycourts.gov>; James McAllister [redacted]@nycourts.gov>; Ellen Palazzo <[redacted]@nycourts.gov>; Vanessa Kanelopoulos <[redacted]@nycourts.gov>; Richard L. Hauser <[redacted]@nycourts.gov>
Subject: Request for Exemption – Additional Information Needed

Your request has been reviewed by the UCS Vaccine Exemption Committee and requires additional information. Please review the attached letter for details and further instructions.

You must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/ until you receive a final decision.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

Hon. Frank M Mora

From: NYCourts
Sent: Friday, November 12, 2021 11:35 AM
To: Hon. Frank M Mora
Cc: Omar Cumberbatch; James McAllister; Ellen Palazzo; Vanessa Kanelopoulos; Richard L. Hauser
Subject: Request for COVID-19 Vaccine Exemption - Submitted Successfully

Your request for COVID-19 Vaccine Exemption has been received and is being reviewed by the committee.

You will receive a separate email with the decision or if additional information is needed.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

Section B

You have provided information in a previous statement indicating that your religious faith calls for you to abstain from medicines and vaccines due to concerns regarding the sanctity of your body or its purity. Please answer the below questions to allow us to gain a better understanding of your beliefs.

1. Please list all the medicines, medical treatments and procedures, vaccines, and/or foods that you abstain from due to your religious beliefs:

2. Please list the date you began to abstain from the above listed medicines and vaccines and/or other medical treatments:

3. Please provide a detailed explanation as to why your religious faith requires you to abstain from the listed substances in question 1.

See attached statement made a part hereof, for all 5 questions, dated November 12, 2021.

(continue to next page)

4. Have you received an influenza (flu), pneumonia, tetanus, shingles, HPV or any other type of vaccine since turning 18 years of age? If yes, please specify the type of vaccine(s) and when it/they was/were administered.

5. If you listed any vaccines in question 4, please explain how your religious beliefs permit you to take these vaccines but prohibit the taking of a COVID-19 vaccine.

Please complete notarization and signature on page 7.

I acknowledge that false statements intentionally made herein can lead to disciplinary action, up to and including termination of employment, and may be punishable as class A misdemeanor under PL 210.05.

Signature: _____

Date: 11/12/21

Print Name: Frank Mora

Email: [redacted]@nycourts.gov

Phone: [redacted]

Sworn and subscribed before me

This 12th day of November, 2021

LORI A. KIERNAN
Notary Public - State of New York
No. 01KI6002119
Qualified in Dutchess County
My Commission Expires April 09, 2022

Lori A. Kiernan
Notary Public

My commission expires: April 9, 2022

November 12, 2021

My name is Frank Mora. This is in response to your demand for more information regarding my religious "faith" per Section B from the email sent to me from "NYCourts" dated November 4, 2021. I repeat and reiterate everything in my statement dated September 21, 2021.

Your statement on Section B wherein you claim that I "have provided information in a previous statement indicating that your religious faith calls for you to abstain from **medicines** and vaccines due to concern regarding the sanctity of your body or its purity" in incorrect. (Emphasis added). I stated no such thing regarding "medicines."

Question 1 - I fully stated my personal deeply held and sincere religious beliefs regarding vaccines in my almost four (4) page statement dated September 21, 2021. Regarding medicines, medical treatments and procedures, I do not speculate as to what will happen in the future. My family currently does not take any medicines. Again, I will not speculate as to the future, as it is impossible to comment on something of which I have no knowledge. In addition, there is no comparison to taking a vaccine to possibly prevent a future disease (please read my statement dated September 21, 2021 for an in-depth explanation of this issue), and taking a medicine or having a medical treatment or procedure to help a body suffering from a crisis. If my body was in crisis, I would consider all of the options available to me, and discuss what to do with my doctor. I would also consult the Bible, Catechism of the Catholic Church, and pray to God for guidance. In anything that God sends my way, I would seek His guidance for solutions. Although my beliefs reject vaccinations, as a healthy body does not need intervention (please read my statement dated September 21, 2021 for an in-depth explanation of this issue), there is a significant difference between a body in crisis needing help and a body that is healthy accepting a procedure. I believe God accepts help in a crisis and rejects vaccinations for "prevention."

Question 2 - Since 18 years of age.

Question 3 - This is fully explained in my statement dated September 21, 2021.

Question 4 - No.

Question 5 - N/A.

Very truly yours,

Frank M. Mora

Hon. Frank M Mora

From: NYCourts
Sent: Thursday, December 23, 2021 11:14 AM
To: Hon. Frank M Mora
Cc: Omar Cumberbatch; James McAllister; Ellen Palazzo; Vanessa Kanelopoulos; Richard L. Hauser
Subject: Request for Exemption – Denied
Attachments: Denial.pdf

Your request has been denied by the UCS Vaccine Exemption Committee. Please review the attached letter for more information on your request and further instructions.

Thank you.

Please do not respond to this email - this mailbox is not being monitored

Please be CAREFUL when clicking links or opening attachments.

NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

UCS VACCINATION EXEMPTION COMMITTEE

12/23/2021

Dear Frank Mora,

Your request for a religious exemption to the UCS Vaccination Mandate was considered by the UCS Vaccination Exemption Committee and denied.

Please be advised that you must submit proof of the first dose of your COVID-19 vaccination through the UCS Revised Mask Policy SharePoint site at https://nycourts.sharepoint.com/sites/COVID-19/CPV in 10 calendar days or if the tenth day falls on a weekend or holiday, the following business day. Please submit by close of business on 01/03/2022, and proof of the second dose (if the vaccine is Pfizer or Moderna) within the medically recommended time frame. Until you are fully vaccinated (defined as two weeks after the single Johnson & Johnson vaccination or two weeks after the second Pfizer or Moderna vaccination), you must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/.

Signed,

UCS Vaccination Exemption Committee

EXHIBIT 2

Hon. Frank M Mora

From: Hon. Anne Minihan
Sent: Monday, January 3, 2022 12:23 PM
To: Hon. Frank M Mora
Cc: Hon. Norman St. George; Scott Murphy; Jennifer DiLallo; Nancy J. Barry Esq.; Justin Barry; Omar Cumberbatch; James McAllister
Subject: non-compliance with UCS Covid protocol

Good afternoon, Judge Mora,

As we discussed in our phone conversation a few minutes ago, if you fail to upload proof of one dose of an approved Covid vaccination by close of business today, you may not report in person to work tomorrow. If is your intention to not upload proof, you must make the necessary arrangements today so that you can preside virtually over your assigned matters until the necessary proof has been submitted.

Thank you,

AEM
Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

[redacted]

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 3

9-ADMJ-1-31-22

The HON. ANNE E. MINIHAN, pursuant to the authority vested in her as the Administrative Judge of the Ninth Judicial District,

D O E S H E R E B Y:

ORDER that, until further Administrative Order, the **HON FRANK M. MORA**, Judge of the Poughkeepsie City Court, shall only preside over the following matters in the Poughkeepsie City Court:

Civil matters in which the litigants mutually consent to proceed with the Judge appearing remotely, and

The issuance of Decisions and Orders related to criminal matters which arise from motions submitted on criminal matters where no appearances are required.

HON. ANNE E. MINIHAN
Administrative Judge,
Ninth Judicial District

Dated: White Plains, New York
January 31, 2022

Hon. Frank M. Mora

Lori Conners, Chief Clerk
Poughkeepsie City Court

EXHIBIT 4

Hon. Frank M Mora

From: Law.com Newsroom Update <lawcom@alm.com>
Sent: Wednesday, April 27, 2022 12:11 PM
To: Hon. Frank M Mora
Subject: 'I Felt Afraid to Ask': Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations

View in Browser

Law.com

Newsroom Update

Apr 27, 2022

DIVERSITY

'I Felt Afraid to Ask': Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations



By Christine Charnosky

This is the first installment of a new Law.com series called, "Disabling Ableism: Making the Legal Profession More Accessible," which aims to highlight both the challenges and opportunities law students with disabilities face before, during and after law school, as well as how the legal industry can better embrace disability as a form of diversity.

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Page printed from: *https://www.law.com/2022/2022/04/26/i-felt-afraid-to-ask-law-students-with-disabilities-are-often-torn-between-trying-fit-in-and-seeking-accommodations/*

'I Felt Afraid to Ask': Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations

This is the first installment of a new Law.com series called, "Disabling Ableism: Making the Legal Profession More Accessible," which aims to highlight both the challenges and opportunities law students with disabilities face before, during and after law school, as well as how the legal industry can better embrace disability as a form of diversity.

By Christine Charnosky | April 26, 2022





Photo: Matej Kastelic/ Shutterstock

This is the first installment of a new Law.com series called, "Disabling Ableism: Making the Legal Profession More Accessible," which aims to highlight both the challenges and opportunities law students with disabilities face before, during and after law school, as well as how the legal industry can better embrace disability as a form of diversity.

"There is a stigma that a person in a wheelchair is slow or not capable" of succeeding in law school, Ron Kort, who is a 1L at New York Law School pursing his second graduate degree, told Law.com recently.

But Kort, who was born with spinal muscular atrophy, added: "the argument can be that [people with a disability are] some of most loyal and battletested people out there."

Those currently in (or applying to) law school and those working in the profession struggle between trying to fit in to an incredibly competitive environment and trying to get the accommodations they need while fighting the constant worry that they will be viewed as less capable.

"I can do anything you can, but I may need to do it a little differently," La Shuana Cole, a Bronx assistant district attorney who has a visual impairment due to cancer, told Law.com.

There is a strong desire among people with disabilities to be treated the same as everyone else, Haley Moss, who was diagnosed with autism at the age of 3 and was sworn in to the Florida bar in January 2019 after graduating from the University of Miami School of Law, told Law.com.

Cole acknowledged this as well, saying that she has always been "treated so differently by my family because of my visual impairment that I felt resistant to accept accommodations [in law school] because I didn't want people to view me in that way."

National Association for Law Placement research (https://www.2civility.org/its-time-to-remove-professional-barriers-for-lawyers-with-disabilities/) suggests that between 2.5% and 3.5% of law school graduates self-identify as having a disability, according to 2Civility, an Illinois-based commission devoted to eliminating bias within the legal profession.

Beth Karp, director of accommodations at the National Disabled Law Students Association (https://ndlsa.org/about-ndlsa/) (NDLSA), added that "you can get a very rough estimate of the percentage of disabled law students using [Law School Admission Council] data." In a 2016-2017 report (https://www.lsac.org/data-research/research/accommodated-test-taker-trends-and-performance-june-2012-through-february), LSAC reported having "3,789 test-takers who requested accommodations out of 113,583 overall, coming out to about 3%."

A 2011 American Bar Association report (//www.americanbar.org/content/dam/aba/administrative/market_research/20110314_aba_disability_statistics_report.pdf) states that 5,292 (3.4%) of the 157,598 law students at ABA-accredited law schools requested accommodations, according to the ABA Commission on Mental and Physical Disability Law's 2011 Goal III Report.

"The range of disabilities is so broad, and often the stigma attached to self-reporting is so strong, that there are many who might prefer to not openly reveal their disabilities," according to 2Civility.

That stigma is what often stops law students and prospective law students with disabilities from seeking

accommodations.

Cole, for example, declined accommodations that had been offered to her at New York Law School, a decision she said ultimately led her to have to repeat her first year.

“Once I took accommodations, it made a world a difference,” she said.

While attending the University of Pennsylvania Carey Law School, Britney R. Wilson, who has cerebral palsy, worried that others would think she couldn’t do things on her own.

So while Penn Law offered some accommodations, “I felt afraid to ask for other accommodations that probably would have been helpful because law school is very competitive,” said Wilson, who is now associate professor of law and director of the Civil Rights and Disability Justice clinic at New York Law School.

Moss said she declined speaking to professors at the University of Miami School of Law about her autism because “I was afraid of drawing more attention to myself.”

Wilson said those with disabilities that are “non-apparent” often ”have to work harder to prove their disability.”

Edward Friedman, a 1L at Yale Law School with cerebral palsy, agreed that having a “very visible disability” can be an advantage in that respect.

Still, he added, “it takes a lot of energy on my part to advocate for myself.” He added that he seeks accommodations not only for himself but because he can make things better for others with disabilities.

Disability as Diversity

Complicating that self-advocacy is the fact that disability is often overlooked in the broader conversation around diversity.

“I wasn’t eligible for a lot of diversity fellowships because I’m a straight white male,” Friedman said. “People who look at my headshot may not immediately see me as diverse. The disability community brings a lot of rich perspectives to the table, in the same way as other underrepresented groups, and it is important for us to be included in the diversity conversation.”

“Disability is a social justice issue,” Wilson said, adding that in the civil rights work that she engages in, “I’m always adding ‘and disability.’”

“Although I think more people are beginning to at least acknowledge this, in disability spaces, they are not always addressing the impact of issues on people of color with disabilities,” Wilson added. ”It’s also more than just a representation or diversity issue within the disability community itself, it’s the need to recognize that social justice issues, more broadly, are disability issues and impact people with disabilities.”

“I was a Black woman (with a disability) at an Ivy League school,” Wilson said. “You get afraid of people thinking you got in because of ‘x’ or ‘y.’”

“I was having to deal with the pressures and stereotypes of racism and sexism while navigating my disability,” she added.

Disability is, of course, a form of diversity and should be included in those conversations regarding diversity, equity and inclusion, Wilson said. But “I also wouldn’t want the inclusion of disability as part of

DEI to undermine the importance of race, gender, etc., and particularly, the combined effects of those identities."

Authors Liz Fosslien and Mollie West Duffy have written (https://www.lizandmollie.com /workshops)that "diversity is having a seat at the table, inclusion is having a voice, and belonging is having that voice be heard."

But Wilson took that metaphor a step further, arguing that "there's something wrong with the table."

Another metaphor frequently employed when discussing diversity is "being invited to the party."

For example, "Diversity is where everyone is invited to the party, inclusion means that everyone gets to contribute to the playlist and equity means that everyone has the opportunity to dance," according to University of Michigan's website (https://diversity.umich.edu/about/defining-dei/), quoting Chief Diversity Officer Robert Sellers.

But Amber Hikes, chief equity and inclusion officer at the American Civil Liberties Union (ACLU) said during an Association of American Law Schools panel (https://www.law.com/2022/01/07/diversity-equity-inclusion-and-belonging-how-law-schools-can-improve-diverse-hiring-and-retention/) this past January that the "dance" analogy is problematic as well because it still implies "someone else having 'ownership' over you."

That doesn't equal belonging, which includes creating spaces, having equal and equitable access as opposed to asking for access, Hikes said, adding that "'belonging' is a deeply aspirational goal," Hikes said.

"I don't want to seem like I'm a burden," Cole said, "so I balance between speaking up for self and using my own resources to make it easier for myself."

Diversity is "expressed in myriad forms, including race and ethnicity, gender and gender identity, sexual orientation, socioeconomic status, language, culture, national origin, religious commitments, age, (dis)ability status and political perspective," according to the University of Michigan's DEI policy found on its website.

Equity includes responding to bias, harassment and discrimination and having a policy of equal opportunity for all persons and not discriminating on the "basis of race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran status," according to University of Michigan's policy.

Inclusion is making sure differences are welcomed, different perspectives are heard and every individual feels a sense of belonging, according to University of Michigan.

Wilson said the true issue that needs to be addressed is ableism.

In her classes at NYLS, she uses attorney-activist Talila Lewis's definition of ableism (https://www.talilalewis.com/blog/working-definition-of-ableism-january-2022-update) to make her point: "A system of assigning value to people's bodies and minds based on societally constructed ideas of normalcy, productivity, desirability, intelligence, excellence and fitness."

Lewis's definition also includes: "These constructed ideas are deeply rooted in eugenics, anti-Blackness, misogyny, colonialism, imperialism and capitalism."

Continuing: "This systemic oppression leads to people and society determining people's value based on their culture, age, language, appearance, religion, birth or living place, 'health/wellness,' and/or their

ability to satisfactorily re/produce, 'excel' and 'behave,'" the definition continues, adding "You do not have to be disabled to experience ableism," according to Lewis's website.

"People are different and it's not a horrible thing," Wilson said. "It's the treatment of people with disabilities that is the issue."

Law schools' age-old reliance on "cold calling," for example, is particularly problematic in that regard.

For example, while in law school, Cole was afraid to be cold-called because she has to look closely at things to see them, which causes her to become very nervous. She could never see what was written on the board or in PowerPoint presentations.

Moss said cold calling "always made me look like I didn't understand or know things because I was so nervous to be called on that there would be a disconnect between my brain and my mouth, so [my answers] didn't reflect what I knew or the work I had put in."

"It would have almost been easier to say I didn't do it to save myself the embarrassment," Moss added.

Attorneys and law students said those types of situations create an unfair and inaccurate picture of disability.

"We see all kinds of issues in law schools," Marissa Ditkowsky, a staff attorney at Tzedek DC and executive director of NDLSA, told Law.com in a recent interview. "There are issues with accommodations and with accessing accommodations and a lack of disabled peers, administration and faculty."

Ditkowsky recently wrote (https://ndlsa.org/2020/11/12/ndeam-75-14-ways-employers-can-increase-access-and-opportunity-part-1/) in an article posted to NDLSA's website that society as a whole needs to understand that being disabled is an asset, not a hindrance.

"Being disabled gives us a unique perspective," Ditkowsky, who has myotonic dystrophy type 2, wrote. "I am more adaptable and creative. I've had no choice but to be me. I am more resilient. I know how to do more with less. "

"I relate to my clients in a way that many of my colleagues cannot. It means that I know to ask about, consider and research topics that my colleagues do not, not because they are incompetent lawyers, but because they simply do not have the lived experience," Ditkowsky continued. "I am an asset because I am disabled. It is not the only part of who I am, but it is important, and it makes me better at what I do."

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EXHIBIT 5

K[redacted] R[redacted], LCSW
[redacted], NY
[redacted]

June 15, 2022

Dear Sir or Madam:

[redacted]

K[redacted] R[redacted], LCSW
NYS License No. [redacted]

EXHIBIT 6

[redacted] CHIROPRACTIC
[redacted]
[redacted] NEW YORK [redacted]
[redacted]
[redacted]

May 18, 2022

To Whom It May Concern:

[redacted]

Sincerely,

[redacted]

G[redacted] M[redacted], DC

EXHIBIT 7

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Tuesday, July 21, 2020 8:27 AM
To: Hon. Kathie Davidson
Subject: RE: Face shield

Good morning. Thank you again!

From: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 7:29 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Subject: RE: Face shield

Good Evening Frank,

I spoke with Judge Caruso this evening since your request is based on a medical reason you do not have to wear the mask. Please continue to practice the 6 feet social distancing.

Have a nice evening,

Kathie

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 3:39 PM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Subject: RE: Face shield

Good afternoon. Any word on the face shield? I'm on the bench tomorrow and just want to make sure it will not be a problem.

From: Hon. Frank M Mora
Sent: Monday, July 20, 2020 8:17 AM
To: Hon. Kathie Davidson [redacted]@nycourts.gov>
Subject: RE: Face shield

Thank you so much!

From: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 8:17 AM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Subject: RE: Face shield

GM

This I believe would be an exception let me check with Judge Caruso and get back to you.

Kathie

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 8:14 AM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Subject: RE: Face shield

Uh oh. Due to health concerns, I don't normally wear a mask for more than a few minutes at a time. Since I am well more than 6 feet away on the bench, is it possible to get a "waiver," and just use the face shield?

From: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Sent: Friday, July 17, 2020 12:10 PM
To: Hon. Frank M Mora [redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>; Lorna Hinson <[redacted]@nycourts.gov>; James McAllister [redacted]@nycourts.gov>
Subject: RE: Face shield

Good Morning Frank,

I apologized for giving you incorrect information regarding the wearing of a mask with a face shield. I have been informed by Judge Caruso that you must wear a mask with the face shield. Again my apologies.

Have a nice weekend,

Kathie

Hon. Kathie E. Davidson
Administrative Judge
Ninth Judicial District
Westchester County Supreme Court
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
[redacted]
e-mail: [redacted]@nycourts.gov

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 2:00 PM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: RE: Face shield

Thank you.

From: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 2:00 PM
To: Hon. Frank M Mora [redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: RE: Face shield

yes

Hon. Kathie E. Davidson
Administrative Judge
Ninth Judicial District
Westchester County Supreme Court
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
[redacted]
e-mail: [redacted]@nycourts.gov

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 1:32 PM
To: Hon. Kathie Davidson [redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: Face shield

Kathie,

I was issued a Face shield by my court officers to wear in lieu of a mask on the bench. Please confirm that I am authorized to do so.

Thank you.

Frank

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 8

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

May 24, 2022

To Whom It May Concern:

My name is Jermaine Dublin. I am a court officer in Poughkeepsie City Court. In August 2021, Judge Mora advised me that he was not able to wear his face shield. He did not say why but asked that I put the portable plexiglass shield in front of the bench, which I did. Although I cannot recall the dates, Judge Mora used it in the courtroom a few times. On one occasion, an attorney complained to Judge Mora that he was not wearing a face shield. This happened just before I was going to call that attorney's cases. Although Judge Mora looked distressed, he made no comment, adjourned the rest of the calendar, and went into his chambers. I happened to walk by Judge Mora's Chambers in the afternoon and asked how he was doing. He said he was working through some issues, and thanks for asking. He did not tell me what those issues were.

Thank you.

Very truly yours,

JERMAINE DUBLIN

EXHIBIT 9

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Friday, August 20, 2021 9:07 AM
To: Hon. Sam Walker
Subject: RE: COVID-19 Testing Program

Sam,

Good morning. Thanks for the info. Yes, I do have questions. Here they are:

1. It's my understanding that the USA is part of the Nuremberg Code, which outlaws coerced medical treatments. By treating "vaccinated" people differently than unvaccinated people, that is coercion.

2. What "science" determines that orange card holders are allowed to go mask-less in nonpublic areas, but not in public?

3. What "science" determines that orange card holders and not those with natural immunity (i.e. those who had Covid) are allowed to go mask-less?

4. How is it that an employer is allowed to mandate a medical procedure (i.e. Wearing medical devices (masks); Covid tests)?

5. How is it that an employer is allowed to ask for medical information (i.e. medical test results)?

6. What "science" determines that testing weekly is going to protect anyone, as a person can have Covid, get tested, it come back negative because enough time has not gone by for it to show up on a test, then go to work with Covid for over a week?

7. There is talk about mandatory "vaccination." How is it that an employer will be allowed to mandate a medical procedure (i.e. mandatory "vaccination")?

8. The "science" is now showing that "vaccinated" people are getting Covid and spreading Covid. On August 6, 2021, the director of the CDC stated that "what they ["vaccinations"] can't do anymore is prevent transmission." Why then, would "vaccination" not be an individual's choice?

9. Data clearly shows that there is no statistical difference between states with mask mandates and those without. What "science" is the CDC, and in turn OCA, relying on to show that masks work? Even presuming that masks work, why is it not an individual's choice to wear a mask or not? If the mask works for the individual wearing it, then why are those who wish not to wear it, forced to?

10. OSHA has guidelines on wearing masks, because they are known to be harmful. What "science" shows that masks are safe to be worn for the period of time employees are being asked to wear them?

11. I have "approval" to wear a face-shield in lieu of a mask. Plexiglass was supposed to be installed on all of the benches last year in the height of the "pandemic," but that did not happen. If plexiglass was installed, the face-shield "requirement" would be moot. Why was plexiglass not installed, as the public was told every court either had it or was going to get it?

12. What “science” determines that I am a “threat” to anyone if I am over 6 feet away from everyone in the courtroom?

Thank you.

Frank

From: Hon. Sam Walker <[redacted]@nycourts.gov>
Sent: Thursday, August 19, 2021 10:13 AM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Subject: Fw: COVID-19 Testing Program

Goodmorning:

Just in case you may not have received this memo from Judge Marks.

Please let me know if you have any questions.

Sam Walker
Supervising Judge, City Courts

From: Cindy Martucci-Kiyar <[redacted]@nycourts.gov> on behalf of Hon. Lawrence Marks <[redacted]@nycourts.gov>
Sent: Thursday, August 19, 2021 9:54 AM
Subject: COVID-19 Testing Program

Good morning.

Please see the attached memorandum from Chief Administrative Judge Marks.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 10

From: Sam D. Walker

To: Frank Mora

Subject: Covid-19 Protocols for Judges

Date: August 23, 2021

Good afternoon, Judge Mora:

As we discussed, there is an OCA requirement that all judges in the public areas of the courthouse to include the courtroom wear a mask or a shield. At the beginning of the Covid-19 outbreak you requested special permission, due to a pre-existing condition, to wear a shield instead of a mask. Your request was granted.

It was brought to my attention that you have been traversing the courthouse in both the public and private areas without wearing a mask and/or a shield, and you have not provided any proof that you were vaccinated.

I provided you with a copy of the latest Memorandum from Chief Administrative Judge Marks, addressing COVID-19 Testing Program For Judges. Emanating from Judge Mark's Memorandum, you submitted a series of questions which I will attempt to answer below.

Please be reminded that I do not set policy on how to confront the COVID-19 Pandemic. This is done by OCA. I just advise on what those policies are, and you are expected to follow them.

1. It's my understanding that the USA is part of the Nuremberg Code, which outlaws coerced medical treatments. By treating "vaccinated" people differently than unvaccinated people, that is coercion.

A. I don't understand the relevance of the Nuremberg Code. It's not a question of you being mandated to take the vaccine. In fact, you were exempted based upon a pre-existing condition, and based upon your request you were given permission to wear a shield instead of a mask. All we are requesting is that you wear a shield or mask in the courtroom or in public areas of the courthouse.

2. What "science" determines that orange card holders are allowed to go mask-less in nonpublic areas, but not in public?

A. OCA has directed this policy and we are all expected to comply.

3. What “science” determines that orange card holders and not those with natural immunity (i.e. those who had Covid) are allowed to go mask-less?

A. OCA has directed this policy and we are all expected to comply.

4. How is it that an employer is allowed to mandate a medical procedure (i.e. Wearing medical devices (masks); Covid tests)?

A. The wearing of a mask or face shield is not a medical procedure, it's a safety precaution.

5. How is it that an employer is allowed to ask for medical information (i.e. medical test results)?

A. You don't have to respond to the inquiry, but then you must wear a mask or face shield in all public and private areas of the courthouse.

6. What “science” determines that testing weekly is going to protect anyone, as a person can have Covid, get tested, it come back negative because enough time has not gone by for it to show up on a test, then go to work with Covid for over a week?

A. OCA has directed this policy and we are all expected to comply.

7. There is talk about mandatory “vaccination.” How is it that an employer will be allowed to mandate a medical procedure (i.e. mandatory “vaccination”)?

A. If such a mandate is directed, and if you cannot comply, then you may have to reconsider your position.

8. The “science” is now showing that “vaccinated” people are getting Covid and spreading Covid. On August 6, 2021, the director of the CDC stated that “what they [“vaccinations”] can’t

do anymore is prevent transmission." Why then, would "vaccination" not be an individual's choice?

A. Because OCA has determined this as a safety policy. If you don't get vaccinated, you must wear a mask or face shield in all public and private areas of the courthouse.

9. Data clearly shows that there is no statistical difference between states with mask mandates and those without. What "science" is the CDC, and in turn OCA, relying on to show that masks work? Even presuming that masks work, why is it not an individual's choice to wear a mask or not? If the mask works for the individual wearing it, then why are those who wish not to wear it, forced to?

A. Because OCA has determined this as a safety policy. If you cannot comply you may have to reconsider your position.

10. OSHA has guidelines on wearing masks because they are known to be harmful. What "science" shows that masks are safe to be worn for the period of time employees are being asked to wear them?

A. OCA has determined this as a safety policy. If you cannot comply you may have to reconsider your position.

11. I have "approval" to wear a face-shield in lieu of a mask. Plexiglass was supposed to be installed on all of the benches last year in the height of the "pandemic," but that did not happen. If plexiglass was installed, the face-shield "requirement" would be moot. Why was plexiglass not installed, as the public was told every court either had it or was going to get it?

A. OCA determined that plexiglass would not be installed in every courtroom.

12. What "science" determines that I am a "threat" to anyone if I am over 6 feet away from everyone in the courtroom?

A. OCA has determined this as a safety policy. If you cannot comply, you may have to reconsider your position.

If you are having difficulty complying with the directives of OCA please let me know. Until then, you will be required to comply, as you have always done, with wearing a shield in all public and private areas of the courthouse.

Thanks

Sam D. Walker

EXHIBIT 11

Hon. Frank M Mora

From: Lucian Chalfen
Sent: Tuesday, January 18, 2022 1:04 PM
To: Lori Conners
Cc: Hon. Frank M Mora; James McAllister; Omar Cumberbatch; Selena Hall; Lori Kiernan
Subject: RE: Law 360 Reporter Inquiry

Very good plan. He is a regular here but I don't know what he is after.

From: Lori Conners [redacted]@nycourts.gov>
Sent: Tuesday, January 18, 2022 12:59 PM
To: Lucian Chalfen <[redacted]@nycourts.gov>
Cc: Hon. Frank M Mora <[redacted]@nycourts.gov>; James McAllister [redacted]@nycourts.gov>; Omar Cumberbatch <[redacted]@nycourts.gov>; Selena Hall [redacted]@nycourts.gov>; Lori Kiernan <[redacted]@nycourts.gov>
Subject: Law 360 Reporter Inquiry

Mr. Chafen,
Please note that Frank G. Runyeon, Journalist from the publication LAW 360, appeared at our offices to request an appointment/meeting with Judge Mora after having observed the criminal court calendar. Mr. Runyeon was advised that I would confirm the protocol for such a request and get back to him.

My understanding is that I will direct Mr. Runyeon to you for further information.

Lori L. Conners, Chief Clerk
Poughkeepsie City Court
62 Civic Center Plaza
Poughkeepsie, NY 12601
[redacted]@NYCourts.gov
T: [redacted]
F: [redacted]

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 12

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Thursday, January 20, 2022 11:43 AM
To: Lucian Chalfen; Lori Conners
Cc: James McAllister; Omar Cumberbatch; Selena Hall; Lori Kiernan
Subject: RE: Law 360 Reporter Inquiry

Lucian,

I have a couple of calls into you. I know you're swamped, so I'll send by email. I texted Mr. Runyeon last night the following:

Good evening. I'm sorry I'm just getting back to you, however, my phone does not deliver messages promptly and I have to get it repaired. Please address your inquiries to Lucian Chalfen, our Public Relations Director, at [redacted].

His reply was this:

Thank you Judge. I do believe you can better speak to why you were at the courthouse on an almost daily basis after being denied the vaccine exemption, why you don't wear a mask there, and why you conducted arraignments virtually. Chalfen says you were in violation of the administration's orders on all counts.

I did not call or text him back, as we all know reporters sometimes fib. I don't know Mr. Runyeon, so I have no idea regarding him personally. I'm confident you did not tell him that, as I have written approval for everything I have done.

Please advise.

Frank

From: Lucian Chalfen [redacted]@nycourts.gov>
Sent: Tuesday, January 18, 2022 1:04 PM
To: Lori Conners <[redacted]@nycourts.gov>
Cc: Hon. Frank M Mora [redacted]@nycourts.gov>; James McAllister <[redacted]@nycourts.gov>; Omar Cumberbatch <[redacted]@nycourts.gov>; Selena Hall <[redacted]@nycourts.gov>; Lori Kiernan <[redacted]@nycourts.gov>
Subject: RE: Law 360 Reporter Inquiry

Very good plan. He is a regular here but I don't know what he is after.

From: Lori Conners <[redacted]@nycourts.gov>
Sent: Tuesday, January 18, 2022 12:59 PM
To: Lucian Chalfen <[redacted]@nycourts.gov>
Cc: Hon. Frank M Mora [redacted]@nycourts.gov>; James McAllister <[redacted]@nycourts.gov>; Omar Cumberbatch [redacted]@nycourts.gov>; Selena Hall [redacted]@nycourts.gov>; Lori Kiernan <[redacted]@nycourts.gov>
Subject: Law 360 Reporter Inquiry

Mr. Chafen,

Please note that Frank G. Runyeon, Journalist from the publication LAW 360, appeared at our offices to request an appointment/meeting with Judge Mora after having observed the criminal court calendar. Mr. Runyeon was advised that I would confirm the protocol for such a request and get back to him.

My understanding is that I will direct Mr. Runyeon to you for further information.

Lori L. Conners, Chief Clerk
Poughkeepsie City Court
62 Civic Center Plaza
Poughkeepsie, NY 12601
[redacted]@NYCourts.gov
T: ([redacted]
F: ([redacted]

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 13

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

April 26, 2022

To Whom it May Concern:

Kindly note that on January 18, 2022, after handling his morning calendar virtually off-premises, Judge Mora came in to retrieve some of his personal items, around lunch time. He was wearing his face shield until he went into his personal chambers. Judge Volkman had already left for lunch, and there were several individuals out that day, so Judge Mora and I were the only ones in the back area.

As I normally do, I let Judge Mora know that I was leaving for lunch. When I left, Judge Mora was the only one in the back area. I came back a little early from lunch, and another employee came into my office. I normally let Judge Mora know when I get back, however, I neglected to tell him this time. He then started to walk into my office, holding his face shield and one of his personal files. As soon as he saw me, he immediately stopped and put on his face shield. He commented, "Oh, you're back!" I said, "sorry for not telling you," and that was that.

At that point, the other employee had their cell phone out and was showing pictures of their new grandbaby. I cannot say who took the picture that came out in the Law360 article on January 20, 2022, but it was only the other employee and I in my office, and I did not take the picture.

Thank you.

Very truly yours,

Lori A. Kiernan

Lori A. Kiernan
Confidential Secretary to
THE HON. FRANK M. MORA
THE HON. SCOTT L. VOLKMAN

EXHIBIT 14

Access History

01/26/2022 10:28:41

Date/Time	Node Date/Time	Who	Location	Description
01/18/2022 12:33:42	01/18/2022 12:33:42	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/13/2022 12:43:48	01/13/2022 12:43:47	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/11/2022 12:07:14	01/11/2022 12:07:15	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/11/2022 11:15:21	01/11/2022 11:15:21	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/10/2022 08:27:29	01/10/2022 08:27:29	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/06/2022 15:26:58	01/06/2022 15:26:59	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/06/2022 15:22:52	01/06/2022 15:22:52	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/06/2022 14:56:47	01/06/2022 14:56:48	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/05/2022 12:38:40	01/05/2022 12:38:39	Mora, Frank	PD Double Doors Portal	Access granted
01/05/2022 12:27:22	01/05/2022 12:27:21	Mora, Frank	PD Green Mile Door Portal	Access granted
01/03/2022 16:39:49	01/03/2022 16:39:49	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/03/2022 16:39:45	01/03/2022 16:39:45	Mora, Frank	CH Door across from Juvenile Portal	Access granted
01/03/2022 08:17:04	01/03/2022 08:17:04	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/03/2022 08:17:01	01/03/2022 08:17:01	Mora, Frank	CH Door across from Juvenile Portal	Access granted
01/03/2022 08:16:58	01/03/2022 08:16:57	Mora, Frank	Juvenile Glass Doors Portal	Access not completed
01/01/2022 10:41:57	01/01/2022 10:41:57	Mora, Frank	CH Court Stairwell Door Portal	Access granted

EXHIBIT 15

Hon. Frank M Mora

From: Hon. Anne Minihan
Sent: Wednesday, January 5, 2022 2:54 PM
To: Hon. Frank M Mora
Subject: RE: Personal Belongings

Frank,

Thanks are absolutely not necessary – anything that can be done to make it easier on you and the folks in Poughkeepsie, I'm happy to do or authorize. I have zero interest in making this more difficult than it needs to be. Hang in there.

Anne

Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

[redacted]

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Wednesday, January 5, 2022 2:07 PM
To: Hon. Anne Minihan <[redacted]@nycourts.gov>
Cc: Larry Daley [redacted]@nycourts.gov>; James McAllister <[redacted]@nycourts.gov>; Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>
Subject: RE: Personal Belongings

Judge Minihan,

Thank you!!! I'm sure the staff will appreciate it also, as it will be less taxing on them.

Frank

From: Hon. Anne Minihan [redacted]@nycourts.gov>
Sent: Wednesday, January 5, 2022 12:50 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Larry Daley [redacted]@nycourts.gov>; James McAllister [redacted]@nycourts.gov>; Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>
Subject: RE: Personal Belongings

Good afternoon, Judge Mora,

If you want to go to the court to retrieve your belongings, or to drop off papers or files, or get office supplies you need (or tech equipment), just go while court is open. You can continue doing that so long as you're working remotely (i.e. you're not moving out so you don't need to take all of your personal things unless you want to). Obviously wear your mask and observe the other Covid protocols that everyone entering our courts has to follow.

Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

[redacted]

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Wednesday, January 5, 2022 11:10 AM
To: Hon. Anne Minihan <[redacted]@nycourts.gov>
Cc: Larry Daley [redacted]@nycourts.gov>; James McAllister <[redacted]@nycourts.gov>; Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>
Subject: Personal Belongings

Judge Minihan,

Per your suggestion in a separate email, I am emailing you and those cc'd, to gain access to my chambers to retrieve some of my personal belongings. I'm still at a loss as to how I am barred from "any UCS facility" until I submit proof of vaccination (which I cannot do based on my sincere and genuinely held religious beliefs), while unvaxinated attorneys, litigants, jurors, and members of the public are allowed to enter the facilities, as well as unvaxinated judges/non-judicial staff who received a medical or religious exemption.

May I enter after hours when it is unoccupied to retrieve some of my items, which include private and sensitive medical documentation for my family?

Frank

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 16

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

May 12, 2022

To Whom it May Concern:

To the best of my knowledge, Judge Frank M. Mora did not preside over any cases in this Court from within the Courthouse after January 3, 2022, and worked virtually off-premises since January 4, 2022.

Sincerely,

Lori L. Conners

LORI L. CONNERS
Chief Clerk

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

May 12, 2022

To Whom It May Concern:

Judge Frank M. Mora did not preside over any cases in this Court from within the Courthouse after January 3, 2022, and worked virtually off-premises since January 4, 2022. I can say this with certainty, as my office is diagonally across from Judge Mora's chambers. His chambers is right next to the hallway restroom. This is the restroom that I use throughout the day. In addition, I pass Judge Mora's chambers each day (sometimes several times per day) on my way into the courtroom.

Very truly yours,

Lori A. Kiernan

Lori A. Kiernan
Confidential Secretary to
THE HON. FRANK M. MORA
THE HON. SCOTT L. VOLKMAN

EXHIBIT 17

Hon. Frank M Mora

From: Hon. Anne Minihan
Sent: Tuesday, January 18, 2022 5:36 PM
To: Hon. Frank M Mora
Cc: Larry Daley; Hon. Barry E. Warhit; Scott Murphy; Jennifer DiLallo; Lori Conners; James McAllister; Omar Cumberbatch; Hon. Sam Walker
Subject: Covid protocol and facility access

Good afternoon, Judge Mora,

In follow up to our conversation a little while ago, under no circumstances are you permitted to access the Poughkeepsie City Court facility unless you are masked.

Further, and in light of recent events, it has become necessary to limit your access to the facility. Until further notice, you must have my express permission, or that of Judge Warhit or Judge Walker, before you will be allowed into the courthouse facility. Permission, when granted, will be for a stated and limited purpose. I, or the judge granting you permission, will provide notification to Operations and to Ms. Conners of the date, time, and purpose of your visit. You will check in with Sergeant Jones when you arrive and check out with him when you leave. Again, you will need to be masked for the duration of your visit. In the event that you are unable or unwilling to wear a mask, you will have to make arrangements with court staff to deliver whatever you need to you outside the building.

If you have any questions, please contact me.

Thank you.

AEM
Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
Westchester County Courthouse
111 Dr. Martin Luther King Junior Blvd.
White Plains, New York 10601

[redacted]

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 18

DECEMBER 10, 2021 Albany, NY

Governor Hochul Announces Major Action to Address Winter Surge and Prevent Business Disruption as COVID-19 Cases and Hospitalizations Rise Statewide

CORONAVIRUS (/KI /CORONAVIRUS) COVID-19 VACCINE (/KI /COVID-19-VACCINE) HEALTH (/KI /HEALTH) (/KEYWORDS)

Hochul Shares New Yorkers' Frustration with Winter Surge, Says We Do Not Have to Be Here But We Are

Hochul Thanks More Than 80% of Adult New Yorkers for Getting Fully Vaccinated and Doing the Right Thing

To Protect the Health of New Yorkers, Businesses and Venues Must Implement a Mask Requirement or Require Proof of Fully Vaccinated Status

Hochul Gives Options to Businesses with Mask or Vaccine Requirement

State to Reassess Measure on Jan. 15, 2022

Read Frequently Asked Questions Regarding to New Requirements here

Governor Kathy Hochul today announced masks will be required to be worn in all indoor public places unless businesses or venues implement a vaccine requirement. This a major action to address the winter surge comes as COVID-19 cases and hospitalizations rise statewide (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcoronavirus.health.ny.gov%2Fcovid-19-data-new-york&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=gzsOctpz1pNk8fZiExAR41dRjTZA%2B5xRu%2FnTCXnKwCg%3D&reserved=0) to be in alignment with the CDC's recommendations (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fmmwr%2Fvolumes%2F70%2Fwr%2Fmm7030e2.htm&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=ezs%2Bd6h2qF4ifLFRNF0itsy5z8fGf6lUuzG2doKAfFQ%3D&reserved=0) for communities with substantial and high transmission. The State Health Commissioner issued a determination solidifying the requirement.

This determination is based on the State's weekly seven-day case rate as well as increasing hospitalizations. The new business and venue requirements extend to both patrons and staff. This measure is effective Dec. 13, 2021 until Jan. 15, 2022, after which the State will re-evaluate based on current conditions. The new measure brings added layers of mitigation during the holidays when more time is spent indoors shopping, gathering, and visiting holiday-themed destinations.

"As Governor, my two top priorities are to protect the health of New Yorkers and to protect the health of our economy. The temporary measures I am taking today will help accomplish this through the holiday season. We shouldn't have reached the point where we are confronted with a winter surge, especially with the vaccine at our disposal, and I share many New Yorkers' frustration that we are not past this pandemic yet," **Governor Hochul said.** "I want to thank the more than 80 percent of adult New Yorkers who have done the right thing to get fully vaccinated. If others will follow suit, these measures will no longer be necessary."

"I have warned for weeks that additional steps could be necessary, and now we are at that point based upon three metrics: Increasing cases, reduced hospital capacity, and insufficient vaccination rates in certain areas," **Governor Hochul added.**

Since Thanksgiving, the statewide seven-day average case rate has increased by 43% and hospitalizations have increased by 29%. While the percentage of New Yorkers fully vaccinated continues to increase—gaining 2% from Thanksgiving weekend to now—the uptick is not fast enough to completely curb the spread of the virus, particularly among communities with low vaccination coverage.

The State Department of Health has produced nation-leading studies, published in the CDC's MMWR (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fmmwr%2Fvolumes%2F70%2Fwr%2Fmm7037a7.htm%3Fs_cid%3Dmm7037a7_w&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=yqPaUh2AfraOMvpQXSViORgGpAU5%2FgafCI%2BfjLwEx2k%3D&reserved=0) and the New England Journal of Medicine (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nejm.org%2Fdoi%2Ffull%2F10.1056%2FNEJMoa2116063&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=XjY1ocSmwtpb2Ixc5B07Sf76axPMU25SG7IBFYExYU8%3D&reserved=0), which demonstrate the COVID-19 vaccines' effectiveness - particularly in preventing severe disease. The Department continues to urge eligible New Yorkers of all ages to get fully vaccinated and boosted as soon as possible.

Acting Health Commissioner Dr. Mary T. Bassett said, "Community spread requires a community-minded solution, as the Omicron variant emerges and the overwhelmingly dominant Delta variant continues to circulate. We have the tools we need to protect against the virus - and now we must ensure we use them. There are tools each individual can use, and there are actions we can take as government. Getting vaccinated protects you, and wearing a mask is how we will better protect each other. Both vaccination and mask-wearing are needed to slow this COVID-19 winter surge."

A violation of any provision of this measure is subject to a maximum fine of $1,000 for each violation. Local health departments are being asked to enforce these requirements.

Business/Venue Proof of Vaccination Requirement

Businesses and venues that implement a proof of vaccination requirement must ensure that anyone 12 years of age or older is fully vaccinated before entering indoors. Businesses/venues can accept Excelsior Pass (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fepass.ny.gov%2Fhome&data=04%7C01%7CChristina.Levin%40digital.ny.gov%7C9b811a4406f54896961608d9bc239fd%3D%7C3000&sdata=QkWefhwKa9eCmHJRkS3%2BOhJhd8wJTfLmE3ar8RaWAnU%3D&reserved=0), Excelsior Pass Plus (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fepass.ny.gov%2Fhome&

data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=GvuShtsoEUXqBIxshiKuyT0jlPtJt05Zur9qbOnf7kQ%3D&reserved=0), public transit, homeless shelters, correctional facilities, nursing homes, and health care settings per CDC guidelines.

New York State and the State's Department of Health continue to strongly recommend mask-wearing in all public indoor settings as an added layer of protection, even when not required. Children 2 - 5 who remain ineligible for vaccination must wear a proper-fitting mask.

COVID-19 vaccines and booster doses (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcovid19vaccine.health.ny.gov%2Fbooster-doses&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=KBIoPfOm502%2BMvvW9wM9ajx3RNTtTHpbd3%2BIY%2FrDQyQ%3D&reserved=0) are free and widely available statewide. New Yorkers can visit vaccines.gov, text their ZIP code to 438829, or call 1-800-232-0233 to find nearby locations. To schedule an appointment at a state-run mass vaccination site, New Yorkers can visit the Am-I-Eligible site (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fam-i-eligible.covid19vaccine.health.ny.gov%2F&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=rM0y7mj%2BOf4E6VckY%2BKo7N7VW8acBkUKJR96rD8xTTI%3D&reserved=0). New Yorkers can also contact their health care provider, county health departments, Federally Qualified Health Centers (FQHCs), rural health centers, or pharmacies.

New Yorkers can retrieve their Excelsior Pass or Excelsior Pass Plus here (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fepass.ny.gov%2Fhome&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=IUUsObfH9aTt8AJv%2FVI46%2FRkdtcKU2r2QQBDazY7zzc%3D&reserved=0). Businesses and venues can download the Excelsior Pass Scanner app (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapps.apple.com%2Fus%2Fapp%2Fnys-excelsior-pass-scanner%2Fid1552709177&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=yWDsOMLgpDmHkefCLG5ILwuUxtjOqHoYeMECzBchPrg%3D&reserved=0)—free for any business nationwide and available in more than ten languages—here (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapps.apple.com%2Fus%2Fapp%2Fnys-excelsior-pass-scanner%2Fid1552709177&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=yWDsOMLgpDmHkefCLG5ILwuUxtjOqHoYeMECzBchPrg%3D&reserved=0).

data=04%7C01%7CChristina.Levin%40digital.ny.gov%7C9b811a4406f54896961608d9bc239fd(
%3D%7C3000&sdata=DM5EsJYoPhjQryZDh9e85ZzBRekVSKjal74c%2F%2FGI7Is%3D&
reserved=0), SMART Health Cards issued outside of New York State, full-course vaccination through NYC COVID Safe app (https://gcc02.safelinks.protection.outlook.com/?url=https
%3A%2F%2Fapps.apple.com%2Fus%2Fapp%2Fnyc-covid-safe%2Fid1565213506&
data=04%7C01%7CChristina.Levin%40digital.ny.gov%7C9b811a4406f54896961608d9bc239fd(
%3D%7C3000&sdata=hmW7DSkSXeXYzh4GCjocaxklStsM%2FxvAVhHiVZH3WAA%3D&
reserved=0), a CDC Vaccination Card, or other official immunization record.

In accordance with CDC's definition, fully vaccinated is defined as 14 days past an individual's last vaccination dose in their initial vaccine series (14 days past the second shot of a two-dose Pfizer-BioNTech or Moderna vaccine; 14 days past the one-shot Janssen/Johnson & Johnson vaccine). The State also accepts WHO-approved vaccines for these purposes. Parents and guardians can retrieve and store an Excelsior Pass and/or Excelsior Pass Plus for children or minors under legal guardianship.

Vaccines for children ages 5 – 11 have only been available since November 2021. Therefore, in order to enter a business or venue that implements a proof of vaccination requirement, children ages 5 – 11 only have to show proof of having had at least one dose of the COVID-19 vaccination.

Vaccines have been available for 16–17-year-olds since April 2021 and for 12—15-year-olds since May 2021. At the time of the determination, 63% of the 12 – 17 age group has been fully vaccinated in New York State.

Business/Venue Mask-Wearing Requirement

Businesses and venues that implement a mask requirement must ensure all patrons past their second birthday and medically able to tolerate a face covering wear a mask at all times while indoors outside of physical eating or drinking.

Continued Masking Requirements

Unvaccinated individuals continue to be responsible for wearing masks, in accordance with federal CDC guidance (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F
%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2Ffully-vaccinated-
guidance.html&
data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C
%3D%7C3000&sdata=7IzEkcGzWYZ%2FOkdJkm1Ed9pPxrrpDLW2d4fVbaxyly4%3D&
reserved=0). Further, the State's masking requirements continue to be in effect for pre-K to grade 12 schools (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F
%2Fcoronavirus.health.ny.gov%2Fsystem%2Ffiles%2Fdocuments%2F2021%2F09%2Fschool-
guidance_0.pdf&

EXHIBIT 19

NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

Interim Guidance on Executive Orders 202.17 and 202.18 Requiring Face Coverings in Public During the COVID-19 Outbreak

April 17, 2020

Background:

In December 2019, a new respiratory disease called the novel coronavirus (COVID-19) was detected. COVID-19 is caused by a virus (SARS-CoV-2) that is part of a large family of viruses called coronaviruses. Recently, community-wide transmission of COVID-19 has occurred in the United States, including New York where the number of both confirmed and suspected cases is increasing. To reduce the community-wide transmission of COVID-19, Governor Andrew M. Cuomo has taken aggressive action through Executive Order 202, as amended, to combat the spread of this infectious disease, reducing the density of people in areas of common congregation by closing the in-person operations of non-essential businesses and prohibiting all non-essential gatherings of individuals of any size for any reason.

Executive Orders:

Executive Order 202.17, issued on April 15, 2020, provides the following directive:

> *Effective at 8 p.m. on Friday, April 17, 2020 any individual who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or cloth face-covering when in a public place and unable to maintain, or when not maintaining, social distance.*

Executive Order 202.18, issued on April 16, 2020, provides the following directive:

> *Any person utilizing public or private transportation carriers or other for-hire vehicles, who is over age two and able to medically tolerate a face covering, shall wear a mask or face covering over the nose and mouth during any such trip; any person who is operating such public or private transport, shall likewise wear a face covering or mask which covers the nose and mouth while there are any passengers in such vehicle. This directive shall take effect in the same manner as Executive Order 202.17, at 8 p.m. on Friday, April 17, 2020.*

Guidance:

Individuals must procure, fashion, or otherwise obtain face coverings and wear such coverings when they are in a public and are:

- within six feet of distance from other individuals; or
- in a situation or setting where they are unable to maintain six feet of distance from other individuals; or
- in a public or private transportation carrier or for-hire vehicle.

Face coverings include, but are not limited to, cloth (e.g. homemade sewn, quick cut, bandana), surgical masks, N-95 respirators, and face shields. Please visit the Centers for Disease Control and Prevention's "Coronavirus Disease 2019 (COVID-19)" website for information on cloth face covers and other types of personal protective equipment (PPE), as well as instructions on use, cleaning, and disposal. Please note that the most protective PPE (e.g. N-95 respirators) remains a critical need for health care workers and first responders and, therefore, should be prioritized for those settings.

Individuals are required to wear a face covering in the abovementioned situations and settings, provided that they are older than two (2) years of age and able to medically tolerate a covering. If a face covering would inhibit or otherwise impair an individual's health or if an individual is not older than two (2) years of age, an individual is not required to wear or use such a covering. Further, essential business operators and enforcement authorities are prohibited from requesting or requiring medical or other documentation from an individual who declines to wear a face covering due to a medical or other health condition that prevents such usage.

Nothing in Executive Order 202.17 or 202.18 shall remove the obligation of essential businesses, as well as state and local government agencies and authorities, to procure, fashion, or otherwise obtain face coverings and provide such coverings to employees who directly interact with the public during the course of their work at no-cost to the employee, pursuant to Executive Order 202.16.

Public and private transport operators required to wear a face covering while transporting passengers should consult the New York State Department of Health's "Interim Guidance on Executive Order 202.16 Requiring Face Coverings for Public and Private Employees Interacting with the Public During the COVID-19 Outbreak," issued on April 14, 2020, for further information.

Additional Information:
New York State Department of Health Coronavirus (COVID-19) Website
https://coronavirus.health.ny.gov/

United States Centers for Disease Control and Prevention Coronavirus (COVID-19) Website
https://www.cdc.gov/coronavirus/2019-ncov/index.html

EXHIBIT 20

Michael Brown
[redacted]

June 13, 2022

Dear Sir or Madam:

I am employee of Seeta Eye Center in Poughkeepsie. I have worked here for 1 year, as a technician. I found out that Stacey Koch, the manager of Seeta, who is my boss, filed a complaint against Judge Mora for an incident that happened on December 28, 2021. Prior to this date, I had never met Judge Mora. I found it hard to believe that she filed a complaint. After reading the complaint, I was even more dismayed. I am writing this letter because I feel Judge Mora did not do anything to warrant the police being called on him, or a complaint being filed against him.

I recall that day very vividly as I was asked to come out to the waiting area. Judge Mora was there with his son, who was scheduled for an eye exam. From the moment Stacey addressed Judge Mora, she was very hostile, demanding that he wear a mask. Judge Mora tried to explain that he did not medically tolerate a mask (he was wearing a face shield), but Stacey would not let him speak. She kept cutting him off. Unlike what Stacey wrote in her complaint, Judge Mora did not taunt her. He was calm and a complete gentleman during the entire ordeal. Judge Mora did not create a scene. It was actually Stacey who created a scene. She told Judge Mora that he was upsetting the other patients. An elderly lady actually stood up and said she was upset, but not with Judge Mora, but that she was waiting for over a half hour and had not been seen yet. That comment made me laugh.

What Stacey did not write in her complaint was that she actually called the police a second time. She did this after telling Judge Mora to stop talking, as he was spreading germs on her. I found her statement very bizarre. Judge Mora had a face shield on, and was about 10 feet away from her. After telling Judge Mora to stop talking, she called the police, and told them it was an emergency because Judge Mora was wearing a face shield, would not stop talking, and was spreading germs on her. While still on the phone with the police, Judge Mora said he would leave and try to get medical documentation for her, and she told the police they did not have to come. Judge Mora then left. About an hour later Judge Mora came back with his son and I escorted them into the exam room. There were no other issues the second time. I'm not sure why Stacey did not handle it this way the first time. Judge Mora has been back twice since December, and both times he wore his face shield, and there were no issues.

Thank you.

Sincerely,

Michael Brown

EXHIBIT 21

M[redacted] CHIROPRACTIC
[redacted]
[redacted] NEW YORK [redacted]
[redacted]
[redacted]

May 18, 2022

To Whom It May Concern:

Judge Mora is a patient of this office, and requested this letter. On December 28, 2021, Judge Mora contacted my office saying it was urgent that he speak with me. He explained that he went to the eye doctor with his son and needed a doctor's note, as the office manager would not accept his word that he could not medically tolerate a mask. Judge Mora stated he was not trying to cause waves, and just wanted to get his son's eyes examined. I typed up a note and emailed it to Judge Mora.

Shortly after sending that email, my office received a call from Stacey Koch from Seeta Eye. My receptionist confirmed that Judge Mora was a patient and that we indeed wrote the note. She then asked my receptionist for further details regarding his health condition, and a diagnosis. My receptionist then passed the call on to me, as she knew not to give health information without a HIPAA release. I spoke with Ms. Koch and she asked why a diagnosis was not listed on the note. She wanted to know what Judge Mora's condition was.

Ms. Koch was insistent that I provide a diagnosis, and explanation on why Judge Mora could not wear a mask. At that point, I explained very clearly that I had no problem verifying that the note was authentic, however, she continued to ask specifics about Judge Mora's condition. This is a clear violation of HIPAA without a release form from Judge Mora. I explained that by merely asking about a patient's condition, it is a HIPAA violation. Ms. Koch became belligerent, continuing to demand a diagnosis. I was very surprised by this. I explained to her that someone who works in the medical field should know full well that a HIPAA release is required before a doctor can divulge information. After that, she hung up.

Sincerely,

[redacted]

G[redacted]M[redacted], DC

EXHIBIT 22

Fw: Mask exemption

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@seetaeye.com

Date: Tuesday, December 28, 2021, 03:56 PM EST

----- Forwarded Message -----
From: G[redacted] <[redacted]@optonline.net>
To: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, December 28, 2021, 03:53:54 PM EST
Subject: Mask exemption

M[redacted] Chiropractic
[redacted]
8[redacted]

December 28, 2021

To Whom It May Concern:

Frank Mora is currently under my care. Due to his current health condition, he is medically unable to wear a mask.

Sincerely,

G[redacted] M[redacted], DC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHERYL FERRELLI, JEANMARIE TROJAN, EILEEN CREIGHTON, LINDA RUKAVINA, and JOSETTE ALTOBELLI, *Plaintiffs*, v. STATE OF NEW YORK UNIFIED COURT SYSTEM, NANCY J. BARRY, and JUSTIN A. BARRY, *Defendants*.	22-CV-0068 (LEK)

DEFENDANTS' MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019–6064
Tel.: [redacted]
Fax: [redacted]

Attorneys for Defendants

Dated: February 4, 2022

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The State of New York – Unified Court System (the "UCS"), Nancy J. Barry and Justin A. Barry respectfully submit this memorandum of law in opposition to plaintiffs' motion, dated January 27, 2022, for a temporary restraining order and preliminary injunction.

PRELIMINARY STATEMENT

For nearly two years, the COVID-19 pandemic has threatened the UCS's ability to keep its courthouse doors open and maintain full operational capacity. To further its constitutional mandate and core mission to provide an accessible and safe forum for the public to secure justice, and in accordance with overwhelming public health guidance, the UCS has implemented numerous measures, including requiring masks, social distancing and testing, to protect the health and safety of its workforce and court users. Given the rise in infections and deaths from the Delta variant, starting in summer 2021 the UCS implemented a mandatory vaccine policy (the "Vaccination Policy") for all non-judicial UCS employees. Over the past several months, a majority of the UCS's employees have been vaccinated, aiding in the UCS's efforts to manage the risk posed by highly contagious variants like Delta and Omicron and maintain in-person operations that are critical to the criminal and civil justice systems.

The Vaccination Policy includes a robust exemption process for UCS employees for whom vaccination is medically contraindicated or whose sincerely held religious beliefs prohibit vaccination. Pursuant to that process, any employee who seeks an exemption on medical and/or religious grounds can do so through the confidential submission of any materials that the employee deems relevant. Many UCS employees have availed themselves of the exemption process, including hundreds seeking religious exemptions. A committee comprised of UCS employees with diverse backgrounds and expertise (the "Committee"), advised by legal counsel, engaged in a multilevel review of each exemption request, with identifying information for each applicant redacted to ensure anonymity. Relevant to religious exemption requests, in particular,

the Committee's work included an interactive process pursuant to which the Committee requested supplemental information from virtually all applicants. Almost 60% of all religious exemption requests the Committee ruled upon have been granted. No request was denied without at least three levels of review.

Plaintiffs—five UCS court reporters—have now brought what they describe as a constitutional challenge under 42 U.S.C. § 1983 against the UCS and two Committee members, Justin Barry and Nancy Barry (no relation), claiming that the Vaccination Policy and the UCS's handling and denial of their religious exemption requests violate plaintiffs' First Amendment right to the free exercise of religion. In their current application, plaintiffs appear to seek to enjoin the UCS from enforcing its Vaccination Policy, both in general and as applied to them specifically. But plaintiffs have not established any of the elements necessary to obtain the extraordinary and drastic remedy of a temporary restraining order or preliminary injunction. Their motion therefore should be denied.

First, plaintiffs cannot, as a matter of law, show that they will suffer irreparable harm absent injunctive relief. The law is well settled that adverse employment consequences, including the loss of employment, pay, or benefits—precisely the harm plaintiffs allege here—do not justify injunctive relief because those things are fully compensable by reinstatement and money damages. Moreover, the alleged harm plaintiffs describe is remote and speculative—four of the five plaintiffs continue to work at the UCS today, and the fifth plaintiff continues to be paid by the UCS while on leave. Contrary to plaintiffs' arguments, no presumption of constitutional irreparable harm applies here, where there has been no direct limitation on plaintiffs' First Amendment rights. Plaintiffs are free to practice their religion and can choose—indeed, they have chosen—to refuse the COVID-19 vaccine.

Second, plaintiffs cannot show a likelihood of success on the merits, much less the "clear showing" required to obtain injunctive relief. As an initial matter, the UCS is immune from a Section 1983 suit under the Eleventh Amendment. The individual defendants are likewise immune from suit in their individual capacities, whether injunctive or monetary relief is sought from them, because they are not empowered to provide the injunctive relief plaintiffs have asked for and are immune from monetary damages under qualified immunity principles. The individual defendants should also be dismissed in their official capacities because plaintiffs offer no evidence that the individual defendants have the independent power to enforce or to refrain from enforcing the Vaccination Policy, which is required for injunctive relief, and because they are protected by the Eleventh Amendment for monetary claims. And plaintiff Altobelli has no standing to assert a Section 1983 claim because she has been granted a medical exemption enabling her to continue working at the UCS.

Nor can any of the plaintiffs show they are likely to prove a First Amendment violation based on a facial attack on the UCS's Vaccination Policy in any event. For over a century, the U.S. Supreme Court and Second Circuit courts have upheld neutral and generally applicable vaccination requirements as constitutional, rejecting First Amendment challenges as long as the vaccination requirement satisfies rational basis review, which it surely does here. The Vaccination Policy is—on its face—neutral and generally applicable, applying to all UCS employees, regardless of their religious or non-religious objections to vaccination. Further, the Vaccination Policy, which is directly related to the UCS's constitutional mandate and core mission to ensure safe access to justice and to the goal of protecting public health, easily satisfies rational basis review (and even, although not applicable here, strict scrutiny). Protecting litigants and other court users from a highly transmissible and deadly disease is "unquestionably a compelling

interest," *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 141 S. Ct. 63, 67 (2020), as is promoting the constitutional right to access to justice. Moreover, the Vaccination Policy achieves those compelling interests because it is consistent with the overwhelming public health guidance that vaccination is the most effective way to reduce the spread of COVID-19 and provides exemptions for employees who are medically unable to be vaccinated or who have a sincerely held religious objection to vaccination.

Plaintiffs' challenge to the application of the Vaccination Policy as specifically applied to them in this case fares no better. As explained above, the Vaccination Policy is constitutionally valid on its face. Accordingly, the mere fact that plaintiffs' religious exemption requests were handled in accordance with that policy and ultimately denied does not raise a constitutional issue. Nor is plaintiffs' bare assertion that their religious exemption requests were denied while others were granted sufficient to state—much less show—a likelihood of success on a First Amendment challenge. Plaintiffs offer no factual allegations, much less evidence, to support their claim that either the UCS's handling or its denial of their religious exemption requests demonstrates a violation of their constitutional rights by favoring one religion over another.

Nor could they. Supreme Court and Second Circuit precedent confirm that, in considering a religious exemption request, an inquiry as to the religious nature and the sincerity of the professed beliefs is permitted. Here, the Committee reviewed plaintiffs' requests in accordance with the process the UCS has applied to all religious exemption requests, and asked plaintiffs to provide the same supplemental information hundreds of other UCS employees—across religious practices and faiths—were asked to, and did, provide. And, to date, the UCS has, for completed applications, granted numerous religious exemption requests asserting similar objections as plaintiffs. Significantly, four of these five plaintiffs flatly refused to even provide the supplemental

information requested by the UCS, and their requests for religious exemptions were denied as a result. And, the fifth plaintiff lacks standing to sue as she was granted a medical exemption and thus cannot show any present injury in fact. There is therefore no evidence presented that could support a claim that plaintiffs were discriminated against or prejudiced based on their religion.

Third, the balance of equities and the public interest both weigh heavily against an injunction. Granting the injunction would undermine the UCS's compelling interest in providing safe and healthy venues for seeking justice around the state, and threaten the health of court users and other UCS employees, some of whom have underlying health conditions, are medically ineligible for vaccination, or have close contact with members of the community in those circumstances. In contrast, denying the injunction would do no more than require plaintiffs to prove their claims at trial before obtaining the right to be released from the vaccination requirement based on a professed religious belief that they failed to adequately support.

STATEMENT OF FACTS[1]

A. The UCS Instituted Various Health and Safety Regulations to Prevent the Spread of COVID-19 in Its Facilities.

The UCS adjudicates nearly four million cases each year. It is a large, diverse organization with employees in offices, courtrooms and court agencies at more than 300 separate sites in every county in the State. (Declaration of Justin A. Barry ("Barry Decl."), Ex. 1 at ¶¶ 5–6.) It currently employs over 14,400 non-judicial employees who work to ensure the successful operation of the courts and serve the public in one of the busiest court systems in the world. (*Id.* at ¶ 6.) Non-judicial employees are critical to the UCS's constitutional mission of guaranteeing an accessible and safe forum for securing justice for all litigants and others who interact with the

[1] Plaintiffs' Opening Brief is cited as "Pl. Br." Exhibits to the Declaration of Justin Barry are cited as "Barry Ex."

court system. (*Id*. at ¶¶ 7, 14.)

During the COVID-19 public health emergency, the UCS has taken several carefully considered steps designed to protect the health and safety of its workforce and the public. (*Id*. at ¶¶ 15–36.) These measures have included the use of virtual courts, curtailing non-essential proceedings, updates to the physical infrastructure of UCS facilities, masking rules, testing of employees, and physical distancing among those present in courthouses and offices. (*Id*.) Such health and safety precautions presented extraordinary difficulties for the UCS as it sought to successfully operate in the face of diminished in-person accessibility. (*Id*. at ¶ 21.) Nevertheless, at each stage of the pandemic, the UCS has followed the guidance of federal and state health authorities, including the CDC and the New York State Department of Health, with the goal of achieving safe, in-person operations pursuant to its constitutional mission. (*Id*. at ¶¶ 26, 31, 33.)

B. The UCS Developed a Robust Religious Exemption Process for Its COVID-19 Vaccination Policy in Accordance with Applicable Law.

In response to rising COVID-19 cases, hospitalizations and deaths as a result of the Delta variant in the summer and fall of 2021, the UCS implemented its mandatory Vaccination Policy for all employees to ensure the health and safety of its workforce, litigants and the public, following final approval of the Pfizer-BioNTech vaccine on August 23, 2021. (*Id*. at ¶¶ 35–36.) Shortly thereafter, in a September 10, 2021 memorandum circulated to all employees, the UCS explained its Vaccination Policy in detail, including that all non-judicial personnel would need to be fully vaccinated against COVID-19 by September 27, 2021. (*Id*. at ¶ 38.) The memorandum also included information regarding medical and religious exemption requests and instructions on how employees could make such requests. (*Id*.)

In total, the UCS received nearly 1,200 medical and religious exemption requests. (Barry Decl. at ¶¶ 10–12.) Approximately 1,000 of those requests claimed religious objections to

the vaccine. (*Id*. at ¶ 11.) In order to review this large volume of requests, the UCS implemented a robust process, including requests for supplemental information as necessary, an independent review Committee consisting of a diverse array of UCS administrators and employment law experts, and blind and confidential review of all requests. (*Id*. at ¶¶ 8, 18, 20–23.) Ultimately, the UCS approved over 500 religious exemption requests—almost 60% of the religious exemption requests upon which the Committee ruled. (*Id*. at ¶ 11.)

The UCS required all employees who sought religious exemptions to submit a form explaining the specific reasons for the exemption request. (*Id*. at ¶¶ 13–15.) This initial request was reviewed by one of two working groups, made up of members of the full exemption review Committee. (*Id*. at ¶ 20.) If the exemption request was granted at this stage, the employee and the employee's supervisor were notified of the exemption approval, and the employee was required to submit proof of weekly COVID-19 tests. (*Id*. at ¶ 21.) If the working group determined that more information was necessary to assess the request, as was the case in the majority of requests, the employee was provided with a form to submit supplemental information to facilitate the Committee's review. (*Id*. at ¶¶ 16–18.) The UCS developed two standard forms for supplemental information in response to the commonality of certain exemption requests. (*Id*. at ¶ 18.) One form included questions regarding the use of fetal cell lines in the development of the COVID-19 vaccines and other prescription and over-the-counter medications. (*Id*.) A second form included questions regarding the employee's past use of injectable substances and medications. (*Id*.)

The supplemental forms sought to elicit information where it was unclear from the employee's original submission that the employee's opposition to being vaccinated was based on a belief that was sincerely held and religiously, rather than secularly, based. (*Id*. at ¶¶ 17–19.) The UCS did not, at any stage of its review process, attempt to assess the validity of the employee's

religious beliefs. (*Id*. at ¶ 23.) The same working group that reviewed the initial religious exemption request reviewed the responses to the supplemental form. (*Id*. at ¶¶ 20–23.) If a majority of the working group determined that the request should be denied, the request was then reviewed yet again by a quorum or at least five members of the full Committee. (*Id*. at ¶ 21.) Exemption request denials were finalized only following review and vote by a quorum of the full Committee. (*Id*. at ¶¶ 21, 23.)

Employees whose requests were denied were notified by email and instructed to receive a first dose of the COVID-19 vaccine within 10 days. (*Id*. at ¶ 24.) If an employee who is denied an exemption fails to receive a first dose of the vaccine by the deadline provided, the employee's manager notifies the employee that he or she must submit proof of vaccination by the close of business the following day. (*Id*. at ¶ 25.) If the employee still does not comply, the UCS declares the employee "unfit for service," which means the employee cannot report for work until he or she shows proof of vaccination. (*Id*.) The employee must then stay home and charge the time against his or her accrued compensatory time and annual leave until those days run out. (*Id*.) After that, the employee is placed on unpaid "lost time" during which he or she continues to receive benefits until notified by the New York State Civil Service Commission. (*Id*.) To date, no employees, including plaintiffs, have been terminated on this basis. (*Id*.)

At no point did the UCS exemption review Committee know the identity of employees requesting exemptions, question such employees, or publicize their stated beliefs. (*Id.* at ¶¶ 22–23.) For employees who completed the exemption application process, the UCS granted numerous applications for religious exemption that, like plaintiffs, raised concerns based on fetal cell lines and/or a belief in the sanctity of the body. (*Id*. at ¶ 32.)

C. Plaintiffs Refused to Fully Participate in the Religious Exemption Process.

Each of the five plaintiffs in this lawsuit submitted initial applications for religious exemptions on or around October 18, 2021. (*See* Pl. Br. at 1.) In response to the UCS's request for supplemental information, four of the five plaintiffs—Eileen Creighton, Cheryl Ferrelli, Linda Rukavina, and Jeanmarie Trojan—refused to complete the questionnaire and returned the incomplete form to the UCS, including a letter from their attorney objecting to the exemption process. (ECF 4-16, 4-24, 4-33, 4-41.) As a result, on January 6, 2022, the four plaintiffs who completely refused to provide supplemental information were informed that their respective requests for religious exemptions had been denied. (ECF 4-17, 4-25, 4-34, 4-42.)

Plaintiff Josette Altobelli returned a partially completed supplemental information form to the UCS on December 2, 2021. (ECF 4-8.) Ms. Altobelli's request was denied following review of the request by the exemption Committee, which determined that her responses to the supplemental form did not support her claim that her refusal to receiving the COVID-19 vaccine was based on a sincerely held religious belief. (Barry Decl. ¶ 31.) Ms. Altobelli was notified on December 29, 2021. (ECF 4-9.) Ms. Altobelli was subsequently granted a medical exemption and continues to remain employed at the UCS, with proof of weekly testing. (*Id*. at ¶ 28.)

ARGUMENT

I. PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF SHOULD BE DENIED

A preliminary injunction is an "extraordinary and drastic remedy" that should rarely be granted. *E.g.*, *Med. Soc'y of State of N.Y.* v. *Toia*, 560 F.2d 535, 538 (2d Cir. 1977). The same standard applies for a temporary restraining order. *E.g.*, *Adecco USA, Inc.* v. *Staffworks, Inc.*, 2020 WL 4040341, at *1 (N.D.N.Y. July 17, 2020). To demonstrate that they are entitled to such exceptional relief, plaintiffs must make a "clear showing" of each of these elements: a "likelihood of irreparable harm"; a "likelihood of success on the merits"; "that the balance of hardships tips in

[plaintiffs'] favor regardless of the likelihood of success"; and "that an injunction is in the public interest." *E.g.*, *Speckman* v. *Fabrizio*, 2021 WL 2793053, at *3 (N.D.N.Y. July 6, 2021).

A. Plaintiffs Do Not and Cannot Show Irreparable Harm.

Plaintiffs' request for injunctive relief should be rejected because they cannot establish that they will suffer irreparable harm, which is "[p]erhaps the single most important prerequisite for the issuance of a preliminary injunction." *Kamerling* v. *Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (per curiam) (alteration in original).

None of the alleged harms plaintiffs are complaining about—potentially lost wages and benefits and, ultimately, employment—qualifies as "irreparable" under longstanding law. To the contrary, it is well settled that termination and the associated loss of wages and benefits are not irreparable because "reinstatement and money damages [can] make [a plaintiff] whole for any loss suffered during th[e] period" of unemployment. *Savage* v. *Gorski*, 850 F.2d 64, 67–68 (2d Cir. 1988). In fact, the Second Circuit reaffirmed this principle just last year in denying a preliminary injunction request in a vaccine mandate case, holding that "adverse employment consequences are not the type of harm that usually warrants injunctive relief because economic harm resulting from employment actions is typically compensable with money damages." *We the Patriots USA, Inc.* v. *Hochul* (*We the Patriots I*), 17 F.4th 266, 294 (2d Cir. 2021), *reaff'd by We the Patriots USA, Inc.* v. *Hochul* (*We the Patriots II*), 17 F.4th 368 (2d Cir. 2021). Other courts in this Circuit have reached the same result. *See Kane* v. *de Blasio*, 2021 WL 5909134, at *4 (S.D.N.Y. Dec. 14, 2021) ("Plaintiffs are not required to perform or abstain from any action that violates their religious beliefs. Because Plaintiffs have refused to get vaccinated, they are on leave without pay. The resulting loss of income undoubtedly harms Plaintiffs, but that harm is not irreparable."); *Garland* v. *N.Y.C. Fire Dep't*, 2021 WL 5771687, at *8–10 (E.D.N.Y. Dec. 6, 2021) (denying preliminary injunction because loss of employment and pay for non-compliance with a COVID-19 vaccination

mandate was not irreparable harm). This established principle precludes injunctive relief.

Plaintiffs nonetheless attempt to show an entitlement to injunctive relief by arguing that their supposed "loss of First Amendment freedoms" automatically constitutes irreparable harm. (Pl. Br. at 5–6.) That argument does not work. The Vaccination Policy does not force UCS employees to be vaccinated against their will or violate their religious beliefs. (Barry Ex. 1 at ¶ 40.) Plaintiffs can choose not to be vaccinated in accordance with their beliefs, in which case any potential harm—change in employment status, lost wages, and benefits—does not and cannot constitute irreparable injury under the law. *See Kane*, 2021 WL 5909134, at *4. Moreover, "merely asserting a constitutional injury is insufficient to automatically trigger a finding of irreparable harm." *KM Enters., Inc.* v. *McDonald*, 2012 WL 540955, at *3 (E.D.N.Y. Feb. 16, 2012) (quoting *Donohue* v. *Paterson*, 715 F. Supp. 2d 306, 315 (N.D.N.Y 2010)). And, in fact, as the Supreme Court held less than two years ago in one of its first COVID-19 decisions, the law authorizes First Amendment restrictions, even in places of worship, designed to limit the spread of COVID-19. *See, e.g., S. Bay United Pentecostal Church* v. *Newsom*, 140 S. Ct. 1613, 1613 (2020) (upholding denial of injunctive relief for numerical restrictions on public places that also applied to places of worship as "consistent with the Free Exercise Clause of the First Amendment") (Roberts, J., concurring). Accordingly, the Second Circuit last year in *We the Patriots I* denied a preliminary injunction request where, like here, the plaintiffs challenged a COVID-19 vaccination policy based on "an impairment of their Free Exercise right." 17 F.4th at 294. Notably, the Second Circuit found plaintiffs' "asserted harm [was] not of a constitutional dimension" and "fail[ed] to meet the irreparable harm element" even though the policy, unlike the UCS's, lacked a religious exemption process. *Id.* These precedents foreclose plaintiffs' effort to show irreparable harm by alleging an infringement of their First Amendment rights based on the Vaccination Policy.

Plaintiffs also argue that a "crisis of conscience imposed by [a vaccination policy]" is itself an irreparable harm. (Pl. Br. at 6.) That precise argument, however, was rejected just this week by another federal district court in a materially similar vaccine mandate case. *See O'Hailpin* v. *Hawaiian Airlines, Inc.*, Civil No. 22-CV-00007-JAO-KJM, Order at 18–19 (D. Haw. Feb. 2, 2022) (rejecting plaintiffs' "crisis of conscience" argument that vaccine mandate forced plaintiffs to choose between vaccination "at the expense of their conscience and health, or give up their livelihood"). In any event, in an attempt to support their contrary view, plaintiffs rely on an interlocutory order issued last month by a federal district court in Texas that is currently on appeal to the Fifth Circuit, *U.S. Navy SEALs* v. *Biden*, 2022 WL 34443 (N.D. Tex. Jan. 3, 2022), which, of course, is not binding on this Court. That reliance is misplaced. In stark contrast to the UCS's Vaccination Policy, under the *U.S. Navy SEALs* policy, "[r]eligious exemptions to the vaccine requirement [were] virtually non-existent," and the policy treated people who requested or received religious versus medical exemptions differently by making those with pending or granted religious exemption requests "permanently nondeployable." 2022 WL 34443, at *2. Thus, the *U.S. Navy SEALs* court found irreparable harm there because the religious exemption requests were uniformly denied, and anyone who had requested or received an exemption, would, at best, be "accord[ed] second-class status in a peerless community." *Id.* at *1, *6, *12–13. The situation here is the virtual opposite: the Vaccination Policy includes a robust religious exemptions review process, through which the Committee has granted hundreds of religious exemption requests to date. (Barry Decl. at ¶¶ 11, 16–23.) The UCS provides precisely the same treatment—exemption from the vaccine requirement and continued employment—for recipients of religious and medical

exemptions. (Barry Decl. at ¶¶ 11–12, 21, 25.) For these reasons, *U.S. Navy SEALs* is inapposite, and plaintiffs' attempt to show irreparable harm fails.[2]

B. Plaintiffs Are Unlikely to Succeed on Their Section 1983 Claim.

Plaintiffs have failed to show a likelihood of success on the merits of their claims:

1. The UCS Should Be Dismissed as a Defendant Because It Is Not a Proper Section 1983 Defendant.

To begin with, the UCS, as an arm of New York State, is immune from Section 1983 claims under the Eleventh Amendment. *E.g.*, *McCluskey* v. *N.Y. State Unified Ct. Sys.*, 442 F. App'x 586, 588 (2d Cir. 2011) (affirming dismissal of Section 1983 claim against the UCS as "barred by the Eleventh Amendment since it is an arm of the State of New York"); *Brown* v. *N.Y. State Unified Ct. Sys.*, 261 F. App'x 307, 307–08 (2d Cir. 2008) (affirming dismissal of plaintiff's Section 1983 claim against the UCS because the UCS is not a "person" within the meaning of Section 1983). Under these binding precedents, the UCS should be dismissed.

2. Plaintiffs' Section 1983 Claim Also Should Be Dismissed as to the Individual Defendants.

To the extent plaintiffs are suing the individual defendants in their *official* capacities for money damages, the individual defendants are protected under the Eleventh

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[2] It also bears noting that plaintiffs cannot show that, absent immediate injunctive relief, they will suffer "actual and imminent" harm. *Kamerling*, 295 F.3d at 214; *see also Cayuga Indian Nation of N.Y.* v. *Vill. of Union Springs*, 317 F. Supp. 2d 128, 150 (N.D.N.Y. 2004) (denying preliminary injunction where harm alleged was speculative and not clearly "sufficiently imminent"). Plaintiffs allege that if they do not comply with the Vaccination Policy, they will be placed on leave without pay, lose wages or health benefits, and ultimately face termination. At this stage, however, none of that is imminent; to the contrary, it is merely speculative. No plaintiff has been placed on unpaid leave or lost his or her job. In fact, four of the five plaintiffs continue to work at the UCS as of today: two plaintiffs remain within the grace period provided following denied medical exemptions, one plaintiff is still engaged in the medical exemption process, and one plaintiff has been granted a temporary medical exemption. (Barry Decl. at ¶ 34.) The remaining plaintiff is currently on paid leave. (*Id.*) These circumstances likewise disfavor injunctive relief pending trial. *See Faiveley Transp. Malmo AB* v. *Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (reversing grant of preliminary injunction where plaintiffs failed to show an "actual and imminent" injury "that cannot be remedied if a court waits until the end of trial to resolve the harm") (internal quotations omitted); *Garland*, 2021 WL 5771687, at *8–*9 (denying preliminary injunction because harm alleged was speculative where it was uncertain whether plaintiffs would remain on involuntary leave status).

Amendment. *See Kentucky* v. *Graham*, 473 U.S. 159, 169 (1985). If plaintiffs have sued them in their official capacities for injunctive relief, plaintiffs must show that the individual defendants have "both a particular duty to enforce the [UCS's Vaccination Policy]" and "a demonstrated willingness to exercise that duty." *Roberson* v. *Cuomo*, 524 F. Supp. 3d 196, 223 (S.D.N.Y. 2021) (internal quotations omitted). Plaintiffs have not done so. Instead, all they say is that the individual defendants "informed" them of the Vaccination Policy, (Pl. Br. at 1), and "made and/or approved and ratified" the decision to not provide plaintiffs with work assignments absent proof of vaccination, (Compl. at ¶¶ 22, 32, 42, 52, 62). Critically, plaintiffs offer no evidence to support their conclusory statement or to show that the individual defendants had or have any independent power to enforce the Vaccination Policy or to cause the UCS to refrain from doing so. And, as Mr. Barry has stated in his declaration, the opposite is true. (Barry Decl. at ¶ 35.)

To the extent plaintiffs purport to sue the individual defendants in their *individual* capacities for injunctive relief, their Section 1983 claim should be dismissed because individuals have no ability to provide such relief in their individual capacities. *See Nassau & Suffolk Cnty Taxi Owners Ass'n, Inc.* v. *State*, 336 F. Supp. 3d 50, 69–70 (E.D.N.Y. 2018) (dismissing individual-capacity Section 1983 claim for injunctive relief as "improper" because defendants could provide the relief sought by the plaintiffs only in their official capacities). For monetary relief, plaintiffs' claims are barred by qualified immunity unless they can show that "the unlawfulness of [the individual defendants'] conduct was clearly established at the time." *Liberian Cmty. Ass'n of Conn.* v. *Lamont*, 970 F.3d 174, 186–87 (2d Cir. 2020) (internal quotations omitted). Unlawfulness is "clearly established" if "at the time of the [official]'s conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *Id*. (internal quotations omitted). Here, no binding precedent of the Supreme Court or

the Second Circuit held that the Vaccination Policy was unlawful. To the contrary, similar policies have been upheld all over the country.[3] Qualified immunity thus bars plaintiffs' claims.[4]

3. *Plaintiff Altobelli's Claim Should Be Dismissed Because She Lacks Standing to Assert It.*

Plaintiff Altobelli cannot succeed on her claim for the independent reason that she has no standing to assert it. To have standing, she would have to show she suffered an injury in fact that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Port Wash. Teachers' Ass'n* v. *Bd. of Educ. of Port Wash. Union Free Sch. Dist.*, 478 F.3d 494, 498 (2d Cir. 2007) (internal quotations omitted). Ms. Altobelli has suffered no such injury. She has been granted a medical exemption to the Vaccination Policy and thus remains a UCS employee. (Barry Decl. at ¶ 28.) The denial of her religious exemption request therefore has resulted in no injury to her and, as such, she lacks standing to bring this claim.

4. *Plaintiffs Cannot Show That the UCS's Vaccination Policy Violated Their First Amendment Rights.*

In addition to these impediments to plaintiffs' Section 1983 claim, they are unlikely to succeed on the merits. To succeed on such a claim, plaintiffs have to show a "depriv[ation]" of a constitutional or federally protected right by a "person" who "acted under color of state or territorial law"—here, that their First Amendment rights were violated. *Gomez* v. *Toledo*, 446 U.S. 635, 640 (1980); *see generally Ram* v. *Lal*, 906 F. Supp. 2d 59, 70–71, 75–76 (E.D.N.Y.

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[3] *See, e.g.*, *Does* v. *Bd. of Regents of Univ. of Colo.*, 2022 WL 252320, at *6 (D. Colo. Jan. 27, 2022); *Troogstad* v. *City of Chicago*, 2021 WL 5505542, at *14 (N.D. Ill. Nov. 24, 2021); *Church* v. *Biden*, 2021 WL 5179215, at *19 (D.D.C. Nov. 8, 2021); *Bauer* v. *Summey*, 2021 WL 4900922, at *20 (D. S.C. Oct. 21, 2021); *Williams* v. *Brown*, 2021 WL 4894264, at *11 (D. Ore. Oct. 19, 2021); *Johnson* v. *Brown*, 2021 WL 4846060, at *27 (D. Ore. Oct. 18, 2021); *Does 1-6* v. *Mills*, 2021 WL 4783626, at *17–18 (D. Me. Oct. 13, 2021), *aff'd*, (1st Cir. Oct. 19, 2021); *Harris* v. *Univ. of Mass., Lowell*, 2021 WL 3848012, at *8 (D. Mass. Aug. 27, 2021).

[4] Given the multiple fatal deficiencies, plaintiffs cannot save this action from dismissal by substituting other persons for the named individual defendants. Such amendments in and of themselves would be futile.

2012). To that end, plaintiffs must show, with a "better than fifty percent" probability of success, that the UCS's Vaccination Policy is neither neutral nor generally applicable, not entitled to rational basis review, and would fail strict scrutiny review. *See Ass'n of Jewish Camp Operators* v. *Cuomo*, 470 F. Supp. 3d 197, 209 (N.D.N.Y. 2020). They cannot do so.

Plaintiffs' Facial Attack Fails. The UCS's Vaccination Policy is facially neutral and generally applicable because it does not specify or target particular religions or religious practices, "impose[s] identical burdens on religious and non-religious conduct," and "does not impose special burdens on religion alone." *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d 358, 402 (S.D.N.Y. 2021). Rather, it applies to all UCS employees who have not received a medical or religious exemption—whether they are "eager to be vaccinated" or "reluctan[t] . . . due to philosophical or political objections to vaccine requirements, concerns about the vaccine's efficacy or potential side effects, or religious beliefs," and it "does not single out employees who decline vaccination on religious grounds." *We The Patriots I*, 17 F.4th at 281–82. As such, it is neutral and generally applicable. *See Phillips* v. *City of New York*, 775 F.3d 538, 540, 543 (2d Cir. 2015) (finding school vaccination mandate with medical and religious exemption process with "multiple layers of review" was neutral and generally applicable where it applied to all public school students, particularly "during an outbreak of a vaccine preventable disease"); *Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 218–19 (finding COVID-19 restriction was neutral because it applied broadly and plaintiffs failed to show it was enacted "because of, not merely in spite of, [plaintiffs'] religious practice"); *Dixon* v. *de Blasio*, 2021 WL 4750187, at *7 (S.D.N.Y. Oct. 12, 2021) (denying injunction where COVID-19 vaccine requirements were "facially neutral because they are not directed against a specific religious practice and there is no evidence of animus," and

did not "expressly carve out a category for religious conduct and subject that category to more severe restrictions than any other").

Plaintiffs nevertheless seek to manufacture a First Amendment claim by arguing that the UCS's Vaccination Policy "pick[s] and choose[s] which expressions of a religious belief system it would permit to receive exemptions" and that it shows "favoritism for certain religious views." (Pl. Br. at 8–9.) That allegation, however, is unsupported by any evidence; instead, it is merely a lawyer's unsupported assertion that is "not evidence" and thus cannot support injunctive relief. *Ocasio* v. *Barr*, 829 F. App'x 558, 561 (2d Cir. 2020). Further, it is flatly contradicted by actual evidence. The UCS has granted hundreds of religious exemptions to employees of many different faiths and religious views—including employees with beliefs similar to plaintiffs'—without favoring or disfavoring any of them. (Barry Decl. at ¶¶ 10–12, 19, 23, 32.) Plaintiffs' applications were not rejected because their beliefs were disfavored, but because they either refused to comply with the review process or failed to adequately support their application. (Barry Decl. at ¶¶ 30–31.) *See, e.g.*, *Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 218–19 (finding plaintiffs' assertion that COVID-19 restrictions targeted Jewish overnight camps was factually unsupported and restrictions were facially and substantively neutral); *Kane*, 2021 WL 5909134, at *5 (finding plaintiffs failed to show that COVID-19 vaccination requirement was not neutral or generally applicable).

Plaintiffs' reliance on *Fulton* v. *City of Philadelphia*, 141 S. Ct. 1868 (2021), to show that the Vaccination Policy is not neutral is unavailing. There, the Supreme Court ruled that a nondiscrimination clause in the City's agreements with foster-care agencies—requiring the provision of certification services to all prospective parents—was not of general applicability because it provided individualized exemptions to the agencies for secular but not religious reasons

and only at the "sole discretion" of a city official. *Id*. at 1878–79. In contrast, the UCS's Vaccination Policy *expressly* provides for a religious exemptions process through a multilayered review, and the Committee has in fact granted approximately 60% of the requests it ruled upon. (Barry Decl. at ¶¶ 11, 20–23.) That policy is thus the opposite of what was at issue in *Fulton*. *Id.* at 1877. *See also We the Patriots I*, 17 F.4th at 288–89 ("The mere existence of an exemption procedure, absent any showing that secularly motivated conduct could be impermissibly favored over religiously motivated conduct, is not enough to render a law not generally applicable and subject to strict scrutiny.") (internal quotations omitted).

Where, as here, the policy at issue is a neutral and of general applicability, rational basis review—not heightened scrutiny—applies, even if enforcement of the law incidentally burdens religious practices. *Emp. Div., Dep't of Human Res. of Ore*. v. *Smith*, 494 U.S. 872, 879 (1990); *Kane*, 2021 WL 5909134, at *5 (finding rational basis review applies to COVID-19 vaccination mandate where plaintiffs failed to demonstrate the exemption review process was not neutral or generally applicable). That is because "[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." *Phillips*, 775 F.3d at 543; *see also, e.g.*, *We the Patriots I*, 17 F.4th at 288; *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 405.

Rational basis review requires a showing that the policy at issue is "a means for addressing a legitimate goal that is rationally related to achieving that goal." *We the Patriots I*, 17 F.4th at 290. The UCS's Vaccination Policy easily meets that standard because it is, as Mr. Barry has affirmed, (Barry Ex. 1 at ¶¶ 32–35), directly related to protecting and promoting public health. *See We The Patriots I*, 17 F.4th at 290 (holding that COVID-19 vaccination requirement in the face of a deadly disease that had devastated New York was "a reasonable exercise of the State's

power to enact rules to protect the public health"); *see also, e.g.*, *Kane* v. *De Blasio*, 19 F.4th 152, 166 (2d Cir. 2021) (COVID-19 vaccination mandate "plainly satisfies" rational basis review).

Plaintiffs nonetheless argue that strict scrutiny, not rational basis review, should govern. They are wrong for the reasons set out above. But even if, contrary to fact, strict scrutiny applied, the UCS's Vaccination Policy would pass review as it promotes a compelling state interest and is narrowly tailored. In fact, while courts in this Circuit have generally applied rational basis review when evaluating vaccination requirements and COVID-19-related restrictions, several have reasoned that the challenged regulations would *also* survive strict scrutiny. *See Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 224–25 (holding COVID-19 restriction would survive even if strict scrutiny applied where alternative rules were not feasible due to reliance on voluntary compliance); *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 408–09 (holding vaccination requirement would survive strict scrutiny because it was the least restrictive measure available and noting that prior restrictions did not stem outbreak); *C.F.* v. *N.Y.C. Dep't of Health & Mental Hygiene*, 191 A.D.3d 52, 72–73, 78 (2d Dep't 2020) (finding city vaccination requirement would survive strict scrutiny because it was supported by a compelling state interest and was narrowly tailored).

The same is true here. The Vaccination Policy focuses on "[s]temming the spread of COVID–19," which the Supreme Court has held "is unquestionably a compelling interest." *Roman Cath. Diocese of Brooklyn*, 141 S. Ct. at 67. The Vaccination Policy is also narrowly tailored to serve that interest. The UCS implemented various measures since the start of the global public health pandemic but found that they were insufficient to achieve public safety. (*Supra* pp. 5–6; Barry Ex. 1.) Contrary to plaintiffs' assertions, indefinite remote working alternatives or relying solely on a mandatory testing program were impracticable given, among other things, the rapid spread of the variants, the length of time between testing and results, and the operational

needs of the court system. (Barry Decl. at ¶ 33.) The Vaccination Policy is the least restrictive measure the UCS could have taken to meet the compelling interest of reducing the spread of COVID-19 in the court system because it applies only to the UCS's judges and employees, rather than to all court users. *See, e.g.*, *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 408 (finding disease outbreak was "undoubtedly compelling" and vaccination mandate was "narrowly tailored because it was the least restrictive measure available to reach that objective in light of [d]efendants' previous unsuccessful efforts, the medical data and their limited resources"); *Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 224–25 (finding COVID-19 restriction was sufficiently narrowly tailored to serve compelling state interest of limiting the spread of COVID-19).

Plaintiffs' As-Applied Challenge Fails. To prevail on an as-applied challenge, plaintiffs need to show "the manner in which [the UCS's Vaccination Policy] was applied to [plaintiffs] in [the] particular circumstances violated the Constitution." *Almengor* v. *Schmidt*, 692 F. Supp. 2d 396, 397 (S.D.N.Y. 2010), *aff'd sub nom. Schain* v. *Schmidt*, 396 F. App'x 713 (2d. Cir. 2010). They do not and cannot do so here.

Plaintiffs primarily appear to contend that the mere fact that their religious exemption requests were denied while other religious exemption requests were granted itself raises a constitutional violation. (Pl. Br. at 8–9.) This does not follow. To begin with, courts all across the country have repeatedly upheld vaccination policies even where, unlike the UCS's Vaccination Policy, they offer *no* religious exemptions process at all. *See, e.g.*, *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 405 (upholding vaccine mandate without religious exemptions under the First Amendment because it was "not the Court's place to discard this emergency measure meant to protect the community"); *F.F.* v. *New York*, 194 A.D.3d 80, 88 (3d Dep't 2021) (holding repeal of religious exemptions did not violate the Free Exercise Clause because vaccine requirements were

"generally applicable to the public at large in order to achieve herd immunity"); *C.F.* v. *N.Y.C. Dep't of Health & Mental Hygiene*, 191 A.D.3d at 76–79 (upholding city vaccination requirement with only medical exemption and finding requirement was neutral and of general applicability even if it incidentally burdened particular religious practices).[5] It does not follow that merely because the UCS has provided a religious exemption procedure that it was not constitutionally required to have in the first place, the failure to grant *every* request itself becomes a constitutional violation. *See, e.g., Phillips*, 775 F.3d at 543 (upholding as "clearly constitutional" denial of religious exemption and enforcement of state vaccination requirement during "outbreak of a vaccine-preventable disease," noting policy's provision of religious exemption went "beyond what the Constitution requires"). Indeed, under plaintiffs' apparent worldview, *any* denial of a religious exemption request would give rise to a constitutional violation, thereby rendering any religious exemptions review process meaningless.

Plaintiffs' as-applied challenge to the Vaccination Policy also fails for lack of proof. Beyond inadmissible and conclusory lawyer assertions that the UCS "cherry pick[ed] which religious beliefs they choose to recognize," (Pl. Br. at 7), plaintiffs have presented *no evidence* even suggesting, much less showing, that the UCS's exemption review process is constitutionally impermissible or that the UCS rejected their exemption requests for some constitutionally impermissible reason. They have identified no facts as to how, why, or when the UCS's religious exemptions process treated each of the plaintiffs differently as compared to any other religious exemption applicant. Plaintiffs' mere conjecture that a denial was unlawful is plainly insufficient to warrant injunctive relief. *See, e.g., Sibley* v. *Watches*, 501 F. Supp. 3d 210, 225 (W.D.N.Y.

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[5] *See also, e.g., Nikolao* v. *Lyon*, 875 F.3d 310, 316 (6th Cir. 2017); *Mills*, 2021 WL 4783626, at *12, *15, *18; *Harris*, 2021 WL 3848012, at *7.

2020) (dismissing plaintiff's as-applied First Amendment challenge and denying preliminary injunction motion absent evidence the denial was based on "ideas and viewpoints").

The fact that the UCS has *granted* hundreds of religious exemptions requests, (Barry Decl. at ¶¶ 11), shows that the Vaccination Policy is not impeding employees' free exercise of religion. Where applicants completed the exemptions application process and provided requested supplemental information, *the UCS repeatedly has granted religious exemption requests based on precisely the same fetal cell lines and/or sanctity of the body objections that plaintiffs have invoked here*. (Barry Decl. at ¶ 32). Where, as here, an employer follows an appropriate process to review religious exemptions, courts will not second-guess or evaluate the accuracy of the individual exemption determinations. *See, e.g.*, *Turner* v. *Liverpool Cent. Sch.*, 186 F. Supp. 2d 187, 189, 192 (N.D.N.Y. 2002) (upholding rejection of a religious exemption request from vaccination requirement where a school district validly evaluated whether objection to vaccination was based on "genuine and sincere religious belief"); *Nikolao*, 875 F.3d at 316 (denying Free Exercise challenge where vaccination mandate and religious exemptions process were constitutional without reviewing individual determinations); *Burns* v. *Warwick Valley Cent. Sch. Dist.*, 166 F. Supp. 2d 881, 890–91 (S.D.N.Y. 2001) (upholding denial of religious exemption from leave policy after determining that review process was constitutionally valid).

What plaintiffs really seem to be saying is that the UCS should be prohibited from asking them questions about their religious beliefs as part of the exemption application review process because merely asking the question violates their First Amendment rights. That is not the law, nor could it be. Under prevailing Supreme Court and Second Circuit case law, the UCS is legally entitled to probe whether an employee's beliefs are sincerely held and religiously based. *See, e.g.*, *United States* v. *Seeger*, 380 U.S. 163, 185 (1965) (holding that in assessing draft

exemptions on religious grounds, the reviewing body can "decide whether the beliefs professed by [an applicant] are sincerely held and whether they are, in his own scheme of things, religious"); *Jackson* v. *Mann*, 196 F.3d 316, 320–21 (2d Cir. 1999) (finding district court erred because state officials and court could question whether beliefs are "sincerely held"); *Philbrook* v. *Ansonia Bd. of Educ.*, 757 F.2d 476, 481 (2d Cir. 1985) ("[A] sincerity analysis is necessary in order to differentiat[e] between those beliefs that are held as a matter of conscience and those that are animated by [other] motives"); *Turner*, 186 F. Supp. 2d at 189, 193 (upholding as constitutional a religious exemption denial for a vaccination requirement where the administrator determined plaintiff's beliefs "were sincere" but "founded upon a personal philosophy" instead of "religion").

In any case, plaintiffs have no basis to challenge the UCS's religious exemption process or determination when they deliberately refused to even participate in the process mandated by the policy. Four of the five plaintiffs refused to provide the supplemental information the UCS requested to process their exemption applications. (Barry Decl. at ¶ 27.) Plaintiffs' refusal to submit the requested information during the exemption review process in no way renders the Vaccination Policy unconstitutional as applied to plaintiffs. *See Friedman* v. *Clarkstown Cent. Sch. Dist.*, 75 F. App'x 815, 819–20 (2d Cir. 2003) (finding denial of religious exemption from vaccination mandate did not violate Free Exercise rights where plaintiff did not submit requested documentation or forthrightly answer inquiries about the basis for her objections); *Troogstad*, 2021 WL 5505542, at *11 (denying TRO because denials of religious exemptions for failure to comply with the employer's religious exemption process "do not raise free exercise concerns").

C. The Balance of the Equities and the Public Interest Both Strongly Disfavor Injunctive Relief Here.

The Second Circuit and numerous other courts in this Circuit and elsewhere have held that the public interest weighs decisively in favor of COVID-19 vaccination mandates and

against injunctions barring their implementation. *See We the Patriots I*, 17 F.4th at 296 (holding that enjoining COVID-19 vaccination mandate was not in the public interest); *Clementine Co. LLC* v. *de Blasio*, 2021 WL 5756398, at *16 (S.D.N.Y. Dec. 3, 2021) (denying preliminary injunction where COVID-19 vaccination requirement was "clearly the interest of the public health"); *Maniscalco* v. *N.Y.C. Dep't of Educ.*, 2021 WL 4344267, at *4 (E.D.N.Y. Sept. 23, 2021) (finding public interest weighed against enjoining a COVID-19 vaccination mandate); *Garcia* v. *N.Y.C. Dep't of Health & Mental Hygiene*, 106 N.E.3d 1187, 1196 (N.Y. 2018) (reversing grant of injunction because state agency's vaccination requirements "do not relate merely to a personal choice about an individual's own health but, rather, seek to ensure increased public safety and health for the citizenry by reducing the prevalence and spread of a contagious infectious disease").[6]

The Second Circuit and other courts have similarly held that the balance of the equities favors COVID-19 vaccination policies. *See, e.g.*, *We the Patriots I*, 17 F.4th at 295 ("Although Plaintiffs undoubtedly face a difficult choice if their employers deny religious accommodations—whether to be vaccinated despite their religious beliefs or whether to risk termination of their jobs—such hardships are outweighed by the State's interest in maintaining the safety within [employment] facilities during the pandemic."); *Broecker* v. *N.Y.C. Dep't of Educ.*, 2021 WL 5514656, at *9–10 (E.D.N.Y. Nov. 24, 2021) (denying injunction of COVID-19 vaccine mandate based on "the equities at stake" and to "safeguard[] the public health and safety").[7]

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[6] *See also, e.g.*, *Troogstad*, 2021 WL 5505542, at *13; *Church*, 2021 WL 5179215, at *18; *Bauer*, 2021 WL 4900922, at *19; *Williams*, 2021 WL 4894264, at *10–11; *Johnson*, 2021 WL 4846060, at *26; *Mills*, 2021 WL 4783626, at *17; *Harsman* v. *Cincinnati Children's Hosp. Med. Ctr.*, 2021 WL 4504245, at *4 (S.D. Ohio Sept. 30, 2021); *Beckerich* v. *St. Elizabeth Med. Ctr.*, 2021 WL 4398027, at *7 (E.D. Ky. Sept. 24, 2021); *Harris*, 2021 WL 3848012, at *7–8; *Am.'s Frontline Drs.* v. *Wilcox*, 2021 WL 4546923, at *8 (C.D. Cal. July 30, 2021); *Tigges* v. *Northam*, 473 F. Supp. 3d 559, 574 (E.D. Va. July 21, 2021).

[7] *See also Troogstad*, 2021 WL 5505542, at *13; *Church*, 2021 WL 5179215, at *18; *Bauer*, 2021 WL 4900922, at *19; *Williams*, 2021 WL 4894264, at *10–11; *Johnson*, 2021 WL 4846060, at *26; *Mills*, 2021 WL 4783626, at *17; *Harris*, 2021 WL 3848012, at *8.

The reasoning of these decisions, arising under materially indistinguishable circumstances, applies equally in this case. The UCS's Vaccination Policy was conceived of and implemented to ensure a safe and accessible court system for the public. (Barry Ex. 1 at ¶ 42.) That is a compelling public interest under the precedents set out above. Barring the UCS from implementing the policy in favor of a handful of plaintiffs—all but one of whom refused to even participate in the process—would impose incalculable harm on the UCS and the public. The Vaccination Policy, which has been uniformly in place for months and complied with by a vast majority of the UCS employees, is the most critical element of the UCS's strategy to stem the spread of COVID-19 in the court system. (Barry Ex. 1 at ¶¶ 34–35.) The Vaccination Policy is enabling the UCS to return to and maintain full in-person operations, which is necessary to provide the public with safe and free access to the courts. (*Id*. at ¶ 42.) Court operations are also harmed when employees who serve important functions, including court reporters like plaintiffs, are unable to attend proceedings in the courtrooms to perform their duties. (Barry Decl. at ¶ 33.) An injunction precluding any inquiry into stated religious objections would be subject to extreme abuse and would undermine the integrity of the UCS's religious exemptions process.

An injunction also would disrupt the UCS's approach to tackling the global health pandemic by increasing the risk of transmission in the court system, exposing vulnerable populations to a potentially deadly disease, and hindering the UCS's ability to remain operational. This harm flows directly to the public; without a safe and operational court system, the public's fundamental right to access the courts is impeded. As such, plaintiffs—a literal handful of UCS employees—cannot "clearly show[]" that the balance of equities favor such a sweeping and harmful result. *Litwin* v. *OceanFreight, Inc.*, 865 F. Supp. 2d 385, 401 (S.D.N.Y. 2011).

CONCLUSION

The Court should deny plaintiffs' motion.

Dated: February 4, 2022

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of an Investigation Pursuant to Section 44, subdivision 3, of the Judiciary Law in Relation to

FRANK M. MORA,

A Judge of the Poughkeepsie City Court, Dutchess County

- X

Commission's New York City Office
61 Broadway, 12th Floor
New York, New York

February 27, 2024
10:14 am

B e f o r e:

RONALD GOLDSTOCK, ESQ.
Referee

P r e s e n t:

MELISSA DIPALO, ESQ.
Principal Attorney

DENISE BUCKLEY, ESQ.
Senior Litigation Counsel

HON. FRANK M. MORA
Respondent

A l s o P r e s e n t:

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Senior Clerk and FTR Operator

ANDY FENWICK
Investigator

MR. MAISONET: On the record.

MR. GOLDSTOCK: Good morning, everyone. It is now 10:14 a.m. My name is Ronald Goldstock, and I have been designated by the Commission as Referee to hear the testimony of Judge Frank M. Mora. I note that Judge Mora is represented today by Counsel.

Will Counsel and Commission Counsel please give your appearances for the record? And we'll just go around this way.

MR. LAVEGLIA: Sure. Chad LaVeglia, L-A-V-E-G-L-I-A, Law Offices of Chad J. LaVeglia, 350 Motor Parkway, Suite 308, Hauppauge, New York 11788. Good morning, everyone.

MS. DIPALO: Melissa DiPalo, Principal Attorney for the Commission. Good morning.

MS. BUCKLEY: Denise Buckley, Senior Litigation Counsel for the Commission. Good morning.

MR. FENWICK: Andy Fenwick, Investigator for the Commission.

MR. GOLDSTOCK: Okay. And --

MR. MAISONET: Miguel Maisonet, Senior Clerk and FTR Operator.

MR. GOLDSTOCK: These proceedings are being digitally recorded. The recording will be transcribed. In order to facilitate a clear and accurate record, please

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speak slowly, clearly, and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until the question is completed, and answer each question with words, not a nod or gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording.

Please turn off all cell phones and other electronic equipment. Everybody has done that.

During the course of this proceeding, the Judge may consult with his Attorney. I will entertain requests for private conferences. Counsel may make objections to questions posed to the Judge. However, in making those objections, Counsel should take into account that this is not an -- that this is an investigation, not a trial, and the rules of evidence do not apply.

Counsel will have the opportunity to question the Judge at the conclusion of questioning by the Commission's Attorney. This is subject to further questioning by the Attorney for the Commission.

The Judge and the Judge's Attorney may make initial and closing oral statements today and within seven days of receipt of the transcript may submit a statement in writing. Any other written materials may also be submitted at the appearance or within seven days of receipt of the

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transcript.

Judge, would you please raise your right hand?

Do you swear or affirm under penalties of perjury that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

JUDGE MORA: I do not swear oaths, but yes, I affirm.

MR. GOLDSTOCK: Well, you affirm?

JUDGE MORA: Yes, I do affirm.

MR. GOLDSTOCK: Okay. We can begin.

MS. DIPALO: Okay. We are not going to make an opening statement at this point.

Mr. LaVeglia, I don't know if you'd like to.

MR. LAVEGLIA: Yes, I would.

MR. GOLDSTOCK: Okay.

MR. LAVEGLIA: All right. Make sure that this is working.

MR. MAISONET: Yes, it is.

MR. LAVEGLIA: Okay. Thank you.

All right. So good morning, everyone. Starting with the administrative complaint ending in 1176 for not complying with Judge Marks' administrative order to be vaccinated. You know, off the bench, Judge Mora is an extremely devout Catholic and a religious man. He has a sincerely held religious belief that he should not vaccinate

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or take any measures for a healthy body. And he derives these beliefs from the Catechisms of the Catholic Church, which says that he must follow his conscience, and it gives him the gift of reason, which then leads to religious beliefs and faith.

And so in his application for a religious accommodation, he cited, from the Bible, Matthew 12 [sic], that people who are in good health do not need a doctor, sick people do, and people who are healthy do not need a doctor. He hasn't been vaccinated since he was 18 years old. He has three children. None of them are vaccinated. He goes to church every week. He is one of the most religious people out there. Those are his religious beliefs, and they are indeed sincerely held. It is just not an option for him to take a vaccine when he is healthy. That is not to exclude other medications when he is not healthy. So his beliefs are nuanced.

He has submitted letters from his doctor saying that he has not been vaccinated since he's 18. He submitted proof showing that his children had to leave school in 2019 when the religious exemption was taken out, and they were homeschooled. These are his beliefs. And in his own scheme of things, they are religious beliefs.

So when he was not getting vaccinated, it wasn't because he was trying to defy the orders of Chief

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Administrative Judge Marks. It's because he had no choice. He also did not return in person to court for almost 13 and a half months. And these measures were temporary, but his religious beliefs, his faith in God, that's permanent. That's not something he can just dispense with no matter what.

Going on to not wearing the mask in the courthouse for administrative complaint ending 0723. Judge Mora was given authorization by Administrative Judge Minihan to wear a face shield.

JUDGE MORA: Davidson.

MR. LAVEGLIA: I'm sorry, Davidson -- to wear a face shield, not a mask. What was happening is that Judge Mora has something called object phobia. When he wore a mask, he got anxiety. He felt hot. His head got -- he got dizzy. He suffered headaches. But he didn't know what the cause of those things were. Still, he went out on the bench with the mask every day, and he pretty much suffered in silence.

He went to his chiropractor and complained about neck pain and other symptoms related to the mask, and then and only then did he really realize that this might be something I need to speak with a licensed social worker about. And he did, and he spoke with K[redacted] B[redacted]. And we submitted a letter to the Commission from Ms. B[redacted] verifying that Judge Mora saw her and that he suffers

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from object phobia.

So in this catch-22, what he did was he wore a face shield, and he maintained strict social distancing. He did not go within six feet of people and even went out of his way to go beyond six feet of other people. The few times he did not wear his face shield, he admits, and Judge Mora apologizes for that. But under the heat and duress of extreme anxiety and headaches -- and this is on top of full calendar every day. He's one of two part-time -- I mean full-time Judges in Poughkeepsie City Court. He still went out on the bench and did his job. And other than not wearing the face shield those few times, he complied with the administrative order.

And on the period from January 5th to January 18, 2022, he was authorized to be in court. He presided over cases virtually in the morning, and then he would go to the court in the afternoon to get files that he had to bring home because he had to do work. He wasn't there defying any orders. He was just trying to do his job to the best of his ability. And when he was there, he anticipated that no one else was in his office. And if he did run into people, he maintained social distancing. He respected other people's boundaries. He respected the administrative order, and he respected the public health emergency that we found ourselves in.

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Moving on to administrative complaint ending 1120. This is not masking in the Seeta Eye doctor's office. This encounter in the Seeta Eye doctor really shows that Judge Mora conducted himself, in full, squarely within the rules of judicial conduct. He handled himself like a gentleman, for lack of a better term.

He went in there -- there were two times he went in there. The first time he went in there was January 29, 2021, and he was with his oldest son. The receptionist [sic] said that she had a problem with the -- you know, that he had a face mask. So he went outside. Judge Mora excused himself. He went outside. He didn't argue with her. He didn't tell her what the law was. He didn't say, "Hey, I'm a Judge." He didn't do any of that. Instead, like a gentleman, he went outside, and his son was seen by the doctor. Now, he was able to do this because his son was a few weeks away from being [redacted], so he's almost an adult, and Judge Mora felt comfortable leaving his son in the office without him.

After the appointment was over, the eye doctor called Judge Mora, told him about the visit, and explained that next time he goes in there, he'd be able to see him in the exam room. So Judge Mora was under the impression that next time he went to see the eye doctor, he'd be fine.

MR. GOLDSTOCK: When you say "see him",

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do you mean Judge Mora or his son?

MR. LAVEGLIA: Both. Meaning that Judge Mora would be allowed to go into the exam room --

MR. GOLDSTOCK: Okay.

MR. LAVEGLIA: -- with his son. With his --

MR. GOLDSTOCK: You said, "He would" --

MR. LAVEGLIA: -- other son.

MR. GOLDSTOCK: -- "be able to see him in the exam room." Who were you referring to --

MR. LAVEGLIA: I mean that --

MR. GOLDSTOCK: -- when you said "him"?

MR. LAVEGLIA: -- he'd be able to see Judge Mora's son, but Judge Mora would be able to come into the exam room.

MR. GOLDSTOCK: Okay.

MR. LAVEGLIA: Meaning the doctor didn't say, "You can't come into the building unless you do this" or -- there was an agreement reached -- or an understanding that Judge Mora would be allowed to come into the premises.

So several months -- or almost a year later, on December 28, 2022, he went into the Seeta Eye doctor, and the receptionist [sic] demanded that he provide medical documentation. And he was wearing a face mask, and he was about 10 to 15 feet away from her. Now --

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JUDGE MORA: Shield.

MR. LAVEGLIA: Yes, a shield.

Now first, just as a matter of law, the regulation that was being enforced only requires masking for people who can medically tolerate it. This is 10 NYCRR 2.60. Judge Mora told the receptionist [sic] he cannot medically tolerate a mask, and he was wearing a face shield in lieu of the mask. She demanded that he give medical documentation, also not within the confines of that regulation. She was not even authorized to ask him that.

Still, it would be a fair and reasonable response if he went into statutory interpretation and tried to explain the law on what she was and was not allowed to do, but he was calm. And you could hear on the 911 calls that she's loud, agitated. Judge Mora did not respond in kind. He was respectful the entire time, and he was trying to explain to her that he could not medically tolerate the mask and that's why he had a face shield.

She thought he was spreading his germs on her. He was too far away to make that even a possibility. This was a personal vendetta with a disgruntled employee, and Judge Mora handled himself well. This time, he was with his minor son, though, so he could not just walk outside.

And finally, the police were called, but they couldn't do anything about it. Judge Mora did nothing

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other than observe the law, and that's that.

Also, Judge Mora has provided proof from an employee that used to work there to corroborate everything he said. And this employee had absolutely no incentive to help out Judge Mora. They don't know each other. They've never gone out together. This employee didn't know Judge Mora is a Judge. He was just doing the right thing. This receptionist [sic] was very rude to Judge Mora, and whatever her personal feelings were, she took it out on him. She didn't want him wearing a face mask. That was her personal problem, nothing to do with the law.

Next, administrative complaint ending in 0369. This is for alleged retaliation against Ms. Koch, who was the receptionist [sic] at Seeta Eye Care [sic]. Judge Mora brought a defamation suit against Ms. Koch based on what he believed to be a viable claim. He retained an Attorney named Michael Sussman, who's been practicing law for 45 years. 45 years. He's a highly skilled and experienced Attorney. And if he came in here, he would still tell you that he believes that the claim was viable. To this day, Mr. Sussman still believes it was a viable claim. Judge Mora has no experience with defamation claims. He relied exclusively on his Attorney's advice. And then he did everything that was asked of him afterwards once he learned of the Anti-SLAPP Laws and the possibility that it

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was not a viable claim.

And lastly, administrative complaint ending 606 regarding 730 exams. Judge Mora does not have a policy of ordering 730 exams based -- does not have a policy of not ordering 730 exams. He examines every defendant on a case-by-case basis, just as he's supposed to do. We have a transcript from one such proceeding that shows exactly what Judge Mora did, and it shows that he was in full compliance with CPL 730.30. Every defendant that comes before him, he goes through a colloquy to determine if that defendant is able to understand the proceedings, knows who the Judge is, knows who the Attorney is, and is able to understand the nature of the charges and therefore fit.

However, he was told by the Administrative Judge there not to enter into a colloquy with defendants, and that put him in a bind because is he to follow the law or to follow what the Administrative Judge says. He has to follow both. And so for a period of time, he was following what the Administrative Judge said. But from January --

I'm sorry? Oh, (unintelligible).

-- from January 1, 2019, through November 3, 2023, Judge Mora ordered 30 730 examinations.

The Commission has been provided with a plethora of HIPAA authorizations, medical records, letters from treating Physicians, witnesses, academic institutions,

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his Priest, and so much more. Everything that Judge Mora has said has been corroborated. He has complied with the investigation so far and is here to continue to do so. Thank you.

MR. GOLDSTOCK: Okay.

JUDGE FRANK M. MORA

having been duly sworn, was examined and testified as follows:

EXAMINATION BY

MS. DIPALO:

Q. Good morning, Judge.

A. Good morning.

Q. I'm just going to ask you some preliminary questions. Can you state and spell your name for the record?

A. Spell the whole name?

Q. Yes. Or just your last name.

A. Frank M, as in Michael, Mora, M-O-R-A.

Q. And your date of birth?

A. [redacted].

Q. And what is your home address?

A. [redacted].

Q. Judge, I'm going to show you what has been marked Commission -- or pre-marked Commission Exhibit 1, which is a letter from the Commission to you dated October 13, 2023, scheduling your appearance

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to give testimony.

(Commission Exhibit 1 was marked for identification)

MS. DIPALO: And Andy is handing a copy to Judge Mora and Mr. LaVeglia.

MR. LAVEGLIA: Oh, thank you.

MS. DIPALO: And Mr. Goldstock already has a copy.

BY MS. DIPALO:

Q. Judge, are you here today pursuant to that letter?

A. Yes.

Q. And you were originally scheduled to appear on November 17, 2023?

A. Yes.

Q. And the date of your appearance has been adjourned to today?

A. Yes.

Q. Okay. Can you briefly walk us through your educational background, starting with college?

A. I went to Marist College for four years, have a business administration degree with a minor in accounting and a concentration in computer information system. After that, I took off a year between that and law school. And then I applied all across, you know, the country, basically. I got into several and ended up going to the University of Memphis Cecil C. Humphreys School of Law, and that was for three years.

Q. And what year did you graduate from Marist College?

A. '92.

Q. And in what year did you begin at law school?

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A. I believe '94.
Q. And what --
A. I took off a year.
Q. And what year did you graduate?
A. I believe '97. I --
Q. Okay.
A. -- don't --
Q. That's okay.
A. If I'd known I was going to be asked this, I would have --
Q. Sure.
A. -- you know, went back, because it's been a long time.
Q. And you were at Marist for two years?
A. No, no, four. It's a --
Q. Okay.
A. -- four-year.
Q. And were you admitted to the bar after --
A. Yes.
Q. -- law school? Which bars are you admitted to?
A. Southern District of New York. The New York State Bar. I don't know if I'm admitted to any others.
Q. And do you recall what years you were admitted?
A. '97, I believe.
Q. Okay.
A. I don't know the other one.
Q. And after graduating law school, what did you do?

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A. I worked with my mentor Sam Brooke, was an Attorney with him, and then him and a friend of mine from, actually, grade school, we started our own firm, Brooke Mora & Gemmati.
Q. Can you spell Brooke?
A. B-R-O-O-K-E.
Q. And Gemmati?
A. G-E-M-M-A-T-I.
Q. And do you recall what year you started --
A. No.
Q. -- the firm? And was it a -- it was a private practice?
A. Yes.
Q. And what type of law did you handle?
A. I personally handled real estate, landlord-tenant, so evictions, criminal law, general -- but that was my focus because my partner, Sam, and Joe, they actually did family law and other things like that, which was not my forte. So I actually did family law also, but I mostly covered for them or did whatever when I went to Family Court.
Q. And where was your law practice located?
A. You mean in the city or the physical address?
Q. Was it in Poughkeepsie?
A. Yes. Yeah, City of Poughkeepsie.
Q. And when were you first --
A. Actually --
Q. Sure.
A. Well, it started in the City of Poughkeepsie. Then we moved to the Town

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of Poughkeepsie, but yes, Poughkeepsie area.

Q. Okay. And when were you first appointed to the bench?

A. January 1, 2011.

Q. And how long is your term of office?

A. Each term is ten years. I was reappointed by Mayor Rolison -- well, so it would have been 20 -- I think, for 2021, yeah, I believe.

Q. And you were appointed as a Poughkeepsie City Court Judge?

A. Yes.

Q. I neglected to ask that. And what type of cases do you handle in City Court?

A. We handle criminal cases. We handle landlord-tenant, so evictions, which are summary proceedings. We handle parking tickets, traffic, civil matters, small claims, and commercial claims.

Q. And with the criminal cases, do you handle misdemeanor cases?

A. Yes. Well, we handle felonies also in the beginning.

Q. So you can arraign a felony?

A. Oh, yes. We arraign a felony. If it's scheduled for a preliminary hearing and it goes forward, which most of them don't, we would do the preliminary hearing, and then depending on what happens after that, it would either -- well, depends on what happens, but if there's probable cause to believe a felony has been committed, then it gets sent off to County Court.

Q. And you have a co-Judge?

A. Yes.

Q. Who is your co-Judge?

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A. Scott Volkman. V --
Q. And you're -- oh, sorry.
A. Oh, I thought --
Q. Go ahead.
A. -- you wanted --
Q. No, please go ahead.
A. V-O-L-K-M-A-N.
Q. Okay. And you and Judge Volkman -- Volkman --
A. Volk -- yes.
Q. -- Volkman are both full-time Judges?
A. Yes.
Q. Okay. And are you married, Judge?
A. Yes.
Q. How long have you been married?
A. Oh, 20 -- is it 3 now? It might be 23 years now, I believe. I'd have to count. Don't let her hear this.
Q. And do you have children?
A. Yes.
Q. How many children do you have?
A. Three.
Q. And what are their ages?
A. [redacted].
Q. I'm going to turn your attention now to the incident at Seeta Eye Center.

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Did you visit Seeta for an appointment on December 28, 2021?

A. Yes.

Q. Okay. And what was the purpose of that appointment?

A. For my son [redacted] He was [redacted] at the time. He was complaining for a while that he couldn't see good even with his glasses, so we made an appointment to go in.

Q. Was it for an eye exam?

A. Yes, and for whatever corrective lenses he would need.

Q. And would you say the appointment was an urgent appointment?

A. Yes. We wanted to get in as soon as we could because he wasn't able to see that good.

Q. But it wasn't an emergency?

A. Oh, no.

Q. Okay.

A. No, no, no, not an emergency.

Q. And who made the appointment for [redacted]

A. I believe it was me. My wife normally handles all that -- and she's a very private person, so I don't even want to say -- but I was handling that at the time.

Q. Okay.

A. She has a [redacted] that had her [redacted] and I'd rather not say what it is and all that if you don't mind.

Q. No, I understand. Thank you, Judge.

And how old was [redacted] at the time?

A. [redacted].

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Q. Okay. And did anybody else come with you besides [redacted] to the appointment?
A. No.
Q. Now, did there come a time that you became aware that masks were required at Seeta?
A. Well, yes. I mean, masks were required everywhere.
Q. At Seeta in particular?
A. Sure.
Q. When did you learn that masks were required?
A. I have no idea. I just know masks were required everywhere you went unless you couldn't medically tolerate them or unless you were under two years old.
Q. Okay. And had you gone to Seeta before December 28th and been told that you had to wear a face mask?
A. You mean a shield? A mask. Oh, I'm --
Q. Yeah, a face covering.
A. -- sorry, yes. Yes.
Q. Okay. And when was that?
A. That was January 29th of that same year. So is that 20 --
Q. 2021?
A. Thank you. Yes.
Q. And what happened when you arrived at Seeta in January 2021?
A. In January --
Q. Yes.
A. -- 2021? So with my oldest son --

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Q. Yes.

A. -- [redacted] I went in to check in, and the receptionist said, "You have to wear a mask." And I politely said, "I don't medically tolerate a mask." She said, "All right. Well, if you could step aside, Stacey" -- "Ms. Koch" -- I don't know how she said it -- "will come out and talk to you."

Q. Okay. And did Stacey Koch come out and talk to you?

A. Yes.

Q. Who is Stacey Koch?

A. She's the Manager of Seeta.

Q. And did you know Stacey Koch before January of 2021?

A. Yeah, she's been with Dr. Modi -- I don't know how many years -- 20-some odd years, I believe. And she was with him when I had [redacted] 20-something years before that.

Q. And when Ms. Koch came out, what did she tell you?

A. She said I had to wear a mask.

Q. And what was your response?

A. I told her I don't medically tolerate a mask.

Q. Did you come up with some kind of accommodation at that point?

A. At that --

Q. We're in January of 2021.

A. Yes. After we talked a little, we did. Do you want to know the conversation?

Q. Yes.

A. Oh. So she said, "Well, everyone has to wear a mask." I said, "But I don't medically tolerate it, so." My son [redacted] was wearing a mask

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because he can. He doesn't have a problem wearing one. So I said, "Well, what do you do for people that don't medically tolerate it?" She goes, "We've never had this." I said, "You've never had one person?" She said, "Well, we had one person." I said, "What did you do for that patient?" "Well, she decided to leave the practice." And I'm like, "Why would you decide to leave the practice?"

So I said, "Well, we're not deciding to leave the practice. We like this practice. We like the doctors here. It's very accommodating. So is there something we could do now for [redacted] I said, "He's almost [redacted]." I said, "Can I wait outside?" I think I said it. She may have. I'm not sure. But we came to the conclusion, yes.

I said, "Okay, well, he's almost [redacted], so that's fine. He can go in himself." So I said, "I'll wait in my truck." But I said to her, "But when I come back for either my minor kids or myself, can you please have something in place for when I come back?"

Q. And what did Ms. Koch say?

A. She didn't really say anything, I don't believe. I'm not sure. I don't remember.

Q. Okay. So you went to your -- did you go to your car?

A. Oh, yes, I went to my truck.

Q. How long did you wait there?

A. I don't know. 15, 20 minutes.

Q. Okay.

A. Half an hour. I'm not sure. It was for whatever it takes for an exam.

Q. And at some point, did you return back into Seeta?

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A. And that's the craziest thing. My son called me from the exam room because the doctor wanted to just go over -- because like they normally do, they would tell you what's going on. So he puts him on the phone. "Hey, Doc, how's it going? Good?" He says, "Everything's good with his eyes" et cetera, blah, blah, blah. I said, "Yeah, I thought it would be best to wait outside because I can't wear a mask." And he said, "No problem. You know, we'll see you next time in the exam room." I don't know. That was just what he said. I said, "Okay. That sounds good." So he goes, "Here's [redacted] So he put him back on, and I said, "Okay, [redacted] Go check out and come on out."

So I'm waiting. A couple minutes later, he calls me. I said, "Yes" --

MR. GOLDSTOCK: Who --

THE WITNESS: Oh, I'm sorry.

MR. GOLDSTOCK: Who is "he"?

THE WITNESS: My son. Thank you.

A. My son [redacted] called me. He said, "Dad, you have to come in and pay." I said, "Okay. [redacted] just tell them I'm wearing my face shield. Do they want me to come in?" And I hear him. He says, "Yes."

And I said to myself -- this is exactly what I -- I remember it like it was yesterday. I said, "Oh, good, they're going to work with me here. They're accommodating." Because where you pay is the same exact room as where the reception -- it's just to the left, but you're in the same exact room where reception is and all the people sit waiting to go in for their exam.

So I went in, had my face shield on, went up to the counter. I paid the

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$25 -- I think it was $25 -- $25 copay. They gave me the receipt, and we left and thought nothing of it.

BY MS. DIPALO:

Q. Now, who was the doctor you spoke to on --

A. Dr. G[redacted].

Q. Okay. And he's the one who called you after [redacted] -- I'm sorry -- after [redacted] eye exam?

A. [redacted] called me because he told [redacted] you know, "Can you call your father?"

Q. Yes.

A. And then he spoke to me.

Q. Okay. And he's the one who said, "I'll see you next time in the exam room"?

A. Yeah, to those effect -- or "in the office". Something to that effect. It might not have been the exact -- "exam room", "the office" -- I'm not sure what the exact phraseology he used.

Q. What did you take that to mean?

A. "No problem. You'll be able to come in, and there won't be a problem." Or maybe he thought the masks were going to be ended because there was talk of that. I have no idea what exactly he meant, but --

Q. Now, during that visit on January 29, 2021, were you permitted to enter an exam room with your face shield?

A. I don't --

Q. Were you allowed to enter an exam room --

A. You mean there --

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Q. -- wearing your face shield?
A. -- or anywhere else?
Q. There, in Seeta.
A. Well, I left.
Q. Okay. But were you permitted? Did anybody give you permission to enter the exam room wearing a face shield?
A. No, I didn't get that far because I went outside and waited for my son.
Q. Okay. And were you given permission on that date to sit in the waiting room wearing a face shield?
A. No. I decided to leave because my son was old enough.
Q. And how long were you up at reception paying the copay?
A. Oh, I don't know. I don't know if there was somebody ahead of us and we were in line or I just went up. A few minutes, you know, when we got to the desk.
Q. And why were you wearing a face shield in January of 2021?
A. Because in general, there was a mask requirement, and I figured since I don't medically tolerate a mask, even though I technically don't have to wear anything, I would wear a face shield because I don't want people to feel bad, you know, that I don't have anything on, so I figured I would do that. And face shields, some of the studies show that they work even better than a mask because a mask or a face shield, they stop particles, spittle or something like that, so the face shield covers my whole face, nose, mouth, everything.
Q. And what were the issues that led you to wear a face shield in lieu of a mask?

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A. Anxiety.
Q. And how did that -- how did the anxiety manifest itself? What were your symptoms?
A. Increased heart rate, accelerated breathing, sweating, sometimes dizziness. An overwhelming sense of fear, I guess, is the best way to describe it.
Q. And when did these symptoms first arise?
A. So I think it was March of 2020. I was wearing a mask everywhere I went because, you know -- and I think it was even before the mandate from Governor -- I think it was Cuomo at the time -- because, you know, I want everybody -- I want myself to be safe. I want everybody to be safe, so I would wear it.

And my wife actually even bought a very nice black one that has a gold cross on it. And actually, she didn't buy it technically for me, but I took it because I liked it, and I'm proud to be a Catholic, and I was wearing that everywhere I went.

But then at some point mid-April, I think it was, I started getting these feelings, and I had no idea where they were coming from, did not associate anywhere with the mask. Not at all. Wouldn't even -- crossed my mind. [redacted]

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[redacted]. [redacted]

[redacted]. [redacted]

[redacted]

[redacted]

Q. You're good. But in January of 2021, you had not been diagnosed with --

A. Oh, no.

Q. -- anxiety?

A. No, no, no. [redacted]

[redacted]

[redacted]

[redacted] So no, I was not diagnosed nor treated back then. And no, I was not diagnosed at that time.

Q. Did you recognize that you were suffering from anxiety?

A. The signs, I have -- and yeah, I mean -- yes, I guess you could say that.

Q. At that time you recognize --

A. Right, but I --

Q. -- that your symptoms --

A. Yes, but I had no idea where it was coming from.

Q. And did you have the same issues with wearing a mask when you went to Seeta with [redacted] in December of 2021?

A. A mask or a shield?

Q. Wearing a mask.

A. Oh, yes.

Q. Could you wear a mask?

A. No. No, no. If I could -- if I could have wore a mask, I would have done

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that. I don't want to be here. I don't want to be here talking to you. Please don't take any offense over that. I do not try to cause problems. I try to comply with everything that is mandated, especially for safety. If I was trying to do that, I wouldn't even have my kid wear it, but my kids wore it because they could wear it. So no, I could not wear a mask. I'm sorry. That was a longer answer than just no. I apologize.

Q. And were you wearing a face shield --

A. Yes.

Q. -- when you went to Seeta?

A. I was. Even though that was difficult, too, I did, yes.

Q. And now I know you mentioned your wife [redacted]. Did you consider sending [redacted] to that appointment at Seeta in December of 2021 with another family member?

A. I didn't really have anybody that could do it. If I could go back, I probably would have.

Q. Now, did you consider maybe switching to another optician who didn't require face masks?

A. No, I didn't think of that because anywhere I went -- because masks were required everywhere, but people accommodated me. Most places, once I said I had a medical condition, they didn't even ask me to put the shield on. Most places. Some of them had a problem, and I didn't want -- I wasn't there to cause problems. I was just trying to live my life, take care of my family and my kids, so I would go out to the car and get the shield in those instances and put it on, and it was fine.

Q. And what types of places accommodated you and allowed you to wear a

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shield? Just some examples.

A. Restaurants, movies -- basically, any place -- libraries, other doctors' offices. I don't know if I was going to the hospital at that time because my mother had some issues. Everywhere I went, if I didn't have nothing on, the shield was allowed.

Q. And were there any places other than Seeta that did not accommodate you and let you wear the face shield?

A. No.

Q. Seeta was the only place?

A. Only place.

Q. Now, you had testified earlier that after you went to the car -- right -- waited in the car when you were with your son [redacted] in January of 2021, you thought Stacey Koch would accommodate you in some way going forward?

A. Yes.

Q. Prior to the appointment with [redacted] in December of 2021, did you call Seeta to see if masks were still required?

A. Yes, masks -- well, no, I don't think I called them to say it. Masks were required. They were still required everywhere.

Q. And did you call them to see if maybe they would accommodate you by allowing you to wear the face shield?

A. Specifically ask that? No, I did not.

MR. GOLDSTOCK: Excuse me, can I?

One thing I don't understand. When you went in the first time, were you wearing a face shield?

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THE WITNESS: You mean in January with [redacted]

MR. GOLDSTOCK: Yes.

THE WITNESS: Yes.

MR. GOLDSTOCK: So you went in initially. He was wearing a mask, and you were wearing a face shield?

THE WITNESS: Correct.

MR. GOLDSTOCK: Okay.

THE WITNESS: All right.

BY MS. DIPALO:

Q. So what time did you arrive at Seeta with [redacted] on December 28, 2021, roughly?

A. I think the -- I think the appointment was at three. It would be just a couple minutes before.

Q. Okay. And how long did you expect the appointment to take?

A. Standard. Because they usually get you in pretty quickly, so once -- you mean once you're in there getting seen?

Q. Yeah.

A. Okay. Maybe 20 minutes. 15, 20 minutes.

Q. And did you enter through the front door at Seeta?

A. Yes.

Q. Okay. And when you entered, did you see a sign on the front door that said "masks required upon entry"?

A. No. Like I said, [redacted] went in first, so -- I think it's a sliding door if I

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remember.
Q. Okay.
A. But I'm not disputing it. I'll admit there was probably a mask [sic] there because everybody had masks -- or said that masks were required.
Q. And you described earlier what the waiting room and reception area looked like. Can you tell me how big it was, again, approximately?
A. It's huge. It's probably at least two to three times -- no, maybe even more -- at least, I'd say, two to four -- I'm not that good with measurements --
Q. Me, neither.
A. -- but two to four times bigger than this room.
Q. Okay. And how many chairs were in the waiting room at that time?
A. Approximately 20 --
Q. Okay.
A. -- I would think. Around there. I'm not sure. I didn't count them.
Q. And did you notice how many patients were in the waiting room --
A. With [redacted]?
Q. -- when you arrived?
A. It was full. There was --
Q. And --
A. -- a whole bunch.
Q. -- was there any social distancing --
A. Oh, yes.
Q. -- in place?
A. Yeah, they had the chairs, like -- it seemed like maybe even more than six

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feet apart.

Q. And would you say all the chairs were filled?

A. Yes. If not all of them, most of them.

Q. And were there any other protective measures in place in the waiting area like a plexiglass shield separating the receptionist?

A. They may have plexiglass.

Q. Okay.

A. I'm not sure.

Q. And how far were the receptionists seated from the waiting area?

A. You mean where the first seats were?

Q. Yes.

A. Oh. I'm not sure. Let's see. Maybe 15 feet. Maybe. I don't know. I'm not sure.

Q. And when you entered Seeta on December 28th, were you wearing a face shield?

A. Yes.

Q. Okay. And I believe you testified earlier the face shield covered your nose and your mouth?

A. Oh, yes.

Q. Okay. And was [redacted] wearing any kind of face covering?

A. Oh, yes. He was wearing a mask.

Q. And did you check in at reception?

A. Yes.

Q. Okay. And what happened when you went to reception?

A. The receptionist said I had to wear a mask. I said, "I don't medically

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tolerate a mask." I said, "I just went through this with Stacey in January." She says, "Oh, all right. Well, I'll have her come out." I said, "Okay." And I think she said, you know, "Stand on the side again."

Q. Okay. At any point, did the receptionist ask you to wait outside?

A. No, I don't think -- no, I don't believe the receptionist did. I think she just said, "You have to wear a mask." I said, "I don't medically tolerate it." And then she said Stacey will come out and talk to me.

Q. Okay. And did Stacey Koch come out and talk to you?

A. Yes.

Q. Okay. And about how long after you arrived did Ms. Koch come out?

A. Within a couple minutes.

Q. Okay. And where were you when Stacey Koch came out?

A. I was standing off to the side with my son, not near anyone because they have the chairs separated from everybody, so it's just in, like, an open area.

Q. And what happened when --

A. She came out --

Q. -- Koch came out?

A. -- abruptly and came right up to me and said, "You have to wear a mask." I said, "Stacey, I don't medically tolerate a mask." I said, "We already discussed this in January." "It doesn't matter. You have to wear a mask." I said, "I can't wear a mask." I said, "I thought this was all resolved." And I think then she walked over to the reception, like, area.

Q. Okay. And when you said Koch came out abruptly, what do you mean by that?

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A. Like, she just walked really fast up to me and started saying, "You have to wear a mask," like, basically yelling at me.
Q. And you told her that you could not medically tolerate a mask?
A. I did.
Q. Did you tell her why you couldn't medically --
A. No.
Q. -- tolerate a mask?
A. No, and I wasn't asked.
Q. And did Koch ask you for -- or Stacey Koch ask you for a doctor's note at any point?
A. At some point, yes. Not right in the beginning.
Q. Okay. So when she walked over to reception, what happened then?
A. It happened so fast. But at some point, she said, "If you don't wear a mask, you have to leave." And I thought she was saying, like, leave like I did the last time. And I actually looked down at my son, and I'm, like, thinking to myself -- I don't know if I said it. I may have. I think I even said it, maybe -- "I can't leave." I said, " I've got my minor" -- "I've got my son here." I think I said that --

MR. GOLDSTOCK: How old was he?

THE WITNESS: [redacted]

MR. GOLDSTOCK: Okay.

THE WITNESS: Oh, sorry. Go ahead.

BY MS. DIPALO:

Q. What was Stacey Koch's response?
A. "Well, you have to wear a mask or you have to leave." I said, "But he's

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got an appointment." I said, "Can't you please see him?" And then she said -- then she was getting the phone or she asked for the phone. I don't remember how that happened. So I figured she's going to call the doctor out, which I was hoping for. And then I would've said, "Doc, can you please just see him?" But instead, she says, "If you don't leave, I'm calling the police." And I was in shock. And I'm thinking, if I could have put a mask on right then, I would have because I needed to get my son's eyes examined. But I just couldn't do it. I was having a panic attack and that was it for, you know, that session.

Q. And the second time she told you, if you don't put on a mask, you have to leave, did you understand that she meant you have to leave the premises?

A. Well, when you say the second time --

Q. So you said she said you have to leave if you don't put on a mask.

A. Right.

Q. And correct me if I'm wrong --

A. Um-hum.

Q. -- you understood that to mean, like, leave [redacted] there with her?

A. Yes. So the second time --

Q. Yes.

A. -- is when she had the phone and she said, "If you don't leave, I'm calling the police."

Q. Okay.

A. That was the second time.

Q. So she told you two times, "If you don't leave" -- "if you don't put on a mask, you're going to have to leave" or -- sorry.

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A. Sort of.
Q. Or she asked you to leave two times?
A. Well, no, she said, "If you don't leave, I'm calling the police."
Q. Okay.
A. That's what she said.
Q. And what did you understand that to mean?
A. I understood that she was going to call the police.
Q. Did you understand she wanted you to leave the premises?
A. I didn't understand if she wanted me to leave with my son or leave him there and wait outside, no. So no, at that point, I didn't know if she wanted us both to leave or they would see him still. It happened so quickly.
Q. And did you explain that to her?
A. So she called the police. And, you know, I was standing in the same spot. I didn't move from the spot. And yes, while she's on the phone, I'm trying to explain to her that I can't leave him. I said, "Can you please see him?" I'm begging her to please see him. I said, "Can you please see him?" That's when she said, at some point there, "Well, where's your medical documentation?" I said, "I don't have medical documentation on me." I said, "I can try to get some." I said, "Would you please -- would you please see him? And then I'll get you whatever you're asking for." I said, "Could you just please see him?" At that point, she hung up, and I was just waiting there because now the police are coming. I'm not going to leave.
Q. Did you tell Stacey Koch while she was on the phone that the police

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weren't going to remove you --

A. No.

Q. -- for not wearing a mask?

A. I would never, ever say something like that. What I think happened -- because after hearing the police call, I said at some point -- I don't know at what point -- that Dutchess County isn't even enforcing the mandate. That's what I said. Now, if she interpreted that that the police wouldn't come or that -- I don't know what -- I don't know how she interpreted it. I would never say "The police will not come."

I was at that point a Judge for over ten years. I know when you call the police, the police are going to come, and that's why I stayed right where I was. Because why am I going to leave when I'm doing nothing wrong? The police will come, and then we can explain to them what's going on. Maybe they would have explained -- and I heard the Dispatcher actually say the exact same thing I said to her: "Dutchess County isn't enforcing the mask mandate." I heard that afterwards, I mean. I didn't hear it when she was --

Q. At the time.

A. -- on the phone. I heard it when I heard the recording. I mean, I couldn't hear what the police Dispatcher was saying. I could only hear what she was saying.

So I figured the police would get there. Since they're on the way, I'm not going to run out because, you know, the old saying that -- I think it's even questions of defendants a lot of time or you see it in TV, whatever -- "if you didn't do anything wrong, why did you run" -- or "why did you leave

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when the police were coming". So I'm not leaving. I'm just going to explain to them what's going on.

Q. And how many times before Stacey Koch called the police did she ask you to put on a face mask?

A. Oh, I'm not sure. At least the two times.

Q. Okay.

A. I don't recollect.

Q. And what was your tone of voice during this interaction with Ms. Koch?

A. I think it was calm and level and then as I'm talking now. I tend to get a little emotional or animated, I guess you'd say. But at one point I was begging her to see him, so I was talking the way I'm talking now. "Stacey, will you please see my son? I'll get you medical documentation. I'll try to get it after I leave."

Q. And what was Stacey Koch -- what was her response to you when you were begging?

A. She just kept saying -- she ordered me at one point, as you'll hear on the recording, "Stop talking." I was taken back. I thought I said to her "Excuse me?" but I didn't. After I heard the recording again, I heard what I said. I said, "I'm not going to stop talking."

I just couldn't believe someone is telling me, who's standing at least ten feet away from me, who has a mask on herself -- I have a shield on, and she's telling me to stop talking. She actually said to me," I don't want to breathe your air."

The embarrassment. I'm with my little son. I'm trying to get his eyes seen, and I feel like a complete failure because I can't put a mask on.

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And she's telling me she doesn't want to breathe my air like I'm a leper, like I'm sick. I had COVID four months before, so I had immunity from it, and I wasn't sick at the time.

Q. But did Ms. Koch know that?

A. Know what?

Q. That you had COVID four months before?

A. No.

Q. Did you tell her that?

A. No. I didn't even think of it.

Q. Did you tell her you weren't sick?

A. No.

Q. Did you consider that she may be concerned about, you know, her own health and that was why she was asking you --

A. Well, I don't --

Q. -- to wear a mask?

A. -- know. If you followed everything the CDC said -- she has a mask on. I have a shield on. We're well over six feet apart. I'm no threat to anyone. No threat to anyone. And then it went down, from the CDC, from six feet to three feet. Wait, how does the science change when you have the same virus and now it's six feet to three feet? But that's a tangent. So no, I did not -- I was not a threat to anyone. And if she thought it was a threat, I don't know what to tell you. She didn't tell me I was a threat. She just said she didn't want to breathe my air.

And at then, one point -- I thought it was on the 911 call, but she must have said it when she was asking to call -- because she called twice to the

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police. She called a second time. She must have said it to the receptionist when she was getting the phone. "Call them. It's an emergency. He won't stop talking. He's spreading his germs on me." 911 didn't capture that because I think she said it before it connected. She's saying I'm spreading my germs on her. I'm nowhere near her. I was nowhere near anyone except my son.

Q. And how did her statement make you feel?

A. Degraded. I felt ashamed, embarrassed. It felt like -- you know, I thought back -- not then, but afterwards -- to the way the people that had HIV felt in the '80s. After that, I could only -- I still can't even imagine. And those people were sick, and they had to go to court to fight for their rights to be able to go into places to be accommodated. And now there's laws, as we all know, that you can't ask anyone, even if they have AIDS. So a sick person is allowed to go in. So I felt humiliated and embarrassed and ashamed.

Q. And you mentioned that Stacey Koch called the police a second time.

A. Yes.

Q. What happened during that second phone call?

A. So the second phone call, when she's saying "You have to come. It's an emergency. He won't put a mask on. He's spreading his germs" -- that's what she said, but she didn't say it -- she said it -- it's not captured -- once I heard that, I said, "Wow. Even if the police come, I don't know if there's anything that's going to be able to resolve this with her."

So I said to her -- because I still needed to get his eyes examined. My wife is at home expecting him to come back with a prescription. I was

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under so much stress because of that and having to take care of her and the family and all that. So I said to her -- I said, "Stacey, if I get -- if I leave and get you medical documentation, will you please see my son?" And she said, "Yes." And I said, "Thank God," I'm saying to myself. I'm going to try to get it. I didn't know if I could. I said, "Okay. I'm going to leave now." And then I think you hear her on the phone saying, "He's leaving." And I said, "I'll try to get you the medical documentation." And I left.

Q. And where did you go?

A. Well, I got in my car and went home. And then I called my --

MR. GOLDSTOCK: With your son?

THE WITNESS: Yeah. Oh, yes. Yes, yes, yes.

MR. GOLDSTOCK: Okay. And incidentally, let me just --

THE WITNESS: Yes.

MR. GOLDSTOCK: -- say that I will interrupt every now and again if I don't think the record is clear --

THE WITNESS: That's totally fine.

MR. GOLDSTOCK: -- and -- thank you -- and sometimes when I have my own questions because I don't understand something. So I do this just to make the record more robust. That's all.

THE WITNESS: Thank you.

MR. GOLDSTOCK: Okay.

A. So I went home, and I called my chiropractor, who actually was able to

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come on the phone, and I told him what was going on. He said, "I can give you a note" because he was treating me. I said, "Really?" He said, "Yeah." I said, "Can you do it -- when could you do it?" He goes, "I can get it -- I'll have my receptionist" -- or whoever -- "send it over to you now. I'll email it to you." I said, "Thank you so much."

He emailed it to me. I emailed it to Stacey. I don't know if she called me or if I -- I think I called her back, and I said, "Stacey, did you get the documentation?" She says, "Yes." "Can we come in?" "Yes." I said, "Thank God. When?" "Come in at 4:30." I said, "Okay." "I want you to wait in the parking lot," she said. "I'll come out and get you and your son. I'll bring you in through the back door." I said, "Fantastic. Thank you."

We went there. I waited. I called her. And she didn't come out. Mike Brown (phonetic), who I didn't know even who he was before this date, came out and brought us in the back. And he got his eyes examined, and we left.

BY MS. DIPALO:

Q. Now, just to backtrack a little.

A. Yes?

Q. What was Stacey Koch's tone of voice like during your interaction?

A. She sounded angry. She was very condescending to me. That's basically it.

Q. Was she raising her voice?

A. At some points, I believe she did.

Q. Okay. And do you recall at which point she raised her voice?

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A. No. Again, it happened so quickly.

Q. Okay. I'd like to show you what's been pre-marked Commission Exhibit 2, which is a letter to the Commission from you sent to us by Mr. LaVeglia, dated June 17, 2022.

(Commission Exhibit 2 was marked for identification)

MS. DIPALO: Andy's going to give everybody a copy.

MR. GOLDSTOCK: Thank you.

MS. BUCKLEY: Thank you.

MS. DIPALO: Thank you.

BY MS. DIPALO:

Q. Do you recognize this letter, Judge?

A. Yes.

Q. And have you read this letter?

A. Yes.

Q. And you've adopted its contents?

A. Yes.

Q. Okay. If you could turn to page 31, I'm going to ask you to look at the first paragraph. And if it's okay, I'm just going to read it into the record.

MR. GOLDSTOCK: What (unintelligible)?

BY MS. DIPALO:

Q. "Ms. Koch continued yelling at Judge Mora and said he would have to leave if he did not put on a mask. Her behavior was completely irrational and unprofessional." What was the basis for your statement that Ms. Koch's behavior was irrational?

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A. Because I wasn't near anyone; I was well past six feet from everyone; I had a face shield on, and everyone else had masks on.
Q. So you believe she was behaving irrationally because she wasn't allowing you to remain with a face shield --
A. Yes.
Q. -- when you were social distancing?
A. Correct. And because I couldn't medically tolerate a mask, yes.
Q. And if you could just look at -- same page, 31. It's the first paragraph, and it's the sixth line down. I'm going to read it into the record. You state, "Ms. Koch, however, was there to prove a point." What do you mean when you said she was there to prove a point?
A. She wasn't going to let anyone in without a mask no matter what the circumstance was.
Q. And do you believe she had a right to do that?
A. No. Not if you couldn't medically tolerate a mask, no.
Q. And --
A. Or if somebody was there under two years old, no. So if there was a one-and-a-half-year-old -- I think we spelled that out in one of our papers at one point -- if she said "That baby has to wear a mask," no, the baby does not have to wear a mask. The mandate itself said it. If you're under two or you can't medically tolerate a mask, you don't have to wear it. So if she said "No, the baby has to wear a mask," no, she would not be allowed to do that. That's my contention because that's --
Q. But --
A. -- what the 10 NYCRR 2.60, the mandate or whatever you want to call it,

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said.

Q. -- it was a private medical practice, correct? Ms. Koch --

A. Well, it's private, but it's a place of public accommodation.

Q. But she was permitted to enforce the code as she saw fit?

A. No. No, she was not as she saw fit. She was to enforce the code according to the code. The code said if you cannot medically tolerate a mask, you do not have to wear one. Nowhere in the code does it say someone could ask for medical documentation, can refuse you, et cetera. I didn't even have to give medical documentation, but I'm not there to cause a problem. I'm there to get my son seen, and if she needed medical documentation, I was going to get it for her.

If I had known this incident would have happened before I got there, I would have never, ever went into there before having this resolved. If I had any inclination in my mind that that scene was going to happen, I would have worked it out beforehand. I would have said, "What do you need?" And she would have told me, and I would have got it to her, and then there would have been no problem. It seems like -- she would have said, "Wait in your vehicle." "Happy to do so."

I'm not there as an activist or whatever trying to prove something. I'm trying to get my kid seen. I'll wait in my car. I'll go in the back door. I'll go last. None of that matters to me. I wasn't there to cause a problem at all.

Q. At any point did you suggest waiting in the car until you got medical documentation?

A. Well, no, because once I told her "If I get you medical documentation,

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will you see him," I left. That's when I left. I didn't leave, as some have said in different papers -- that I left because the police were coming. No. If that was the case, I would have left the first time she called the police. I was waiting for the police to come because I did nothing wrong. I was waiting for them to come to hopefully defuse the situation and have my son seen without having to leave. So no, I didn't have to wait outside because I left at that point.

Q. And if we could just still take a look at Commission Exhibit 2, I'm going to ask you to turn to page 32, and it's the first full paragraph about eight lines up, and I'm just going to read it into the record. So it starts with "Instead of calling Dr. G[redacted], Ms. Koch called the police back, telling them there was an emergency. She claimed that Judge Mora was just wearing a face shield, would not stop talking, and was spreading his germs. At that point, Judge Mora realized he was not dealing with a rational person." What was your basis for stating that she was not a rational person?

A. I was, again, more than six feet away from her. She had a mask on. I had a face shield on. I was spreading germs nowhere. Nowhere.

First of all, a mask or a face shield does not stop your air. It does not stop if there's any germs or whatever coming out. It stops droplets. It stops spittle. The both of them. And there's some dispute as to whether -- some say a shield works better than a mask for that purpose.

So I wasn't spreading germs on anyone. If that's the case, then everyone was spreading germs because everyone's breathing. Just because you have a cloth face shield on doesn't stop your air from expelling. It stops

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particles, droplets.

Q. And do you believe that you were behaving rationally during the interaction with Ms. Koch?

A. I was talking with her. I was trying to get her to see my son. Again, if I had known it was going to happen, it wouldn't have happened because I would have resolved it before I went there.

Q. And did you consider leaving at any point, before the police were called, and rescheduling?

A. It happened so quickly. It happened so quickly, so I don't know how to answer that. I mean, it was very, very quickly.

Q. And --

MR. GOLDSTOCK: Yeah, I was going to ask --

MS. DIPALO: Sure.

MR. GOLDSTOCK: -- two questions.

THE WITNESS: Yes?

MR. GOLDSTOCK: Both of them, again, you know, based on confusion. Your problem with leaving the minor son was what? That is, my assumption is that, as happened with your older son, your son would sit in a chair wearing a mask. You would be outside?

THE WITNESS: Right.

MR. GOLDSTOCK: But you said there was a difference because he was a minor, and I'm trying to figure out what that difference is.

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THE WITNESS: Well, [redacted] he was a -- he was a bigger -- I mean, he was a minor, too, I mean, technically, because he's under [redacted] -- but [redacted] was almost as tall as me at that point, a bigger boy. A [redacted]-year-old, I'm not going to leave in a facility without me or a guardian or somebody there.

Children are human trafficked. I don't know if I said that right. We see it on the news all the time. Children are abducted. I'm not saying a staff member would, but I don't know anybody in this place. I wasn't going to leave my minor child alone in a --

MR. GOLDSTOCK: He wouldn't be alone. I mean, he would be in an office with -- a room three times this size --

THE WITNESS: Right.

MR. GOLDSTOCK: -- with all occupants sitting there, either completely full or three-quarters full, however you described it, with medical staff there.

THE WITNESS: With --

MR. GOLDSTOCK: I mean, I should tell you -- and the reason I'm having this issue -- is at [redacted], my daughter -- and I know there are differences between girls and boys, but maybe not for this purpose -- flew to Lyon by herself, changing planes in Paris. And I'm sure there are lots of other kids who've done the same thing. So I'm

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trying to figure out what it is about not leaving a [redacted]-year-old boy in a medical room where presumably you're sitting right outside --

THE WITNESS: Well, when you're outside --

MR. GOLDSTOCK: -- in your car or truck and you can see the front door. I'm sure you could have pulled your -- so to protect -- and that's the issue I'm trying to understand.

Or in the alternative -- and I'd like you to address both -- is why not just sit outside with him, and when his turn -- when he was ready, they would come out and just say "[redacted] please" --

THE WITNESS: All right.

MR. GOLDSTOCK: -- "come in"?

THE WITNESS: So for the first thing, my wife is extremely protective. If I had told her I left my son in there with 20 complete strangers -- not the medical staff, 20 complete strangers -- she would have had my head. All right. That's the answer to that one.

The second one, I would have definitely done that like I did when I came back. That wasn't even suggested, and my mind was not thinking of that. In my mind, I'm being attacked here because I can't wear a mask. And I had a panic attack. I wasn't thinking clearly at that point.

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MR. GOLDSTOCK: But you agree you could have said, "Okay. I'll sit outside with him. Please come out and get him when you're ready"?

THE WITNESS: Absolutely.

MR. GOLDSTOCK: Okay.

THE WITNESS: And I would have -- if I had thought of that, I would have done that in a heartbeat, and if she did that, it would have been great.

MR. GOLDSTOCK: Okay.

THE WITNESS: I wish that did happen. I really do. I really do.

BY MS. DIPALO:

Q. Judge, when you say you were having a panic attack, what were you experiencing?

A. The same symptoms that I said before: dizziness, sweating, the breath --

Q. Shortness of breath?

A. Thank you. I lost my train of thought there.

-- shortness of breath, the same types of symptoms that I would get when I was wearing the mask in the beginning. Even thinking of having to put the mask on cause these feelings. The shield itself is hard enough, but the mask -- I don't know why. It just -- it is. I don't know.

Q. And I neglected to ask earlier but were any members of the Seeta staff present during your exchange with Ms. Koch?

A. Oh, sure. There was probably two receptionists there, I would think, maybe somebody in behind them -- I'm not sure -- and then Mike Brown,

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who she had come out and stand, like, to her -- I think it was left, would be to my right. And I'm saying to myself, "Why is he here? Is he like a guard or something?" I didn't even know who it was.

Q. And what do you mean she had him come out?

A. She called him and told him to come out -- or I don't know if she called him or had somebody call him -- it seemed like to stand guard.

Q. And did you hear her tell somebody to -- did you hear Koch tell somebody to bring --

A. No.

Q. -- Mike Brown out?

A. No.

Q. And I'm going to ask you some time questions so --

A. All right.

Q. How long would you say your entire exchange with Stacey Koch lasted from the time she came out to the time you left Seeta?

A. I really don't know.

Q. Was it ten minutes? Half an hour?

A. No, no. It definitely wasn't a half an hour. I'm not sure. Less than ten minutes. I don't know.

Q. And again, do your best. How long would you -- how much time passed from the time that you first entered Seeta until the time Stacey Koch called the police for the first time?

A. Again, I don't know.

Q. Okay.

A. I'm sorry.

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Q. Like five minutes?
A. I'd say less than that. Maybe. I don't know.
Q. Okay.
A. I really don't.
Q. How much time between Stacey Koch's first call to the police and her second call to the police?
A. Again, I don't know exactly. A couple minutes, maybe. It seemed like it was pretty quick. I don't know.
Q. And did you remain standing in the spot in the waiting room --
A. Yes.
Q. -- where you had been?
A. I didn't move.
Q. And [redacted] was there with you --
A. Yes.
Q. -- the entire time?
A. Yes.

MS. DIPALO: Okay. At this point, I'd like to play an audio recording. It's of Stacey Koch's telephone call to 911 made on December 28, 2021. It's been pre-marked as Commission Exhibit 3, which is just a --

MR. GOLDSTOCK: Okay.

MS. DIPALO: -- piece of paper.

MR. GOLDSTOCK: Please go ahead.

(Commission Exhibit 3 was marked for identification)

MS. DIPALO: And if we can go off the record,

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we'll play the --

MR. LAVEGLIA: Thank you.

MS. DIPALO: -- audio recording, which is going to run for 1 minute and 17 seconds.

MR. GOLDSTOCK: Okay.

MS. DIPALO: And we're --

(Recess from 11:25 a.m. until 11:27 a.m.)

MR. MAISONET: On the record.

MR. GOLDSTOCK: We've been off the record for approximately two minutes. It's 11:27. We're now back on.

MS. DIPALO: And I'm just going to let the record reflect that we just listened to Commission Exhibit 3.

BY MS. DIPALO:

Q. Judge, did you hear Stacey Koch speaking when she made this phone call?

A. Yes.

Q. Okay. And did you hear Stacey Koch say, "I have a gentleman who is refusing to leave and will not wear a mask"?

A. Yes.

Q. Okay. And did you hear her say that he's wearing a face shield that does not cover his mouth?

A. Yes.

Q. And was that accurate?

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A. No.

MS. DIPALO: I'm going to play another -- I'd like to go off the record again to play another audio recording. And this is Stacey Koch's 911 call after it was transferred to the Town of Poughkeepsie Police Department that has been pre-marked as Commission Exhibit 4.

(Commission Exhibit 4 was marked for identification)

MS. DIPALO: And Mr. Goldstock --

MR. GOLDSTOCK: Okay. We can.

MS. DIPALO: -- if we could go off the record.

MR. GOLDSTOCK: We'll go off the record. It is --

(Recess from 11:28 a.m. until 11:31 a.m.)

MR. MAISONET: On the record.

MR. GOLDSTOCK: Okay. It is now 11:31. We're back on the record after listening to a second conversation.

MS. DIPALO: Okay. And I'm just going to let the record --

MR. GOLDSTOCK: People's [sic] 4. Yeah.

MS. DIPALO: Sorry. Yeah. Let the --

MR. GOLDSTOCK: Yeah.

MS. DIPALO: -- record reflect that we listened to Commission Exhibit 4.

BY MS. DIPALO:

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Q. Judge Mora, did you hear Koch speaking to the Dispatcher when she made this call?

A. Yes.

Q. Okay. And did Koch speak to you during this phone call?

A. Yes.

Q. Okay. And did you speak to Koch during this phone call?

A. I did.

MS. DIPALO: Okay. At this point, I'd like to go off the record again and play a portion of the audio recording of the call we just listened to. It's been pre-marked as Commission Exhibit 4-A, and it runs from 1:10 to 1:19. And it's just a portion --

MR. LAVEGLIA: Thank you.

MS. DIPALO: -- of that call that's been isolated.

(Commission Exhibit 4-A was marked for identification)

MR. GOLDSTOCK: Okay.

(Recess from 11:32 a.m. until 11:33 a.m.)

MR. GOLDSTOCK: Tell me when.

MR. MAISONET: On the record.

MR. GOLDSTOCK: All right. Okay. We're back on the record. It's 11:33. Exhibit 4-A was played two times, one at 90 percent of volume, the other at 100 percent.

BY MS. DIPALO:

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Q. Judge, when you listen to that recording, did you hear Stacey Koch say, "I would be happy to provide a paper mask for you"?
A. Yes.
Q. And was she speaking to you?
A. Yes.
Q. And did you hear your voice in the background?
A. I heard a little bit. I mean --
Q. Did you hear a voice in --
A. Yes.
Q. -- the background? And do you believe it was your voice?
A. Yes.
Q. Do you recall what you were saying to her?
A. It's probably along the lines, "I can't wear a mask," but I don't know exactly what I said. I couldn't really hear it.
Q. Okay. And then did you hear Stacey Koch say, "Then you can't be in our practice. We're a private practice"?
A. Yes.
Q. And was Stacey Koch speaking to you?
A. Yes.
Q. And did you hear a voice in the background responding to Stacey Koch?
A. Yes.
Q. And do you believe that was your voice?
A. Yes.
Q. Okay. And do you recall what you said in response?
A. Something about, "Well, I'm allowed to be here." Something along those

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lines. I don't know -- I don't remember exactly what I said.

Q. And then did you hear Stacey Koch say, "No, you can't"?

A. Yes.

Q. And was she speaking to you?

A. Yes.

Q. And did you hear a voice in the background responding to her?

A. Yes.

Q. And was that your voice?

A. Yes.

Q. Okay. And do you recall what you said?

A. No.

MS. DIPALO: I'd like to play another portion of the audio recording of the call to the Town of Poughkeepsie Police Department. It has been pre-marked Commission Exhibit 4-B, and it runs from 1:20 to 1:25.

(Commission Exhibit 4-B was marked for identification)

MR. GOLDSTOCK: And this is part of --

MS. DIPALO: This is --

MR. GOLDSTOCK: -- Exhibit 4?

MS. DIPALO: 4, yes.

MR. GOLDSTOCK: Okay.

MR. LAVEGLIA: Thank you.

MR. GOLDSTOCK: We'll go off the record now at 11:35.

(Recess from 11:35 a.m. until 11:36 a.m.)

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MR. GOLDSTOCK: Okay. Tell me when.

MR. MAISONET: On the record.

MR. GOLDSTOCK: Okay. It is 11:36. We're back on the record after playing Exhibit 4-B. Judge and Judge's Counsel said there was no need to play that portion a second time.

BY MS. DIPALO:

Q. Judge, did you hear Stacey Koch say, "I wish you wouldn't speak. If you're not going to wear a mask, don't talk"?

A. Yes.

Q. And was she speaking to you?

A. Yes.

Q. Did you hear a voice in the background responding to Stacey Koch?

A. Yes.

Q. And was that your voice?

A. Yes.

Q. And do you recall what you said?

A. I believe "I'm going to talk" or something along those lines.

MS. DIPALO: Okay. And if we could just go off the record one more time and play another portion of the audio recording of Stacey Koch's call to the Town --

MR. GOLDSTOCK: Okay.

MS. DIPALO: -- of Poughkeepsie Police Department --

MR. GOLDSTOCK: It is --

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MS. DIPALO: -- that has been pre-marked Commission Exhibit 4-C, and that runs from 1:42 to 2:04.

(Commission Exhibit 4-C was marked for identification)

MR. LAVEGLIA: Thank you.

MR. GOLDSTOCK: Okay. It is 11:37. We're off the record again.

(Recess from 11:37 a.m. until 11:38 a.m.)

MR. GOLDSTOCK: Okay.

MR. MAISONET: On the record.

MR. GOLDSTOCK: It is now 11:38. We're back on the record after playing Exhibit 4-C. And it was played once, and Judge and Counsel said that they didn't need it to be played again.

BY MS. DIPALO:

Q. Judge Mora, did you hear Stacey Koch say, "If you lived through what I just lived through, you wouldn't"-- "if you just lived through what I did, you would know what you're doing. No, don't speak. We don't want your air"?

A. Yes.

Q. Okay. And was she speaking to you?

A. Yes.

Q. And did you hear a voice in the background on the recording?

A. Yes.

Q. And was that your voice?

A. Yes.

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Q. And do you recall what you were saying to Stacey Koch?
A. Something along the lines that I'm going to speak.
Q. And did you hear Stacey Koch say on the recording, "I do not" -- "I do not" -- "I do not go to a restaurant. I live with someone who has had [redacted] three times, and I really don't want your germs on me"?
A. Yes.
Q. Was she speaking to you?
A. She was.
Q. And did you hear a voice in the background on the recording?
A. Yes.
Q. And was that your voice?
A. Yes.
Q. And do you recall what you said to Stacey Koch?
A. I said something along the lines of "But people go to restaurants, and no one's wearing a mask, and everyone is breathing everyone's air." Something along those lines.
Q. And what was the purpose of --
A. The --
Q. -- bringing up restaurants?
A. Well, the point is that, wherever you are, you're breathing air. You're breathing everyone's air. I was trying to get that point across. Being in the practice there, everyone in there is breathing everyone's air. Whether you have a mask on or not, you're breathing everyone's air. A mask does not stop someone's air from coming out. It doesn't stop germs from coming out. A mask and a shield do the same thing. They stop spittle.

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They stop droplets. That's what I -- I was trying to explain that, that you're breathing everyone's air. You're standing next to the receptionist. You're standing next to Mike Brown. You're breathing their air. Everyone's breathing air. That's all I was trying to get across.

Q. Did you hear Stacey Koch say that she had lived with someone who had [redacted] three times?

A. I did.

Q. And did you consider that Stacey Koch was asking that you wear a mask to protect that family member's health?

A. Maybe she thought that. I have no idea.

Q. Well, when you heard her say that she lived with a family member --

A. Right.

Q. -- or that she lived with someone who had [redacted] three times, what was your reaction?

A. Well, you mean, what was I thinking?

Q. Yes.

A. I was thinking, "What does that have to do with what's going on here?"

Q. Did you think, again, she was trying to protect the health of her family member who had had [redacted]?

A. Do I think she thought she was trying to protect? Yes.

Q. Yes.

A. Yes.

Q. And --

A. After, you know, hearing it and listening to it, yes. I think she thought, by having me wear a mask, she'd be protecting her family member.

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Q. And do you think that's a rational request?
A. No, not under the situation. Absolutely not. I was --
Q. Why is that?
A. I was nowhere near her. Again, I was well more than six feet away from her according to the CDC guidelines at the time. They've, again, been reduced, and now they're nonexistent. So by wearing a mask as opposed to a shield, being more than six feet away -- I think it might have been ten. I'm not sure. It was well more than six -- is going to make no difference if I have a mask on as opposed to a shield or actually if you had nothing on if you're that distance away. I don't think anyone has said that if you're further than that you can spread the virus.
Q. Okay. And were you aware that in December of 2021 Governor Kathy Hochul had issued a statewide mandate requiring masks in indoor settings because there was a rise in COVID numbers? I believe it was due to the Omnicron [sic] variant.
A. Yes, I know there was her mandate which said you have to wear a mask unless you don't medically tolerate or you're under two years old.
Q. Okay. Now, you mentioned that after you left Seeta, you went home --
A. Yes.
Q. -- correct? And you had called your chiropractor?
A. Yes.
Q. To obtain medical documentation?
A. Well, to see if he could.
Q. Okay.
A. Yes.

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Q. What did you say to -- well, let me back up. Who is your chiropractor?

A. Dr. M[redacted].

MR. GOLDSTOCK: Excuse me. Before we --

MS. DIPALO: Yeah.

MR. GOLDSTOCK: -- get into this, can we go off the -- well, I can do this on the record. It's not a problem. I just want to do a little housekeeping.

It is now 11:45. We've been at it about an hour and a half. I try to break the morning into two sessions. So because you were getting on to a new topic, I thought maybe this might be time for a five-to-ten-minute break if you want it. I'm fine, but I figure that you guys --

MR. LAVEGLIA: I'm fine as well unless anyone --

MS. DIPALO: I'm almost done with this complaint.

MR. GOLDSTOCK: Okay.

MS. DIPALO: So --

MR. GOLDSTOCK: All right, then let's continue.

MS. DIPALO: -- probably about another five, ten minutes.

MR. GOLDSTOCK: Okay. We'll do --

MS. DIPALO: That work for everybody?

MR. GOLDSTOCK: -- that, and then we'll take

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a break. Okay. Perfect.

BY MS. DIPALO:

Q. Who is your chiropractor?

A. Dr. M[redacted].

Q. Okay. And when did you begin seeing Dr. M[redacted]?

A. Oh, I've been seeing him for years. I believe in chiropractic -- just for -- well, of course, when you have an immediate problem -- but just for general maintenance, if you will.

Q. And just to back up, what is Dr. M[redacted]'s first name?

THE WITNESS: God bless you.

MS. DIPALO: Bless you.

MS. BUCKLEY: Sorry about that. I'm --

THE WITNESS: Not a problem.

MS. BUCKLEY: -- so sorry.

A. G[redacted].

BY MS. DIPALO:

Q. Can you spell that for the record?

A. G[redacted].

Q. And his last name?

A. M[redacted].

Q. Okay. And do you know when you began seeing Dr. --

A. No. Years --

Q. -- M[redacted] as a patient?

A. Yes, years ago.

Q. 2020?

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A. No. Well --
Q. Before --
A. -- before that.
Q. -- that?
A. Yes, yes.
Q. Okay. And how did you find Dr. M[redacted] -- or Mr. M[redacted]? Did anybody refer you to him?
A. No, I've known him for --
Q. Go ahead.
A. I've known him for many, many years.
Q. And how did you first meet Mr. M[redacted]?
A. Childhood, I would say.
Q. You grew up together?
A. Yes.
Q. Okay. Do you socialize with Mr. M[redacted]?
A. Used to. Not so much anymore. You know, people get older and have their own kids and their own lives.
Q. And did you grow up in Poughkeepsie?
A. Yes.
Q. And Mr. M[redacted] grew up in Poughkeepsie?
A. Yes.
Q. Okay. And you went to school together?
A. Yes.
Q. Same year?
A. Yes.

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Q. Okay. Would you call him a friend?
A. Yes.
Q. Okay. And in 2021, did you socialize with Mr. M[redacted]?
A. I'm sure once in a while. I don't --
Q. Okay. Like lunches, dinners?
A. Yeah. Maybe lunch here and there. Maybe.
Q. Do you belong to any of the same organizations?
A. I don't think so.
Q. Any of the same churches?
A. No, I don't think he goes to church anymore.
Q. And are you still a patient of Mr. M[redacted]?
A. Dr. M[redacted]? Yeah.
Q. Dr. M[redacted]?
A. Yes. Yes.
Q. Okay. And when you called him after you left Seeta, what did you say to him?
A. I said basically what happened. I said, "I'm trying to get [redacted] seen at the eye doctor, and they won't let me in because I can't wear a mask." And he says, "Well, I could write you a note." I said, "Oh, great," because I was treating with him, and that was it. And like I said, he sent it over -- had the receptionist type it up and send it over. It's a short, short note.
Q. Did he tell you what the note would say?
A. No.
Q. Did you ask him to put anything in the note?

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A. No. He just said he would write a note, and I said, "Okay, send it" -- you know, "Email it over. I'll send it over to her."

MS. DIPALO: Okay. I'm going to show Judge Mora what has been pre-marked Commission Exhibit 5, which is a letter from Dr. M[redacted] dated December 28, 2021. And Andy is giving a copy to Mr. Goldstock, Judge Mora, and Mr. LaVeglia.

(Commission Exhibit 5 was marked for identification)

BY MS. DIPALO:

Q. Judge, do you recognize this letter?

A. Yes.

Q. Okay. And how did Dr. M[redacted] get this letter to you?

A. Email.

Q. And you received it at around 3:56 p.m. on December 28, 2021?

A. Well, this says 3:53, but --

Q. Oh.

A. -- close.

Q. Yours says three -- oh, yes.

A. So does yours.

Q. Thank you. Yes. I was looking at the wrong one.

A. Yes.

Q. 3:53?

A. Yes.

Q. Thank you. And then you forwarded it to Stacey Koch at 3:56 p.m.?

A. Correct.

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Q. Thank you. And the letter states, "Frank Mora is currently under my care. Due to his current health condition, he is medically unable to wear a mask." Does it identify your current health condition?

A. No.

Q. And what did you understand your current health condition to mean?

A. When -- you mean what he wrote?

Q. Yes.

A. Oh, when I was wearing the masks it -- the mask, in the beginning, when I first saw him in April, I think it was, of 2020, I had physical manifestations from the anxiety. I had the neck pain, and the headaches, and all that. I believe that's what he was referring to.

Q. And -- okay. And do you know why he didn't mention those symptoms in the letter?

A. No, not at all.

Q. Did you ask him to omit them from the letter?

A. No.

Q. And as of December 20, 2021, had Dr. M[redacted] diagnosed you with any kind of health condition that made you medically unable to tolerate a mask?

A. He didn't give me a diagnosis. And he can't diagnose me for what was later diagnosed as my anxiety. My condition -- my physical pain cleared up, so no. But the answer is no. I don't remember him giving me a diagnosis. No.

Q. And if I could just show you what has been premarked as Commission Exhibit 6, which is a printout of your dates of treatment at M[redacted]

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Chiropractic from January 1, 2020, to August 19, 2022. And Andy has provided a copy to Judge, his Attorney, and Mr. Goldstock.

(Commission Exhibit 6 was marked for identification)

Q. Have you had a chance to --

A. Oh yes.

Q. -- look at it?

A. Sure.

Q. And does it accurately reflect the dates that you visited M[redacted] Chiropractic, to the best of your recollection?

A. I was just going to say, to the best of my recollection, yeah.

Q. And to the best of your recollection, does it accurately reflect the treatment that you received on each date?

A. Yes, adjustments. Correct.

Q. And when you were going to M[redacted]Chiropractic -- or sorry, when you went to M[redacted] Chiropractic on January 15, 2020, do you recall what your physical complaints were at that time or if you had any?

A. No, I -- that was probably just for, like I said, regular maintenance. I believe in natural healing and chiropractors do things naturally.

Q. And you receive a spinal adjustment; is that --

A. Well, yeah, I guess that's what they call it. They adjust your back and your neck and things like that.

Q. Okay. And did your physical complaints -- or sorry. Did anything change during this period? Did you begin seeing Dr. M[redacted], or did you mention any physical complaints to Dr. M[redacted] during this period?

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A. The period on here?
Q. Yes.
A. Yes, in April is when I started to get the headaches and the neck pain. Yes.
Q. And that's what you -- and what did -- did Dr. M[redacted] come up with a treatment plan?
A. Well, he was adjusting me, and I think it was a little more often, if I remember correctly. Yeah, I went -- like, in May, then June. So yeah, he was just doing the normal adjustments, and then it kept persisting.
Q. The neck pain and the --
A. And the headaches.
Q. -- headaches?
A. Yes. The physical, right.
Q. And at some point did you tell Dr. M[redacted] that you were experiencing anxiety?
A. I did. I didn't tell anybody, even my wife, prior to that.
Q. And do you recall around when you told Dr. M[redacted]?
A. I'm not sure. May. Maybe May. I don't know.
Q. Of 2020?
A. Yes.
Q. Around the time you started experiencing the neck pain and the --
A. Yeah, after --
Q. -- headaches?
A. -- it wasn't resolving that's when it came out, basically.
Q. I believe it was mentioned earlier, Dr. M[redacted] told you that maybe try

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removing your mask --

A. Yes.

Q. -- to see if the problems -- your symptoms would --

A. Right.

Q. -- resolve. So was it after that? Around the same time?

A. I don't know. Maybe around the same time. I -- I wasn't keeping track of it because I never thought I'd be here talking about it.

Q. And when you told Dr. M[redacted] that you felt like you were suffering from anxiety, did he have any kind of response?

A. Oh, he said, "I don't do that. You should get seen by somebody that does."

Q. A mental health professional --

A. Yeah.

Q. -- he meant?

A. Right, right.

Q. And did you consult with a mental health professional?

A. No.

Q. And why is that?

A. I just never thought I would need it.

Q. And prior to December 20, 2021, had Dr. M[redacted] ever provided you with a letter stating that you were medically unable to tolerate a mask due to health conditions?

A. Prior to this letter?

Q. Yes.

A. No.

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Q. And had he provided you a letter like that after December 20, 2021?
A. No.
Q. And as of December 20, 2021, had any other doctors or physicians advised you that you suffered from a condition that made you medically unable to tolerate a mask?
A. My therapist.
Q. In December of 2021?
A. Oh, I'm sorry. No. I'm sorry, I --
Q. That's okay.
A. -- misheard the question.
Q. And you emailed Dr. M[redacted]'s letter to Ms. Koch, correct?
A. Yes.
Q. And you were permitted to enter Seeta?
A. Yes.
Q. How did you enter the building?
A. Through the back door.
Q. Okay. And who escorted you?
A. Mike Brown, is his name.
Q. Okay. And were you wearing a face shield?
A. Yes.
Q. And did [redacted] have on his face mask?
A. Absolutely.
Q. Okay. And where did you go when you entered the building?
A. Through the back door, I think down a hall, and into the exam room.
Q. Okay. And did your son receive an eye examination?

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A. He did.
Q. Okay. And who gave him the eye examination?
A. Dr. G[redacted].
Q. How long did the examination last?
A. 15, 20 minutes, maybe. I'm not sure.
Q. And who was in the room, apart from -- or let me rephrase that. Was anybody in the room apart from you, [redacted] and Dr. G[redacted]?
A. Mike Brown may have been, but I'm not sure.
Q. And did you have any conversations with Dr. G[redacted] while -- about the incident with Stacey Koch while you were in the examination room?
A. I think it might have come up. It may have come up. I'm not sure.
Q. Do you remember who brought it up?
A. No.
Q. Do you remember what was said?
A. No.
Q. And did you have any conversations with Michael Brown about the incident with Stacey Koch while he was escorting you into the building to the exam room?
A. Yes. He said something like, "Oh, I'm sorry about that." I said, "Oh, no problem. I mean, listen, everybody has a bad day. No problem. I mean [redacted] eyes are getting seen, so no big deal."
Q. And did you have any conversations with Michael Brown about the incident with Stacey Koch in the examination room?
A. That day?
Q. Yes.

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A. No.
Q. Did you have --
A. I don't think so. I don't think so.
Q. Did you have a conversation with Michael Brown about the incident with Stacey Koch in an exam room on another day?
A. Yes.
Q. And when was that?
A. I don't remember when. I believe it was when I was there for an eye exam.
Q. Do you recall the date of your --
A. No.
Q. -- appointment?
A. I don't. Sorry.
Q. Was it after December 20, 2021?
A. Yes. After the incident with [redacted]?
Q. Yes.
A. Yes. Yes.
Q. Was it during 2022?
A. Oh yes. Well, definitely after 2021.
Q. Okay.
A. I believe it was in 2022. I'm not sure. I'd have to look it up.
Q. Were you wearing a face shield at the time?
A. Yes.
Q. When you went in for the examination?
A. Yes.

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Q. And did you enter Seeta through the waiting room?
A. I believe so.
Q. Did you interact with Stacey Koch at all?
A. No.
Q. And was this before or after you commenced the defamation lawsuit against Stacey Koch?
A. I think it was after.
Q. So it would be in 2023?
A. Maybe. Again, I don't know. It was -- I'm pretty sure it was after.
Q. And what was your conversation with Michael Brown at that time?
A. Oh, just -- it was just general talking: "How's everything going?" "Good." I said to him, "Is everything good? How's everything with you?" I said, "Everything's good except, as I'm sure you know, Stacey Koch filed a complaint against me." And he didn't know. He said, "Filed a complaint about what?" I said, "The incident with -- when I was here in December with [redacted]." He was, like -- he said something to the effect of "What are you talking about?" I said, "Yeah, she filed a complaint." I thought he would know because she actually had him out there. He had no idea.
Q. And what did Michael Brown say in response to learning that Stacey Koch had filed a complaint?
A. He said, "You didn't do anything wrong." I said, "I didn't think I did. She complained that I didn't have the mask on and wouldn't leave." He goes, "But you had the face shield on." I said, "Yeah." "Well, the face shield's sufficient." I said, "She's saying it's not." So then he said, "Is

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there anything I can do for you?" I said, "I don't know. Would you be willing to maybe write a letter?" "Sure." I said, "Okay." I said, "Well, let me talk to my Attorney and I'll get back to you."

Q. And did you get back to him?

A. I did.

Q. And do you recall when this was?

A. No.

Q. And what did you say when you got back to him?

A. I said, "If you're still willing to write a letter, that would be great." He goes, "Of course." I said, "All right." I said, "Do you want me to draft something up?" And he said, "Yeah, that'd be good." I said, "All right, let me draft something up, and I'll give you a call back." And I did that. And again, I don't know what day it was. I didn't keep track of that.

Q. And how did you get in touch with him?

A. He gave me his cell phone.

Q. Okay. So you -- did you call him on his cell phone or did you text him?

A. Probably both.

Q. Okay. And how did you get him a draft of the letter?

A. So I called him up, and I said, "I have something drafted." I said, "Let me read it to you." I said, "We'll go line by line." And I said, "The only thing you do is you tell the truth." Anybody I ask for anything, a letter or whatever, I would always say, "Just tell the truth."

So I read each line, and I don't know if he made a change or two. I don't remember. So I said -- I went line by line. I said, "Is this true?" "Yes." Let me keep going. I read every line, I said, "Okay, is that good?"

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"Yes." "All right. Do you want any changes?" "No." I said, "All right. I'll print it out, and I'll meet you to sign it." He said, "Okay."

Q. And where did you meet him to sign it?

A. At his house, on his back porch or deck or whatever he had there.

Q. Okay. And did he give you his address?

A. Yes.

Q. Okay. And did you have any conversation when you met him to sign it?

A. I had him -- I said, "Read this again. Make sure it's good." And he read it, and said, "Yeah, it's good," and he signed it.

Q. And when you called Michael Brown on his cell phone, what number did you call him from?

A. My cell phone.

Q. Okay. And do you ever show Michael Brown a copy of Stacey Koch's complaint to the Commission?

A. I don't know. I don't remember.

Q. And when you told him you drafted the letter, did you have any discussion with him about what he observed on that date? Did he give you a narrative of his recollection of events?

A. He may have. I don't remember.

Q. How did you draft the letter?

A. I don't understand the question.

Q. When he agreed that you could draft the letter for him, what did you do at that point?

A. I typed up a letter for him.

Q. Okay. And did anybody give you information for the letter?

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A. Other than him, no.
Q. And what information did he give you?
A. Oh, I don't remember exactly what parts that he specifically said or what parts he may have changed when I was reading it to him. I don't recall that.

MS. DIPALO: I'm going to show Judge Mora what is premarked Commission Exhibit 7, which is a letter dated June 13, 2022, from Michael Brown. And it's Commission Exhibit 7. Andy's distributing a copy to the Judge, his Counsel, and Mr. Goldstock.

(Commission Exhibit 7 was marked for identification)

Q. Do you recognize this letter?
A. Yes.
Q. And is this the letter that you drafted for Michael Brown?
A. Yes.
Q. And is that Michael Brown's signature? Did you witness Michael Brown sign that?
A. Yes.
Q. Okay. And the date of the letter is June 13, 2022, correct?
A. Yes.
Q. Does that, at all, refresh your recollection as to when you went to the appointment -- your eye appointment and initially discussed the incident with Stacey Koch with Mr. Brown?
A. It would -- I would think before that, before this date. I mean, again, I can look up when I was there. I just would have to be at my computer --

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Q. Sure.
A. -- to do that.
(Proceedings concluded at :)
Q. That would be helpful if you want to, you know, provide it afterwards. Thank you.
And if you just look at paragraph 1, line 4.
A. Yes.
Q. It's the last word. It says, "After reading the complaint, I was even more dismayed."
A. Yes.
Q. Does that refresh your recollection whether you showed Mr. Brown a copy of the complaint?
A. It doesn't. I may have shown it to him. I'm not sure.
Q. And did you know Michael Brown prior to December 20, 2021?
A. No.
Q. Okay. Have you had any contact with Michael Brown since you obtained the letter from him on June 13 --
A. Yes.
Q. -- 2022?
A. Yes, I did. And I wish I didn't.
Q. Okay. Do you want to -- can you tell us what happened?
A. Sure. He called me -- I think it was right -- well, maybe right after or maybe the day after. I'm not sure exactly when -- after Stacey Koch testified or whatever, with you guys, with the Commission. And he said -- he called me. And he said, "Stacey just testified in front of the

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Commission." I said, "Oh, okay." I said, "She went to the Commission?" "No, it was on the computer." I said, "All right." And she came out right after, and she came up to me, and she was almost" -- I'm a paraphrasing, I don't know -- I don't remember exactly what he said, again, I didn't record any of this because I never thought it would be needed. He said, "She was basically bragging. She said I told the Commission I felt threatened by him, or he threatened me," something to those words. "And I'm going to get him fired." I said, "Really?" He said, "Yes." I said, "What did you do?" He said to her -- he said, "I said to her, 'What type of person are you that can do this to someone? I can no longer work for a person like you, and I quit.'" And I said, "Mike, you quit your job" -- I said -- "because of me?" He goes, "Well, it's not because of you. I can't work with a person like that." But I said, "I'm so sorry. I would have never wanted anything like that to happen to you." He said, "That's all right. I got a better job." I said, "Really, where?" He goes, "I'm going to be the" -- I think he said the head of the Health Department at the [redacted]. I said, "Mike, congratulations." I said, "I always say when one door -- God works in mysterious ways. When one door closes, another door opens." I said, "All right, well, thanks for calling and letting me know." And he goes, "No, don't worry. I have to testify in front of them in two weeks. And I'm going to tell them everything." I said, "Mike" -- and I said it again, "Just tell the truth." He goes, "Okay," and that was that.

Q. And he called you --

A. He did.

Q. -- the day after Stacey Koch testified?

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A. Either the day of or the day after, right around then.
Q. And he called you on your cell phone?
A. Yes.
Q. And did you ask him any questions, or did he just give you --
A. No.
Q. -- a narrative?
A. He gave me what I just said, in sum and substance. I mean it might not be every word.
Q. And did Michael Brown contact you after he gave testimony before the Commission?
A. Yes.
Q. Okay. And did he call you on your cell phone?
A. Yes.
Q. And what did he say to you?
A. He said, "I just testified." And again, I don't know if it was the day of, it was after. "I just testified. They talked to me for about 45 minutes or an hour." I said, "Wow, that seems like a long time." He goes, "Yeah. And they asked me if you coerced me into writing this letter." I said, "Really?" I said, "What you tell them?" He goes, "Of course not." I said, "Okay. Well, thank you." And that was it. So I know you didn't ask this question, but if you want me to answer why I say I wish I didn't talk to him that day?
Q. Certainly.
A. Because I would have never called Michael Sussman after that, because he knew everything that was going on because he was representing me in

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my federal suit against the New York State Court system, and others. And so he knew all -- everything that was going on. And I told him what Mike Brown told me, what he just did, and I said, "Michael, is there -- do I have any recourse for what she's done and what she's doing?" I said, "Something like tortious interference with business?" or something like that. I mean, I've heard of that before, never practiced in that area, just like I've never practiced or been involved with a defamation case before. He said, "Let me do some research, and I'll get back to you." So he gets back to me. He says, "No, tortious interference with business, you don't meet any of the elements, but defamation you do." And I know we're going to get into this after, but he says, "Defamation, you do." I said, "Okay." He drafted a retainer, and we went forward. And that's why I said I wish I never got that call from Mike Brown because I would have never contacted Michael Sussman, and the rest of the events would've never unfolded.

Q. Did you believe what Michael Brown had told you that Stacey Koch said?

A. Yes.

Q. That she was going to have you fired?

A. Yes.

Q. And did you believe Michael Brown when he told you that the Commission asked whether you had coerced him into providing the letter that's been marked Commission Exhibit 7?

A. Yes, but I don't know about in that many words. But yes, I believed it.

Q. And have you had any contact with Michael Brown since that last call

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that you described?
A. I'm not sure.
Q. Has he ever appeared before you in court?
A. No. Not that I know of.
Q. Now, just a few more questions. Judge, at any point during your exchange with Stacey Koch at Seeta, did you identify yourself as a Judge?
A. Absolutely not.
Q. And at any point during the exchange with Stacey Koch at Seeta, did you refer to your judicial position?
A. No. I would never do that.
Q. Do you believe you had a right to remain on the premises at Seeta after Stacey Koch asked you to leave?
A. Based on the -- I don't know what you want to call it, the Health Department -- the mandate, or whatever you want to call it, the 10 NYCRR 2.60, I did believe I was allowed to be there.
Q. Do you believe you should have left when she asked you to leave?
A. Yes.
Q. And this kind of ties in here. Like, sitting here today, would you have done anything differently during your exchange with Stacey Koch?
A. If I could go back, is that what you're asking?
Q. Yes. Yeah. From today's vantage point, what would have done differently?
A. It's exactly what I said before.
Q. Uh-huh.

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A. I would have never even went there. I would have tried to have it resolved beforehand. And if it wasn't resolved I wouldn't have gone. I would never want anything like that to happen.

MS. DIPALO: I finished, yes.

MR. GOLDSTOCK: Okay. I have a couple of --

MS. DIPALO: If we're ready --

MR. GOLDSTOCK: -- questions, and then we'll --

MS. DIPALO: Uh-huh.

MR. GOLDSTOCK: -- take a break.

You said that when Michael Brown spoke to you, and you called your Attorney. Who was that?

THE WITNESS: Mr. LaVeglia.

MR. GOLDSTOCK: Okay.

THE WITNESS: And just to interject, the only reason I contacted him and other people, it gave me witness -- letters or whatever, is because Laura Smith, the Chief Counsel to the Advisory Committee said, "You're absolutely allowed to talk to yourself," meaning the Judge, to people, to witnesses, or to get witness statements, et cetera. If she had advised the opposite, I wouldn't have talked to anybody. But since she said, it's absolutely allowed, that's why I reached out to all these people.

MR. GOLDSTOCK: Okay. So without asking

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you the question about what you said to your Lawyer and what your Lawyer said to you, you're saying that, in effect, when you spoke to Michael Brown, he told you what it was, you spoke to your Lawyer, and then as a result of your Attorney speaking to you, you drafted a letter for Michael Brown?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay. I have one other question, but you may not be able to answer. It's so weird I have to ask it. So immediately after Michael Brown speaks to Ms. Koch, and she says "I'm going to get the Judge fired," he said, "I can't work for a person like that, so I'm quitting. And I told her I quit." And he spoke to you about that the day that this occurred or the day after?

THE WITNESS: I believe right around then. I don't know exactly when. Again, I didn't write any of this down.

MR. GOLDSTOCK: Right.

THE WITNESS: I didn't think it would be necessary.

MR. GOLDSTOCK: But you had testified that it was that day or the day after, he had come out of her office, she had spoken to Michael Brown, Michael Brown was so upset he quit, and he called you to tell you he quit.

THE WITNESS: Yes. That's what he told me.

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And again --

MR. GOLDSTOCK: But by then he had already had a new job?

THE WITNESS: Yeah, so --

MR. GOLDSTOCK: So apparently he got the new job from the time that he was so upset that he quit, to the time that he spoke to you, which was either that day or the day after.

THE WITNESS: It may have been a few days after. I don't know. I probably shouldn't have said it the day of, the day after. He called me after it happened. I don't know exactly when.

MR. GOLDSTOCK: Okay.

THE WITNESS: So again, am I able to go back and look up phone records? I don't know. If I can, I'll give you the date. I want to be as accurate and truthful as I can be. So if I can find that exact date and time that he called me, I would be more than happy to do so and give it to you.

MR. GOLDSTOCK: All right. All I'm suggesting is that getting a job as the Head of Health for the [redacted], it probably takes more than a half an hour --

THE WITNESS: Right.

MR. GOLDSTOCK: -- or a day.

THE WITNESS: So maybe it was a few days

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after. I don't remember.

MR. GOLDSTOCK: Even a few days.

THE WITNESS: I don't know.

MR. GOLDSTOCK: Okay.

THE WITNESS: I'm telling you what he told me; that's all I'm saying.

MR. GOLDSTOCK: Okay. I'm just saying, the record reflects what you said, and I have a question about it. Obviously other people are as well, so I'm actually doing this not to be adversarial, but --

THE WITNESS: Oh, no, no.

MR. GOLDSTOCK: -- to give you a chance to explain what's on the record.

THE WITNESS: I appreciate that, and --

MR. GOLDSTOCK: Okay.

THE WITNESS: -- I don't know exactly when he called, so.

MR. GOLDSTOCK: Okay. The five minutes turned into an half an hour, so it's now 12:15. We'll go off the record. We can take our break now, and then normally we break around one for lunch, but I guess, given the timing here, it probably should be a little after that.

MS. DIPALO: Yes.

MR. GOLDSTOCK: So does 1:30 --

MS. DIPALO: Is that okay with everybody?

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MR. GOLDSTOCK: -- suit everybody, and does coming back at two o'clock suit everybody?

MR. LAVEGLIA: It does.

MR. GOLDSTOCK: I mean I don't know if this violates any Union rules, but -- okay. So we'll plan -- we'll take a ten-minute break now, and be back at 12:25, we'll go to 1:30, we'll take a break for lunch, and be back at one o'clock.

MR. LAVEGLIA: That's fine.

MS. DIPALO: Thank you.

(Recess from 12:15 p.m. until 12:33 p.m.)

MR. GOLDSTOCK: Okay. It is now 12:34. We're back on the record.

I just had one more question for the Judge, and then we can turn it over for further questioning on other subjects.

So if I understood you correctly, you said that you had spoken to Dr. M[redacted] after you left the doctor's office and that --

THE WITNESS: After I left Seeta.

MR. GOLDSTOCK: Seeta.

THE WITNESS: Yes.

MR. GOLDSTOCK: Yeah, that doctor, the ophthalmologist. And you had not asked him for a letter but he volunteered to write one; is that correct?

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THE WITNESS: Well, I -- I told him what was happening. I said, "She's requiring medical documentation." And that's what he said. "I can give you a note."

MR. GOLDSTOCK: But you didn't call him to get the note?

THE WITNESS: Well, I didn't know if he could give me one, so --

MR. GOLDSTOCK: So you asked him if he could, and he said he could?

THE WITNESS: Yes, basically. I don't remember word for word what was said, but yes.

MR. GOLDSTOCK: Well, no, it struck me when you had testified before that you said specifically that you didn't call him to ask him for the letter. You called him just to tell him what was going on, and he volunteered to send the letter. And I just want to clear that up.

THE WITNESS: I --

MR. GOLDSTOCK: If I'm mistaken, then the record will reflect that. And if not, then you should clear it up.

THE WITNESS: I think you're mistaken.

MS. DIPALO: Go ahead. Why don't you -- do you want to -

THE WITNESS: Well --

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MS. DIPALO: -- recount how you remember --

MR. GOLDSTOCK: I don't have the world's greatest memory.

THE WITNESS: No, no, neither do I.

MR. GOLDSTOCK: But it struck me, when you said that, that's what I heard, so.

THE WITNESS: That's not -- if I did say that --

MR. GOLDSTOCK: Okay.

THE WITNESS: -- please -- I mean thank you for the question. No, I did not mean that. I was calling him to tell him what was going on, saying I need medical documentation. And before -- I think before I asked him I think he said I can give you a note. I think that's how it went. But no, I was calling him to tell him what was going on to see if he could provide something.

MR. GOLDSTOCK: Okay. So when you went back and said "Do you want a medical documentation," you were thinking about Dr. M[redacted], right?

THE WITNESS: Wait --

MR. GOLDSTOCK: Because the --

THE WITNESS: -- when I went back?

MR. GOLDSTOCK: You left the ophthalmologist's office --

THE WITNESS: When I -- okay.

MR. GOLDSTOCK: -- with the understanding

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that you were going to get medical documentation, and therefore they could see your son, if that were the case.

THE WITNESS: Right. I said I would try to get it to her, yes.

MR. GOLDSTOCK: Yes.

THE WITNESS: And yes, I was thinking of Dr. M[redacted].

MR. GOLDSTOCK: M[redacted].

THE WITNESS: Correct.

MR. GOLDSTOCK: Because there were no other doctors at that time, right?

THE WITNESS: There was no other doctors.

MR. GOLDSTOCK: Okay. And -- okay. And so what sort of struck me was the way the letter was written. The first is only two sentences. One is, "He's under my care," and then, "Due to his current health condition," but that health condition, I take it, has nothing to do with his care, right?

THE WITNESS: I don't understand.

MR. GOLDSTOCK: That is to say everything that indicated was a manipulation. Is that what it's called?

THE WITNESS: Well, it's an adjustment.

MR. GOLDSTOCK: Adjustment.

THE WITNESS: But yes, some --

MR. GOLDSTOCK: An adjustment, okay.

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THE WITNESS: -- people call it manipulation.

MR. GOLDSTOCK: Okay. Yeah, adjustment. Sorry, I've never been to one.

And the way he found that you had a problem with the mask is he told you not to wear the mask and see if there was any difference, right?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay. So it wasn't that he did something or he made a diagnosis based on his care of you; his care of you was the adjustment. You had just mentioned something to him. He said, "Well, what if you don't wear a mask," and you didn't wear a mask, and then you felt better.

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay.

THE WITNESS: Basically, yes, I would say that.

MR. GOLDSTOCK: Okay.

THE WITNESS: And if I could just go back to one other thing? The mask that Ms. Koch said that didn't cover my mouth.

MS. DIPALO: Yes.

MR. LAVEGLIA: You mean the face shield?

THE WITNESS: Oh, thank you. I wasn't wearing a mask. The face shield is the New York State

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Court System-issued mask.

MR. GOLDSTOCK: Face shield.

THE WITNESS: Face shield, thank you. I keep saying the wrong thing. That's the face shield I was wearing. The one that they authorized me to wear in the courtroom. So it, of course, covers my mouth, because I don't know any other mask that wouldn't cover your mouth.

BY MS. DIPALO:

Q. And just a couple of questions about that face shield. Does it cover the area, like, under you -- go below your chin?

A. I think it goes below your chin. I haven't worn it in a long time, thank God. I think it goes under your chin.

Q. Would you say -- how far under your chin, an inch?

A. Maybe an inch or two. I'm not sure.

Q. And just on -- while we're on this topic, do you know whether the mask mandate that was in place in December of 2021, did it allow for wearing face shields in indoor settings?

A. You mean the 10 NYCRR 2.60?

Q Yes. Yes.

A I thought it said a face covering.

Q Do you know whether that included face shields?

A I'm not sure. I'd have to -- I'm sure -- I know it's in our packet here somewhere. I'd have to read it again.

Q Did you check it all before you started wearing the face shield?

A Well, no, not per se, because it said, if you didn't medically tolerate, you

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didn't have to wear a mask. It didn't say a face shield. I'm the one that said I don't want people to be uncomfortable because of me. I'm thinking to myself. I'm not saying this out loud. Well, we all do talk to ourselves sometimes. So I said I'll wear a face shield whenever there's an issue, because I don't want people to feel uncomfortable. People felt uncomfortable for too long with this virus that devastated our world. So I'm the one that said, I'll --

MR. GOLDSTOCK: I'm sorry, what does that mean?

THE WITNESS: The virus?

MR. GOLDSTOCK: No. You said people thought too long about the virus.

THE WITNESS: No, have been -- no, no, no. I'm sorry, I must have misspoke. People have been devastated by this virus, physically and mentally, for too long. I don't want anybody --

MR. GOLDSTOCK: Oh, okay.

THE WITNESS: -- because of me, to feel anxiety or angst or bad. That's why I would try to accommodate by wearing a face shield. Yes.

MR. GOLDSTOCK: Okay.

EXAMINATION BY

MS. DIPALO:

Q. If we can, I'm going to turn on to another topic, and it's the defamation lawsuit, *Frank Mora v Stacey Koch*. Judge Mora, did there come a time

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when you learned that Stacey Koch had filed a complaint against you with the Commission?

A. Yes.

Q. And do you recall when that was?

A. When you guys sent it to me, March 30th.

Q. Sorry, I'm going to show you --

A. Yeah.

MS. DIPALO: I'm going to show you what's been pre-marked Commission Exhibit 8, which is a copy of a letter from the Commission to Judge Mora, dated April 12, 2022. Andy's going to give a copy to Mr. Goldstock, Judge Mora, and Mr. LaVeglia.

(Commission Exhibit 8 was marked for identification)

THE WITNESS: Oh right, March 30th. I'm sorry, that was the first one you guys sent me. So I change my answer: April 12, 2022.

BY MS. DIPALO:

Q. And did you first learn about Stacey Koch's complaint from the Commission's letter?

A. Yes.

Q. And if you could just take a look at this letter, do you recognize it?

A. Yes.

Q. And did this letter -- in this letter did the Commission ask you questions about the incident at Seeta Eye Center on December 28, 2021?

A. Yes.

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Q. Okay. I'm just going to ask you again. You were provided with a copy of Stacey Koch's complaint as an attachment to this letter?
A. Yes.
Q. And did you submit a written response to this letter?
A. Yes.
Q. And that was through your Counsel, Mr. LaVeglia?
A. Yes.
Q. Now, to your knowledge, was Stacey Koch's complaint to the Commission confidential at the time you received this letter in April of 2022?
A. Yes.
Q. Okay. It hadn't been made public at all to your knowledge?
A. Okay. So that's a good question. And the definition of made public is what got me in trouble with filing this lawsuit. Michael Sussman advised me -- because I even said -- because I didn't know -- I never handled a defamation case, never been involved in one, but I thought one of the elements had to be public. And I asked him, I said, "Is filing with the Commission public?" And he said, "Yes." I said, "Okay," because that was before we filed the lawsuit, and I took his advice. So go ahead. I don't know if that answers your question.
Q. But at the time you received this letter, you thought it had been made public by Stacey Koch having filed it with the Commission?
A. No. I thought it was, like it says, confidential.
Q. Okay.
A. It's after I spoke to Michael Sussman that he said filing it is -- with the

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Commission, is making it public.
Q. Understood.
A. Right.
Q. Now, at some point after receiving this letter, did you commence a lawsuit -- a defamation lawsuit against Stacey Koch?
A. Yes.
Q. And do you recall the date you commenced the lawsuit?
A. It was -- no, not exactly, but I mean --
Q. Okay.
A. -- it's of record, so -- and I know it was, like, a day before. I believe what the statute of limitations would be on a defamation claim, I think, is a year.
Q. So if the incident at Seeta --
A. December 28 --
Q. -- took place on December 28, 2021, it was in or around December 20, 2022?
A. Around there, yes. Yes.

MR. GOLDSTOCK: Excuse me for one second. I just want to go back. You said that when you first called your Attorney, Mr. Sussman, that's a different Attorney.

THE WITNESS: Yes.

MR. GOLDSTOCK: He wasn't your Attorney beforehand?

THE WITNESS: Beforehand for what? Yes --

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MR. GOLDSTOCK: Before you spoke to him?

THE WITNESS: Yes.

MR. GOLDSTOCK: He had been your Attorney?

THE WITNESS: Sure. He was representing me in my federal lawsuit.

MR. GOLDSTOCK: Okay. So the federal lawsuit was filed before the --

THE WITNESS: The Seeta lawsuit?

MR. GOLDSTOCK: Yeah.

THE WITNESS: I mean Ms. Koch, yes.

MR. GOLDSTOCK: The defamation. Okay.

THE WITNESS: Yes.

MR. GOLDSTOCK: So you called him and he said to you, "Let me do some research on this"?

THE WITNESS: Yes.

MR. GOLDSTOCK: And then, presumably, he did his research. He called you back, or you called him --

THE WITNESS: However.

MR. GOLDSTOCK: -- but you spoke to one another, and he told you that the tortious interference with your business was not viable but that filing with the commission, as research showed, was public and therefore you could sue -- have a defamation suit?

THE WITNESS: Yes. He said I met the

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elements to file a defamation suit.

MR. GOLDSTOCK: Okay.

BY MS. DIPALO:

Q. And just going back, where did you file the lawsuit?

A. Dutchess County Supreme Court.

Q. And is there a reason you waited around eight months, after learning of Stacey Koch's complaint, to file the lawsuit?

A. Yes.

Q. And what was the reason?

A. Well, prior to receiving that call from Michael Brown, I had no intention of filing anything. It's after I received that call, and what I presumed that this lady is trying anything to, basically, ruin my life, ruin my career. I believe what Mike Brown told me, that I reached out to Mr. Sussman to see if there's anything I could do to have recourse for this.

Q. And --

A. And the filing.

Q. -- you received a call from Michael Brown in or around -- was it in or around June of 2022, based on the date of the letter? Would you like me to refresh your recollection?

A. Which letter? Are you talking about --

Q. Michael Brown's letter that was drafted.

A. No, it didn't have anything to do with --

Q. Okay.

A. -- his letter.

Q. That was after that?

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A. Yes, it's when --

Q. Okay.

A. And I'm not trying to be disrespectful. If you tell me the date that Ms. Koch -- I don't know if she testified before you. I don't know if it was on FTR, if a Stenographer or you guys just spoke with her. That's the date. At that point, sometime after she spoke with you guys, is when he called. And again, for the record, I don't remember if it was the same day, the next day, a few days later. I'm not sure.

MS. DIPALO: At this point I'd like to show you what's been pre-marked as Commission Exhibit 9. And this is a copy of the summons and complaint in *Mora v Koch*. And Andy is providing a copy to everybody.

(Commission Exhibit 9 was marked for identification)

THE WITNESS: Okay.

BY MS. DIPALO:

Q. Judge Mora, do you recognize this document?

A. Yes.

Q. And who prepared this document?

A. Michael Sussman.

Q. And before the complaint was filed in court, did you review the contents with Mr. Sussman?

A. Yes.

Q. And did you read through the complaint before it was filed?

A. Yes.

Q. And did you approve it before it was filed?

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A. Yes.
Q. And was Stacey Koch's complaint attached as an exhibit to your complaint?
A. I don't know. I believe so.
Q. Take a look at --
A. Oh.
Q. -- Commission -- I'm sorry, Exhibit 1 to your complaint.
A. Exhibit 1, yes.
Q. And is that Stacey Koch's complaint to the Commission?
A. Yes.
Q. And your lawsuit was publicly filed, correct?
A. Yes.
Q. Judge Mora, why did you commence a defamation lawsuit against Stacey Koch?
A. Because Michael Sussman said I was allowed to, and it was a viable claim. And specifically, because she said -- I'm not sure where in here. She said I was taunting her. That is so hurtful to me, I can't even begin to explain. I wasn't taunting her at all. And if it came across like I was, I sincerely would apologize for that. Like I said, I was begging, practically -- no, I was. I was begging for her just to let my son have his eyes looked at. I would never taunt someone, especially someone who just told me she's home with -- that has her -- I think it was her husband, but a family matter -- I forget how she said it -- living with someone with [redacted] That would be so offensive to me, I can't even begin to explain. That's basically why.

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Q. And what -- again, I think you testified to this already, but was what prompted you to reach out to Michael Sussman to see if you could commence some kind of action against Stacey Koch, what Michael Brown told you; that she was bragging about getting you fired?

A. Yes.

Q. And you would not have commenced a lawsuit against Stacey Koch otherwise?

A. Correct. If I had not had that call from him, I would just let this whole procedure to go through. And if I could go back, of course I wouldn't have done this because, first of all, it cost me a lot of money. And I don't think now, after everything that happened, that it was viable. At the time I did because I was going by my Attorney's advice. However, if Mr. Sussman was here today, because as of yesterday he 100 percent disagrees with me. He still says this is a viable lawsuit.

He recommended that I appeal back when I could have appealed, and I specifically told him, "Do not appeal this case." I said, "If I had known" -- "first of all, that it wasn't viable, I would have never brought it." And again, he disagrees. And I said to him specifically, I said, "Michael, did you know what SLAPP was? Do you know what SLAPP is?" He goes, "Of course I know what SLAPP is. I've been litigating SLAPP suits for several years." And I said -- and I have never heard of SLAPP. Prior to receiving the motion to dismiss, never even knew what that meant. Strategic lawsuit against public participation. Never even heard of it. Never been involved with it in my entire life, in private practice, as a Judge, never handled anything like that, never even knew

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what it was.

And I said, "Michael, why didn't you tell me this was a SLAPP suit?" He goes, "It's not a SLAPP suit." And my exact words were "You could've fooled the Judge." He goes, "She's wrong. That's why we should appeal." I said, "Michael, if you had told me -- if you would at least told me it could be a SLAPP suit, I would have, first of all, asked you what's a SLAPP suit. Then you would've told me, and then I probably would have looked it up." No, not probably. I would have looked it up and I would have told you, "Don't bring this lawsuit."

There's a case out there that was against an Attorney, but it seems to fit with a Judge too. Do I agree with it? Absolutely not. And as the Commission argued, it's for the integrity of the system. Listen, I'm all for the integrity of this system. I love the law. It's my passion. But to be able -- as I find out that someone can file a complaint -- and I'm not saying this is Ms. Koch. I'm not saying this, but to find out that someone could file a complaint against a Judge and it can be false and malicious, that's actually what the case law says, and the Judge has no recourse against the person, to me is preposterous. I'll analogize that to the criminal justice system.

We want integrity in the criminal justice system. We want victims of crimes to come forward. We want witnesses to come forward. However, if they file a false and malicious statement with the police or whoever, or testify falsely, not only will they be prosecuted for that, for filing a false statement, the victim of that statement would be allowed to sue that person. So the integrity of the system hasn't been hurt because of that.

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And I understand Judges were in a different position and were looked at differently, but I don't think anyone should be able to falsely and maliciously file a complaint against someone. If it's found out that it was, the Judge, and anyone, should be allowed to get redressed for that.

I know I'm way off on a tangent, but if I had known about a SLAPP -- about that lawsuit, if my Attorney even told me it's a possibility, I would have never brought this lawsuit.

Q. And when you say you had this conversation with Michael Sussman --

A. Yes.

Q. -- when was that? Was it after the Judge issued her decision in the case?

A. The -- I think the SLAPP one was after the decision. I think the SLAPP was after that, and he still says it's not a SLAPP. To this day he'll say it's not a SLAPP. You call him in, I can almost guarantee you, because he put it in writing to me also, that if -- he disagrees. And that's why I didn't go -- but I didn't go forward because it looks like a SLAPP. I didn't intend it to be a SLAPP. I wasn't trying to stop her from participating because she already participated. She filed. She testified before you. I had no -- I would never stop someone from testifying. That's the whole basis for our justice system.

Q. Now, just backtracking a little. When you contacted Michael Sussman about bringing a potential lawsuit -- I just want to make sure he -- I have your testimony correct -- he called you back and said, "Can't bring a lawsuit for tortious interference with business." Did he tell you that you could bring a defamation lawsuit, or did you ask him whether you could bring a defamation lawsuit?

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A. I'm pretty sure it was him. Yeah, it was definitely him, because I didn't know. I never handled a defamation case, so he's the one that came to me and said, "You can bring a defamation suit." And when you spoke, I don't know if it was in email, whatever.
Q. That was my next question.
A. Communication.
Q. Yes.
A. Yeah, yeah, we communicated. And it was him, yes.
Q. How many times before you initiated the lawsuit would you say that you had communications with Michael Susman?
A. About the lawsuit?
Q. Yes.
A. About this particular lawsuit --
Q. About this lawsuit before you initiated --
A. Filed?
Q. -- it. Yeah, before you filed.
A. I have no idea. It was several because we had to get the facts and get the complaint going. There were several, I would say. I have no idea.
Q. Did you meet in person?
A. We met in person -- no, not for this, though. No. It was telephone, emails, yeah.
Q. And do you know Michael Sussman at all before you initiated the lawsuit, the defamation lawsuit?
A. Yeah, he's representing me on my --
Q. Oh, yes.

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A. -- federal lawsuit.
Q. Did you know him prior to him representing you on the federal lawsuit?
A. Yes. He represented the class action when they changed the law to remove the religious exemptions for your kids to be allowed to go to school, and I was part of that action, so I met him at that point.
Q. So that --
A. I knew of him because he's been -- like my Attorney said here, this Attorney, I got to be specific, Mr. LaVeglia, he's been in practice for, I believe, 45 years, so he had a -- he's very reputable, well known for the stuff he does, so that's how I know him.
Q. And the lawsuit concerning the religious exemptions that happened around 2018, 2019 --
A. Well, 2019 --
Q. -- did that fall apart?
A. 2019 is when they changed the law, so it would be after that, at some point.
Q. And before you initiated the lawsuit, before you filed the lawsuit --
A. Well, hold on. Which lawsuit?
Q. Sorry, the defamation lawsuit.
A. Yes.
Q. Did you talk to Mr. Sussman about what had happened at Seeta with Stacey Koch?
A. Yes.
Q. Okay. And did you talk about the elements of defamation?
A. Did him -- did he --

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Q. You and Mr. --
A. -- and I --
Q. -- Sussman.
A. Yes, I believe so.
Q. And did you look at Stacey Koch's complaint to the Commission together?
A. At the same time, I'm not sure if we looked at it. Like going line by line, you mean?
Q. How did you determine which statements in Stacey Koch's complaint were defamatory?
A. Oh, Mr. Sussman.
Q. And did he ask you whether you thought they were defamatory?
A. Not -- I don't think so.
Q. So one of the elements of defamation, and correct me if I'm wrong, is that the statement is false, correct?
A. Right.
Q. Okay. So did Mr. Sussman ever ask you whether the statements in Stacey Koch's complaint were true or false?
A. I don't know if in so many words, but I told him, definitely -- well, I mean, I'd have to go through it. Definitely the taunting her, that was the one that really upset me, because I would never, like I said, taunt her or anyone else, especially in the situation that everyone was in regarding the COVID. I'd have to look. I don't remember.
Q. And did you give Mr. Sussman a copy of Stacey Koch's complaint that she filed with the Commission?

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A. Yes.
Q. And I know you testified to this already. I just want to get it on the record. Prior to initiating the defamation lawsuit, had you ever presided over a defamation action as a Judge?
A. No.
Q. And prior to initiating the defamation lawsuit, had you ever handled a defamation case as an Attorney?
A. No.
Q. And before you filed this lawsuit, were you aware of what was required to prove defamation?
A. No.
Q. And did you do any independent research before you filed this lawsuit to see what was required to prove defamation?
A. No, I fully relied on my Attorney.
Q. And did you talk to Mr. Sussman about whether Stacey Koch's statements had been published or made public before you filed the lawsuit?
A. I did ask him that, because I knew that publication was an element, or was required, or something to that effect. And he specifically told me, "Yes, filing it with the Commission is public." "It's a third party," I think he said -- I don't know if he said third party.
Q. And how did you know that publication was an element?
A. Just hearing about it.
Q. Okay.
A. Just in general, I guess.
Q. And just to -- have you been the subject of a Commission investigation

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previously?
A. Prior to --
Q. Prior to this case.
A. Yes.
Q. This matter. And was that -- to your knowledge, was the complaint in that case kept confidential?
A. I don't understand the question.
Q. So the complaint in the prior case --
A. The anonymous complaint?
Q. If that's -- yes. Was that kept confidential?
A. When you say kept confidential, by who?
Q. The Commission.
A. Yes.
Q. Okay.
A. As far as I know.
Q. And to your knowledge, did the investigation, in that prior case, did that remain confidential?
A. As far as I know.
Q. And to your knowledge, did the disposition in that case remain confidential?
A. As far as I know.
Q. And it never released to the public?
A. Not that I know of.
Q. And were you aware, at the time you filed the lawsuit, that by law all complaints and proceedings before the Commission are confidential?

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A. So again, going back to the advice from Mr. Sussman.
Q. Uh-huh.
A. He said it was publication. So when you say confidential, you mean, like, the outside public doesn't know?
Q. Yes.
A. Yes. Yes.
Q. So Mr. Sussman told you that it was made public by filing with the Commission?
A. Yes, he said for defamation, filing the Commission satisfies that public component.
Q. But you knew that the Commission's proceedings were confidential by law?
A. Yes.
Q. So did you question him at all about whether it was --
A. No, I took him --
Q. -- public?
A. I'm dealing with an Attorney that's been doing this for 45 years, and I asked him this. I remember this. I said, "Have you handled defamation cases before?" He laughed. He said, "I've handled" -- I don't know if he said hundreds of them. I'm not sure what he said. Basically he's saying -- "This is what I do" is what he said. So no, I fully took what he said as true at face value. I had no reason to question it, I guess that's how I'll say it.
Q. And before you filed the lawsuit, did you -- were you aware of whether there were any privileges that were defenses against defamation?

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A. No.
Q. Were you aware of the defense of absolute privilege?
A. No.
Q. And did you do any kind of independent research on, you know, whether potential defenses against defamation?
A. No. And I left -- that whole lawsuit up to my Attorney.
Q. And just going through, to your knowledge, at the time you filed the lawsuit, Stacey Koch's complaint remained confidential?
A. Right. It hadn't left the Commission.
Q. Yes. And it hadn't been released to the public --
A. Correct.
Q. -- at large, hadn't been --
A. At large, yes, that's the word.
Q. -- hadn't been disclosed to any news organizations?
A. No.
Q. It hadn't been made available online?
A. No.
Q. Okay. And Stacey Koch's complaint to the Commission was attached as an exhibit to your complaint, correct?
A. Correct.
Q. So is it fair to say that Stacey Koch's complaint was made available to the public or published when you filed your complaint -- you filed your lawsuit?
A. Made available to the public, yes.
Q. And it was published at the time --

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A. When you say published, what do you mean by publish?
Q. It means it was released --
A. Okay.
Q. -- to members -- to third parties.
A. The word released, yes, it was definitely released. It was a public lawsuit. Yes.
Q. Now, are you aware of a newspaper article that appeared online shortly after you filed your lawsuit?
A. Yes.

MS. DIPALO: I'm just going to show Judge Mora what has been pre-marked Commission Exhibit 10. And it's a copy of an online article that appeared in the Mid Hudson News website on January 3, 2023. And I apologize for the very small print.

(Commission Exhibit 10 was marked for identification)

BY MS. DIPALO:

Q. Judge, have you seen this article before?
A. Yes.
Q. And can I just direct your attention to the top left corner under the caption that says, "Judge suing Office Manager for defamation after argument over mask policy at doctor's office." Can you tell me the date that appears on this article?
A. January 3, 2023.
Q. And the time that appears next to the date?
A. It looks like 4:24 a.m.

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Q. And if I can just take you back. I'm sorry. If you could just take a look at Commission Exhibit 9, I apologize. Can you tell me the date that your defamation lawsuit against Stacey Koch was filed or received?

A. December 29, 2022. It says 11:13 a.m.

Q. Thank you. Judge, did you alert the Mid Hudson News of your defamation lawsuit against Stacey Koch?

A. No.

Q. Do you know whether your Attorney, Michael Sussman, alerted the Mid Hudson News of the lawsuit?

A. I do not.

Q. Okay. And do you have any idea who notified the Mid Hudson News?

A. No.

Q. And I'm just going to ask you to take out Commission Exhibit 9. We're just going to walk through, that's the copy of the summons and complaint in *Mora v. Koch*. I'm going to ask you to turn your attention to page -- paragraph 23 which is on page 4. Okay. And if it's okay, I'm just going to read it onto the record.

Paragraph 23 states, "Thereafter and on the following day, Koch wrote statements about the incidents which are false, professionally damaging to the Plaintiff as a jurist, and calculated to subject him to personal ridicule and shame."

Judge, what was the basis for alleging that Koch's statements were professionally damaging to you as a jurist?

A. Well, Mr. Sussman explained by filing it with the Commission, that meets that paragraph.

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Q. Do you believe that members of the public and Attorneys have the right to file complaints with the Commission about Judges?
A. Absolutely.
Q. And do you think that all complaints filed with the Commission are professionally damaging?
A. All complaints? I'd have to say no.
Q. And just going back, Stacey Koch's complaint was confidential at the time you filed your lawsuit?
A. Yes.
Q. And at the time you filed the lawsuit, the Commission was investigating her complaint, correct?
A. Yes.
Q. And at the time you filed the lawsuit, there had not been any kind of disposition by the Commission?
A. No.
Q. There had been no determination made on the merits of Stacey Koch's complaint?
A. No.
Q. And just that same paragraph, what was the basis for alleging that Koch's statements were calculated to subject you to personal ridicule and shame?
A. What was -- I'm sorry?
Q. The basis for alleging that her statements in her complaints were calculated to subject you to ridicule and shame.
A. That was drafted by Mr. Sussman.
Q. Do you know -- you read through this, correct?

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A. Yes.
Q. And what did you understand him to mean when he used the word calculated?
A. I'm not sure. I don't -- I don't know.
Q. And I'm just going to turn your attention to paragraph 24 on that same page 4 of Commission Exhibit 9. And it states, "Specifically on December 29, 2021, Defendant wrote the following false and libelous statements on a complaint form provided by the New York State Commission on Judicial Conduct." And it lists five statements. It identifies five statements. I'm just going to walk you through each of one of those statements. In paragraph 24A, it says, "Mr. Mora created a huge scene in our waiting room." Why did you claim that this statement was defamatory?
A. Because I maintain I didn't create the scene. It was created when she came out and confronted me the way she did and didn't accommodate my condition.
Q. Did you consider that statement, that you created a huge scene, was an opinion of Ms. Koch's?
A. An opinion? I think she was stating it was a fact.
Q. It was her subjective -- you didn't consider that it was her subjective belief that you created a huge scene?
A. I'm not sure.
Q. If you looked at it from her view point?
A. I don't think I could look at it from her point, because I would never tell somebody to stop talking, "You're spreading your germs on me. I don't

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want to breathe your air." So I can't even put my mind into something like that, because that's -- it's just beyond the pale.

Q. And I'm going to turn to paragraph 24B, which you've referred to. It states, "He taunted me in front of a waiting room of around 20 people."

A. That's an at symbol --

Q. At at --

A. -- whatever that means.

Q. Yes, I --

A. Yes.

Q. And I just want to note, certain -- the words taunted me in front of a waiting room of at 20 people is italicized. So what was your basis for alleging that statement was defamatory?

A. Because I didn't taunt her.

Q. And again, did you consider that that was Stacey Koch's opinion --

A. No.

Q. -- that you taunted her?

A. I stated -- I thought she was stating what she considered to be a fact.

Q. How would it be based in fact? How would you consider it was based in fact?

A. I don't think it was. I think she thought it was a fact.

Q. And did you consider that it was her subjective belief that you were taunting her?

A. I didn't -- no, I didn't consider that at the time.

Q. And let's turn to paragraph 24C. "He stated the police won't come. The police said they would come, and he then left once the police were on

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their way to our practice." And the words he then left once the police were on their way to our practice is italicized.

A. Yes.

Q. So what was the basis for alleging that this statement was defamatory?

A. I never said the police won't come. And I didn't leave once the police were on their way. After the first call, as far as I knew, the police were on their way. They just were taking however long it was going to take them to get there. That's not why I left the practice, because the police were on the way, the first time.

The second time, I still didn't leave the practice because the police were on the way. I left the practice when I said to her, "If I get you medical documentation, will you please see my son?" And she said, "Yes." And that was such a relief. And I said, "Okay, I'm going to leave now. I'm going try to get the medical documentation and send it to you." And that's when I left the practice. It had absolutely, positively, 100 percent no reason that the police were coming. If the police came, as I told you, I would have spoke to the police and hopefully had resolved it when they got there the first time. So C is completely false.

Q. When Stacey Koch called the police, was it your understanding that they were going to respond to the scene?

A. Absolutely.

Q. Okay. And at some point, before the police arrived or were due to arrive, did you leave the practice?

A. Yes.

Q. Okay. So would it be fair to say that you left once the police were on

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their way to the practice?

A. I can't tell you. I don't know.

Q. Reading it from a different perspective.

A. I don't know if they were on their way, because they said they were on their way the first time and they didn't show up. So I don't know if they were really on the way. I have no idea how many units were in place that day, if they were out on other calls, that would've taken an hour to get there. I have no idea if they were actually on the way. Do I think they would've come? Yes, absolutely. At some point, if I hadn't left and she told them I was leaving, to basically cancel it, she didn't use those words, they would've come. I do believe they would've come.

MR. GOLDSTOCK: How do you know they were -- they said they were coming the first time?

THE WITNESS: I heard the --

MR. GOLDSTOCK: Yeah, but you didn't know it then.

THE WITNESS: Oh, then?

MR. GOLDSTOCK: Yeah.

THE WITNESS: Oh, no, because like I said, being a Judge for ten years, I know when someone calls the police, they respond. They go. So did I know a hundred percent that they were going to come? Of course not. Based on life experience and my background in being a Judge for over ten years, at that time I think it was only ten years, I was very confident the police were coming. Does

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that answer the question?

BY MS. DIPALO:

Q. And turning to paragraph 24D. I'm just going to read it into the record. "He then had a letter created from Chiropractor G[redacted] M[redacted] [sic]" -- it's a typo -- "stating Mr. Mora had a 'medical condition' that prevents him from wearing a mask.'"

A. Yes.

Q. And the words then had a letter created are italicized.

A. Yes.

Q. What was your basis for alleging that this statement was defamatory?

A. Mr. Sussman specifically said this to me, and I remember it. He said -- and that's why it's italicized, I believe. He then had a letter created, like I had influence or something in what the chiropractor did. Like I created it, is what that says. He had a letter created. I didn't have a letter created. I called the doctor, and we talked about it, and he said he would send me a note saying, so he created the letter. So Sussman said that's false.

Q. But did you ask Dr. M[redacted] to compose a letter for you?

A. Again, I don't know if I specifically said it or if he knew what I was asking, and he said, "I can send you a note." So --

Q. And he did produce a letter or generate --

A. Yes.

Q. -- a letter for you?

A. Yes.

Q. And paragraph 24E. "This man should not be allowed any decision-making for others when he cannot act professionally in this medical

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practice." And when he cannot act professionally in this medical practice is italicized. And what was your basis for alleging that statement was defamatory?

A. Because I'm not sure how I didn't act professionally. As far as I remember, I didn't raise my voice. I stayed as calm as I could. You heard -- I mean, you could hear me in there. I wasn't -- I was talking the way I'm talking here.

Q. Would you say it's Stacey Koch's opinion that you did not act professionally?

A. Again, it was written -- it was stated as a fact, so.

Q. She's saying, from her perspective, you did not act professionally. Wouldn't that be an opinion?

A. I don't know, it's not stated as an opinion. It's stated as a fact.

Q. How is it stated as a fact?

A. It says "when he cannot act professionally in this medical practice." That's a statement. It's a fact. It doesn't say "I think he's not acting professionally." That's how I read it, as a statement of fact

Q. And just to turn your attention, we're going to go to paragraph 27, and it's on page 5. And you state, "Defendant's conduct has caused Plaintiff emotional distress, humiliation, shame, and embarrassment and required him to answer her false claims before a State Commission designed and empowered to investigate judicial misconduct." What was your basis for claiming that Stacey Koch's statements in her complaint caused you humiliation?

A. It's pretty humiliating to be before this Commission on, especially,

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something like this. Other things, maybe not, like my religious beliefs. I am not humiliated, ashamed, or embarrassed of my religious beliefs. Distressed, not because of my beliefs, but because of what I'm going through with both the New York State Court System, and the denial of my beliefs, and what the Commission has been putting me through, and my family, and asking for my children's information and all that. So that's how I felt humiliated and shamed and embarrassed, because this Commission -- this complaint is filed here. It was an unfortunate situation, and when I left there, I actually said a prayer for her because I felt bad that she was having a bad day, that she's dealing with a tragic situation at home with her -- I think it's her husband. I think that was said at some point, but her family member, and I felt bad. But when I left there, after it was done, I chalked it up to everybody has a bad day, everybody is under so much duress with what's going on with COVID. I didn't think any of it until April 12, 2022.

Q. And turning to the conversation you had with Michael Brown where he told you that Stacey Koch testified before the Commission and he told you that she was bragging in words or substance that she was going to have your fired, is there a reason that you didn't allege that was defamation in your lawsuit?

A. I don't know.

Q. But that was the reason you called Michael Sussman, correct?

A. Well, that's what prompted me to call him.

Q. And did you tell him --

A. Oh yes, I absolutely told him.

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Q. And did he -- did you discuss whether that may be a defamatory statement?

A. No, because I don't know how it -- no, we did not. I told him everything, and he drafted the summons and complaint. I relied on his expertise, and I don't know how that would be defamation, after now knowing a little bit more about defamation. Trying to get me fired, I don't know how that's a defaming statement. I don't know. I'm not sure. Again, I never practiced in this area. But why he didn't put that in there, I have no idea. I didn't even ask him because I went by his advice.

Q. Now, did your lawsuit request damages from Stacey Koch?

A. Yes.

Q. And how much -- what type of damages did you request?

A. Money damages.

Q. And did you request compensatory damages?

A. I believe so.

Q. Do you want to refresh your recollection?

A. Sure.

Q. It's page 5 of Commission Exhibit 9, and it's just the last paragraph.

A. Yes.

Q. Okay. So did you request compensatory damages?

A. Yes.

Q. And how much did you request?

A. $250,000.

Q. And what loss did you suffer as a result of Stacey Koch filing a complaint with the Commission?

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A. When you say loss, you mean --
Q. Well, compensatory damages are typically for losses, correct?
A. That's a good question. I didn't practice in that area of law.
Q. Did you ask Mr. Sussman why you were seeking $250,000 in compensatory damages?
A. No. I left -- again, I left it up to him because he handles these cases all the time. He knows what they're worth, and he came up with those amounts. I didn't come up with them.
Q. He didn't -- did he run the number of $250,000 by you?
A. Well, it was in here. I saw it.
Q. And did you ask how he got to that number?
A. No. No, I did not.
Q. And did he ask you anything about your salary or any questions to determine how to get to this amount --
A. No.
Q. -- of compensatory damages? And did you seek punitive damages --
A. Yes.
Q. -- in the amount of $175,000?
A. Yes.
Q. And what was your basis for requesting that amount?
A. Mr. Sussman.
Q. And did you return to Seeta Eye Center after you filed your lawsuit?
A. Yes.
Q. And do you remember the date of the appointment?
A. No.

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Q. Was it a month after you filed the lawsuit?
A. Again, I can look it up, but I do not know.
Q. That would be helpful if you could provide the date of --
A. Yes.
Q. -- the appointment. I believe it would be in 2023.
A. Okay.
Q. And do you recall what the purpose of your appointment was?
A. That one, I think, was for me.
Q. And do you remember when you made the appointment?
A. No.
Q. If it was before you filed the lawsuit or after?
A. I'm not sure. It may have been after, because I remember calling Mr. Sussman and saying, it's time -- I got to get my eyes looked at because I'm having a little bit of an issue seeing, because normally I don't go to the eye doctor. I don't got yearly. I go if it's needed. And I said, "Am I allowed to go?" And he said, "Yes, absolutely." So okay.
Q. And --
A. Go ahead.
Q. Oh, sorry. Did you go to the appointment?
A. I did.
Q. And did you see Stacey Koch while you were there?
A. No.
Q. And at any point did you consider canceling the appointment?
A. I don't think so.
Q. And it was just for a routine eye exam?

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A. Yes, because I was -- like I said, I wasn't seeing -- I don't know if it was up close or far away, I've forgotten at the time.
Q. Now, at the time you had filed the defamation lawsuit against Stacey Koch at the time you went to this appointment.
A. Yes.
Q. And you alleged in the lawsuit that Stacey Koch had caused you emotional distress?
A. Yes.
Q. And you also alleged that Stacey Koch's conduct had caused your humiliation?
A. Yes.
Q. And you alleged that her conduct caused you shame?
A. Yes.
Q. And you were seeking $425,000 worth of damages from her --
A. Yes.
Q. -- correct? So why would you want to return to Seeta and potentially encounter Stacey Koch?
A. Because I'm not going to shy away from going to a place that I'd been going to for years, comfortable with the doctor, because of something she did in the past.
Q. The lawsuit was pending at the time of the appointment.
A. This lawsuit was, yes.
Q. Yes, the defamation lawsuit.
A. Yeah, but the -- what caused it was a long time ago.
Q. You were no -- face shields and face masks were no longer required at

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the time of this appointment?
A. No, I believe they were.
Q. They were. And did you wear a face shield or a --
A. I did.
Q. And at the time you made the appointment, and at the time -- I'm going to withdraw that. At the time you went to the appointment, did you consider the effect that it would have on Stacey Koch?
A. No. No.
Q. Did you think about what appearing at Seeta Eye Center -- how it would affect her when you were suing her for $425,000?
A. No, I wasn't there to see her.
Q. But did you think about it before you went to Seeta?
A. Actually, I did not.
Q. Did you think that -- when you went to Seeta for that appointment, were you trying to upset Stacey Koch?
A. Absolutely not.
Q. And did you consider that going to Seeta, when you were suing her for defamation, may be perceived by people as an effort to maybe upset Koch?
A. No, it didn't even cross my mind.
Q. And were you trying to intimidate Stacey Koch when you went to Seeta for the appointment?
A. Not at all. I didn't even think I would see her.
Q. She's the Office Manager.
A. Yeah, she's in the back somewhere, I don't know -- she came out a door

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when she confronted me during the incident.
Q. And on at least two occasions you've been to Seeta you had interactions with Stacey Koch, when you --
A. Yes.
Q. -- when you went with [redacted] and you went with [redacted].
A. Yes, she came out of the back offices, wherever her office is, I don't even know where it is, and came out into the front.
Q. And do you think that maybe a member of the staff would have alerted her that you were coming for an appointment?
A. I have no idea.
Q. And did you consider that going for this appointment at Seeta, after you had filed the defamation lawsuit against her, may be perceived as you trying to intimidate Koch into dropping the lawsuit or --
A. Wait, who dropping the lawsuit?
Q. Stacey Koch. Oh, I'm sorry. Trying to intimidate her from dropping the -- withdrawing her complaint to the Commission. I misspoke.
A. No, until you just said it now, that would've never crossed my mind, number one. Number two, I know you can't withdraw a complaint with the Commission. Once the -- well, at least this is my understanding because I don't know the total workings of the Commission. I'm getting very familiar with it. But once a complaint is filed, that's it. It's in your hands, the Commission's hands. No matter what the complainant says, they can't withdraw it. That's my understanding of --
Q. How did you know that? How did you learn that?
A. I've read every document I could find on the Commission since this all

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started happening. That's how I found that out. I -- this didn't even cross my mind until you said it. Now that you're saying it, yeah, I mean --

Q. Do you see how it might look --

A. I do.

Q. -- intimidating?

A. I do, and --

Q. To Ms. Koch, at least.

A. I do. Now that you're saying it and I'm actually thinking of it, I do. I probably shouldn't have gone there.

Q. So I'm just going to take you through just the history of the case really quickly.

A. Sure.

Q. So after you filed your complaint, did Stacey Koch file a response to your complaint?

A. An answer?

Q. An answer. Yes.

A. Sure.

Q. Okay.

MR. GOLDSTOCK: So just as a reminder, we're at 1:30 now. So --

MS. DIPALO: We may want to break.

MR. GOLDSTOCK: As you are paging through.

MS. DIPALO: I told you ten pages -- ten minutes last time.

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MR. GOLDSTOCK: Right.

MS. DIPALO: Yeah.

MR. GOLDSTOCK: Okay. So this is probably a good time --

MS. DIPALO: Yes.

MR. GOLDSTOCK: -- because you referenced turning to a new subject.

MS. DIPALO: Yes.

MR. GOLDSTOCK: I just have one or two questions, and then we'll take the break.

Do you practice law now as --

THE WITNESS: Oh, no.

MR. GOLDSTOCK: No?

THE WITNESS: Not allowed.

MR. GOLDSTOCK: Okay.

THE WITNESS: As a full-time Judge, you're not allowed to.

MR. GOLDSTOCK: And did you take the position with your Attorney that after they raised the SLAPP argument, that this was not a SLAPP suit?

THE WITNESS: Wait, say that -- I didn't understand that.

MR. GOLDSTOCK: At a point during the litigation you said that your Attorney believes and still believes to this day that it's a SLAPP suit.

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THE WITNESS: Not a SLAPP suit.

MR. GOLDSTOCK: That it's not a SLAPP suit, and had you known about SLAPP you wouldn't have moved forward with this directly. When Ms. Koch, in her response, raised the SLAPP issue and said this was a SLAPP suit, did you and your Attorney take the position that it was not a SLAPP suit and argue that it fell outside of SLAPP?

THE WITNESS: Absolutely. Mr. Sussman said he did the research, his firm did the research, it's not a SLAPP suit. Like you said, it falls outside of the SLAPP definition, the elements, whatever -- I'm paraphrasing, you didn't use those words.

MR. GOLDSTOCK: Okay. Because I just raise that because -- and I'm sorry that I can't get you to the exact page, but I'm sure that --

MS. DIPALO: It helps if you tell me what you're referring to.

MR. GOLDSTOCK: Yeah.

MS. DIPALO: It may be an exhibit, and we can --

MR. GOLDSTOCK: Yeah. So it's the reply memorandum of law in support of conscious motion to dismiss the complaint. And it's page 1 of 16, and on 6 of 16 their argument is, "Mora does not dispute and therefore

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concedes that this action comes within the definition of a SLAPP suit."

THE WITNESS: Well, that's what they said.

MR. GOLDSTOCK: Yes.

THE WITNESS: Right.

MR. GOLDSTOCK: So they are responding to your response and saying that you, that is to say you and Mr. Sussman, have not argued that this falls outside of a SLAPP suit. Which struck me because you said even till today he argues that it's not a SLAPP suit.

THE WITNESS: Correct.

MR. GOLDSTOCK: But yet, presumably, if this is correct, you did not argue that it fell outside the SLAPP suit.

THE WITNESS: I think that's what they alleged. He says he did. Remember he filed it -- he drafted and filed, I don't think I signed any of this, the memorandum. He said -- he argued, and he still says today, it's not a SLAPP suit.

MR. GOLDSTOCK: Okay. So they are wrong when they say that "Mora does not dispute and therefore concedes" meaning you and your Attorney, obviously, "that this action comes within the definition of a SLAPP suit" and triggers anti-SLAPP statute.

THE WITNESS: You said me and my

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Attorney? The definition of the way I see SLAPP now, it seems to fit the definition.

MR. GOLDSTOCK: So did you tell your Attorney that it fell within the SLAPP suit and not to argue that it did not?

THE WITNESS: No, I specifically asked him, I said -- he said it's not a SLAPP suit. I said, "How is it not a SLAPP suit," and he gave me reasons. I don't remember the reasons. I didn't write them down. Again, I'm going on his advice. He's the expert. He said it's not a SLAPP suit, and I can see why Mr. Sussman is very successful. He was very convincing when we talked about this. Extremely convincing. Because I said to him, "I think we should withdraw." We talked about withdraw. And he says, "We can defeat it. It's -- they're wrong." So I thought it fit the definition. I did not bring it as a SLAPP suit.

To this day I will say I had no intention and would never have an intention of filing something to stop someone from complaining or doing what they're allowed to do under the law. I would never knowingly, and that, I think, is the key word, knowingly bring a lawsuit that wasn't viable. I would never do that. Did I bring one that's not viable? It seems like I did based on my Attorney's advice. Knowing what I know now, this lawsuit would have never been filed. So like we talked about before, if I

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could go back, I would've never filed this lawsuit. If I hadn't gotten that call from Michael Brown, I would have never even pursued it.

MR. GOLDSTOCK: I didn't intend on that going this far, but --

THE WITNESS: I'm sorry.

MR. GOLDSTOCK: -- (unintelligible) next question. Do you pay him for his time, or is it a contingent fee or a combination of the two?

THE WITNESS: It was hybrid, a combination.

MR. GOLDSTOCK: Okay. So when you said "This clearly falls within a SLAPP suit and he said -- and I want to withdraw" and he said "No, I can win this," did you continue to have to pay him after you said you wanted to withdraw and he convinced you to continue?

THE WITNESS: No.

MR. GOLDSTOCK: So he stopped all billing at that point?

THE WITNESS: Yeah, the retainer was -- I believe it was $2,500; that's it. That's how much I would have to pay. And then contingency.

MR. GOLDSTOCK: Oh, so at that point it was all on him?

THE WITNESS: All on him, yes. And he wanted -- not only did he want to keep going, which we

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did, obviously, he wanted to file an appeal. And I specifically told him, I'll say it again, I said it before, "Michael do not file an appeal. If you file an appeal there's going to be sanctions for both you and me, and there's going to be an appellate attorney's fees also." But he -- and that' when he didn't file. I was almost going to offer him, "Michael, you're so confident in this; indemnify me if you're so confident." But I didn't do that, number one. And number two, after reading everything, I wasn't going to go forward because, if the law should be changed, that's outside my purview and I don't have the resources anyway to do this. But once I got the decision, I said, "Do not file." He was going to file. I specifically made sure he wasn't going to file because I wanted it to end. I didn't want to put her through anymore if it wasn't a viable suit. So -- and that's -- and we're going to get to it, I'm sure, the apology letter. Because the way I was raised, if you do something wrong, you apologize and you make amends for it. And did I make amends? I paid $20,000 for her Attorney's fees, so.

MR. GOLDSTOCK: Okay. That answers my question. I still have it open as to why they would argue that you did not contest the fact that it was -- it fell within SLAPP, but we can leave that for later.

Okay. Why don't we go off the record. Have a good lunch. It is now 1:38, so let's say 1:40, 2:10 is a

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good -- make it 2:15. I'll be generous.

(Recess from 1:38 p.m. until 2:21 p.m.)

MR. GOLDSTOCK: Okay. Okay, we're back from the lunch break. It is now 2:20. And we can begin.

I think, Judge, you were asked to see if you could find some dates.

THE WITNESS: Yes.

MR. GOLDSTOCK: And you -- before we begin the questioning, do you want to put those on the record?

THE WITNESS: Sure. The eye exams for my sons and myself. [redacted] was April 8 of 2022. Myself was May 20 of 2022, and [redacted] was January 10 of 2023.

MS. DIPALO: Thank you, Judge.

THE WITNESS: You're welcome.

MR. GOLDSTOCK: Okay.

MS. DIPALO: Thanks. Thank you, Mr. Goldstock.

MS. DIPALO: So Judge, at this point I'd like to show you what has been pre-marked Commission Exhibit 11, which is a copy of a motion to dismiss the complaint, filed by Stacey Koch on February 2, 2023.

(Commission Exhibit 11 was marked for identification)

BY MS. DIPALO:

Q. Judge, do you recognize this document?

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A. Yes.
Q. And did you read these paper when they were filed?
A. Yes.
Q. Okay.
A. After they were filed, yes.
Q. After they were filed. And did you discuss these papers with your Attorney?
A. Yes.
Q. And was it your understanding that Stacey Koch was moving to dismiss your complaint under the defense of absolute privilege?
A. Yes.
Q. And was it also your understanding that Stacey Koch was moving to dismiss your complaint based on the anti-SLAPP statute?
A. Yes.
Q. Okay. And did you discuss how to proceed with your Attorney?
A. Yes.
Q. And can you tell us what you discussed?
A. Yeah, as I said earlier, he said he did the research and they're wrong; this is an exception outside of SLAPP, or anti-SLAPP, however you want to say it, and that we could defeat it.
Q. And what about the defense of absolute privilege? Did you discuss that Stacey Koch's complaint to the Commission may be privileged?
A. Yes. He said it was not.
Q. Did he tell you why he believed it was not?
A. He may have. I don't remember.

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Q. Okay. And did you look at any of the case law cited in the motion to dismiss at that time?
A. At that time, thank you. No.
Q. And did you do any other kind of independent research at that time?
A. No.
Q. And after your discussion with Mr. Sussman, did you consider withdrawing your lawsuit at that time?
A. I did.
Q. And why was that? Why did you consider withdrawing your lawsuit?
A. Because I didn't want to go forward anymore after reading this, even though, in my heart, I know I didn't file a SLAPP suit, by the definition of what a SLAPP suit is, to try to stop someone from participating. But I just -- I didn't want to go forward any more. COVID has -- did enough damage to everybody. Even if I could've proceeded, I chose in my mind not to do it. I was actually -- I was actually -- I'm a lector, as I'm sure you know, because you read my religious statement, at church. That's somebody that does the readings. And one of the passages that came up was settle -- settle with your opponent before you go to court; otherwise, you will be handed over to the Judge who will then throw you into prison. I know prison doesn't apply in this situation. But that hit home to me, and I said, "I think I'm going to do that. Let's settle." And so I told him, "Let's withdraw it." I don't remember when -- when that was. I don't know if it was after we filed our answer to this or before. I don't remember.
Q. At some point you -- you told --

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A. Mr. Sussman --
Q. -- Mr. Sussman --
A. -- yes.
Q. -- that you would like to withdraw your complaint --
A. Yes.
Q. -- and settle, or was that separate? You had mentioned settlement.
A. Well, I -- well, I think I asked him at one point, "Are we allowed to just withdraw this?" He says -- I don't know what he said. I don't know if he said "I don't know" or "I'll have to look." I'm not -- or check. I'm not sure. I don't remember. But I do remember saying, let's -- let's withdraw it, or I mean, settle it. And I think we -- I think he sent an email to that effect to opposing Counsel, and said, you know, "We'll withdraw." And it was four or five different stipulations, if you will. And they came back and said -- and again, I haven't looked at this in a long time. I really don't want to bring up these bad memories. But something to the effect, "You pay us $5,000, you give us an apology," and a couple of other minor things. He responded to them. I remember this.
Q. Stacey Koch's Attorney --
A. I'm sorry.
Q. -- I just want to make sure --
A. Yeah.
Q. -- asked for $5,000 --
A. Yes.
Q. -- and an apology?
A. Yes.

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Q. Okay. Sorry.
A. That's all right.
Q. I'm sorry I interrupted you --
A. No, no --
Q. -- Judge.
A. -- you got be clear for the record. I understand that.
And he, meaning Mr. Sussman, without even asking me, responded to them saying, "No way. We -- you're not -- you can't get Attorney's fees." I'm paraphrasing. "We brought this action. You're not entitled to them. We're going to go forward," or something like that. And -- and then he emailed me, and I said, "Okay, go forward with it." I was hung up on the apology. The money wasn't too nice either, but you know, as you said, hindsight. Paying $5,000 as opposed to 20 would have been much better. Paying zero would be even better. If I didn't bring it and if I could go back, that would be the case. But the apology is what I was hung up on because I thought they were saying apologize for going there, which led to this whole incident.
Q. For going?
A. To Seeta --
Q. To Seeta?
A. -- with my son when I couldn't wear a mask but I had the shield on. I found out later on, they were saying apologize for bringing this lawsuit.
Q. And you found out, was that after Mr. Sussman had rejected the offer?
A. It was well after that. It was, I think, after oral argument. That's when I found out. Hold on, let me -- let me think exact -- I could try to think

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exactly when. It was -- no, it was after -- well after that because in oral argument, when we were trying to settle the matter, I said to -- I still thought the apology, and I think he did too, Mr. Sussman, was for the incident that happened, not the lawsuit. And I said to him, "Michael, how am I going to apologize for something I don't think I did anything, per se, wrong when I was there?" He goes, "Well, if we do settle, I can draft something and let you read it." Little did I know they weren't asking for that. They were asking for an apology for the lawsuit, which was much more palpable to me. Which is --

MR. GOLDSTOCK: I'm -- now I'm confused. You had this conversation with him when?

THE WITNESS: When we were in the courthouse for oral argument on this motion to dismiss.

MR. GOLDSTOCK: This was after he had rejected it?

THE WITNESS: Oh, yes. Yes.

MR. GOLDSTOCK: Okay.

MS. DIPALO: Now, I'd like to show you what's been pre-marked Commission Exhibit 12, which is a copy of the Commission's motion to intervene and dismiss, and that's dated February 6, 2023.

(Commission Exhibit 12 was marked for identification)

MR. LAVEGLIA: Is this number 12?

MS. DIPALO: Yes. Commission Exhibit 12, yes.

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BY MS. DIPALO:

Q. And Judge, do you recognize this document?

A. Yes.

Q. Okay. And did you read these papers at the time after they were filed?

A. Yes.

Q. Okay. And did you discuss the Commission's papers with your Attorney?

A. Yes.

Q. Was that at the same time you discussed Stacey Koch's motion papers?

A. Around the same time. This was filed, it looks like, four days later, so I'm not sure if it was the exact same time, but around that time.

Q. And was it your understanding after reading these papers that the Commission was moving to dismiss your complaint pursuant to the defense of absolute privilege?

A. Yes.

Q. And did you discuss the defense of absolute privilege with Mr. Sussman?

A. Yes, same as my answer before. But yes.

Q. Okay. Was it a different conversation or, if you can recall, the same conversation?

A. The conversation may have been only at one time. We may have discussed all of this at the same time. I don't know if I spoke to him about the first one and then the second one. So we spoke about -- he mentioned absolute privilege. He says it's not -- case law says there's a qualified -- I think the word was qualified -- qualified immunity. I'm not sure. I don't -- I don't handle this type of law, so I don't know. But he said it's -- "Your lawsuit is not covered by this. We can defeat this."

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Q. And --
A. He did the research and I fit into an exception, he said.
Q. And you did not withdraw your complaint at that point?
A. Well, I never withdrew --
Q. No.
A. -- the complaint because she issued a decision --
Q. Yes.
A. -- with lightning speed. That's my terminology. We were in the process of withdrawing it, right after the oral argument and before the date the decision was issued, and we were very close. And actually, it might have been two days before that, I'm not sure, I sent him, "Okay. Let's do it. Pay the $5,000. We'll do the apology." I think we even had a draft then. I'm not sure.

The next day -- because he's usually right on top of it. Mr. Sussman is usually -- he gets back to you. He does everything. The next day I said, "Michael, did you send the email? What did they say? I missed -- I must have missed the email."

"Let me look. Oh, here it is. I'll send it now."

And I'm like -- now, first of all, I didn't think we had anything to, I'll use the word to worry about, because decisions at a Supreme Court usually take a lot longer than a couple -- you know, three, four, five days, whatever it was. So I said, "Can you please send it?" because I wanted to get this resolved. Well, he sent it that morning, I think it was, and that afternoon the decision came out. So it was moot.

Q. It was after oral argument?

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A. Yes, yes.
Q. That you --
A. It was after oral argument.
Q. -- attempted to withdraw?
A. That we -- well, we might have been -- I don't know if we attempted before that. I think we proposed it before that. The first proposal was, I think, before all of the oral argument.
Q. Okay.
A. Because we were in discussions, if you will, negotiations for a while. I think it was before oral argument, during oral argument, like when we took a break, and then after oral argument.
Q. Understood. Thank you, Judge.
A. Yes.
Q. Now --

MR. GOLDSTOCK: I'm sorry. I don't understand. Can you just do the timing on this again? So my understanding is they put forth an offer saying pay $5,000 and write a letter of apology.

THE WITNESS: And some -- a couple of other things, yes.

MR. GOLDSTOCK: Okay. He rejects that without speaking to you?

THE WITNESS: Yes.

MR. GOLDSTOCK: Then what occurs?

THE WITNESS: Well, then he --

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MR. GOLDSTOCK: In other words, because at some point thereafter you say, well, we were in negotiations with them, but it had already been rejected, and I'm trying to figure out when, sort of, the next step occurred. Maybe you went through this, I don't -- and I missed it, but --

MS. DIPALO: No.

THE WITNESS: I don't know. Without looking at my records, I can't --

MR. GOLDSTOCK: Okay.

THE WITNESS: -- tell that. We were still going back and forth with proposals, if you will.

MS. DIPALO: And maybe I can try to clarify --

MR. GOLDSTOCK: Okay.

MS. DIPALO: -- a little bit.

Judge, I'd like to show you now what's been pre-marked Commission Exhibit 13, which is Plaintiff's memorandum of law in opposition to the Defendant's motion to dismiss. And that's dated March 6, 2023.

(Commission Exhibit 13 was marked for identification)

MS. DIPALO: Andy's going to provide everyone with --

MR. GOLDSTOCK: Thank you.

MS. DIPALO: -- a copy.

BY MS. DIPALO:

Q. Judge, do you recognize this document?

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A. Yes.
Q. Okay. And who prepared it?
A. Mr. Sussman.
Q. Okay. And before it was filed, did you review the contents?
A. I'm -- I'm sure I did.
Q. And did you discuss the contents with Mr. Sussman before it was filed?
A. Not really. I was relying on his advice and expertise. Because again, I know nothing about this.
Q. Okay. And did you approve it before he filed it? Did you give your okay?
A. Yeah, I said -- I said to some -- in sum and substance, "This is not my area of law. It looks good to me otherwise," basically something like that.
Q. And this was -- it looks like it was filed on March 6, 2023.
A. Yes.
Q. Now, prior to filing your opposition papers, were you in settlement -- were you considering withdrawing the lawsuit?
A. When you say considering, considering myself? Was it thinking about withdrawing? Is that what you mean?
Q. We can say that. Yes, I'll ask that.
A. I -- yes, I believe so.
Q. Okay. And had you discussed -- before you filed your opposition papers, had you discussed withdrawing the lawsuit with Mr. Sussman?
A. I believe we proposed withdrawing it to the other side before we filed this.

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Q. And what happened at that point? Do you recall what the --
A. I think that's when they came back with the $5,000 and the other things we just talked about.
Q. So that was some time before March 6, 2023?
A. To the best of my recollection.
Q. Thank you, Judge. And did you assert the sham exception to the defense of absolute privilege in these papers?
A. So when you say did I, since it's my lawsuit, the answer is yes. That was Mr. Sussman that came up with that based on his research.
Q. And did you discuss the sham exception with Mr. Sussman prior to filing these papers?
A. I'm not sure if we discussed it.
Q. Did you ask him what the sham exception was?
A. Well, I read the papers, and I gathered from here what it was, but I don't know specifically I asked him that.
Q. Is it fair to say that you were alleging that Stacey Koch's complaint to the Commission was a sham?
A. Based on his research and what he found and came up with, I believe that is what he came up with, yes.
Q. And is it fair to say you were alleging that the only reason she brought this -- filed the complaint with the Commission was to defame you?
A. He -- his papers may say that. I don't -- I haven't read this in a long time, and I'm not sure.
Q. And did you do any independent research on the sham exception?
A. No. I relied on, again, Mr. Sussman's expertise.

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MS. DIPALO: Okay. I'm going to show you what's been premarked Commission Exhibit 14, and this is a decision and order in *Mora v Koch*, issued on April 4, 2023, by Supreme Court Justice Maria G. Rosa.

(Commission Exhibit 14 was marked for identification)

MR. GOLDSTOCK: Before we do that, can I --

MS. DIPALO: Yes.

MR. GOLDSTOCK: -- just go back to the previous one again, and just ask you whether -- you read this before it was filed, I take it?

THE WITNESS: Yes.

MR. GOLDSTOCK: And you said when you read the response from the Defendant, you were shocked about the SLAPP thing, and had you known about SLAPP, you would have never filed this in the first place.

THE WITNESS: Correct.

MR. GOLDSTOCK: But he never addresses SLAPP in here.

THE WITNESS: And I didn't even realize it. Again, I don't handle this type of thing, and --

MR. GOLDSTOCK: Well, I mean, you went to law school. You're a Judge. You handle all sorts of cases, civil and criminal, things you don't know about regularly, and you learn about them.

THE WITNESS: I do.

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MR. GOLDSTOCK: Yeah. So this is your own case, and you said before that the SLAPP thing struck you dramatically, so much so that had you known it existed you would have never filed the complaint. And yet, in the response, there's no mention of SLAPP or why it's not appropriate, and I'm just trying to figure out how you as a Lawyer and Judge, having read this before and having been struck by the SLAPP issue didn't say anything about that?

THE WITNESS: I don't remember if I said anything to Mr. Sussman. At that point in my life, I had him handling this. I was completely overwhelmed with life. I said it before about wife's condition. She was -- for this period of time, for about a year and a half, she was [redacted] pretty much. She couldn't -- she couldn't -- she was [redacted] that's all -- I mean, that's the best way to explain it. I was doing everything.

MR. GOLDSTOCK: Do you need a minute? Do you want to take a break?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay. Let's go off the record.

(Recess from 2:41 p.m. until 2:51 p.m.)

MR. GOLDSTOCK: Okay. We're back. It is now 2:46.

Judge, you've had a second to talk to your

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Attorney. Are you able to proceed at this point?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay.

THE WITNESS: Can I continue answering?

MR. GOLDSTOCK: Please.

THE WITNESS: I was completely overwhelmed with life. As I said, my wife was [redacted] I had my full-time job. I was cooking. I was cleaning. I was taking care of the three kids, taking care of my elderly parents, and I let Mr. Sussman handle this entire thing. Reading the Plaintiff's memorandum of law, it didn't even strike me about the SLAPP. I was concerned about everything else in my life at that time. I said, "I have a competent Attorney. He knows what he's doing," and I let him do it, obviously to my detriment.

MR. GOLDSTOCK: Okay. Please continue.

BY MS. DIPALO:

Q. Judge, do you have before you Commission Exhibit 14, which is Judge Rosa's decision?

A. Yes.

Q. Okay. Just going to ask you, do you recall when oral argument was held? And I can help refresh your recollection.

A. Oh, please.

Q. So if you look at page 2 of Judge Rosa's decision, it would be the fourth paragraph down.

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A. March 27, 2023.
Q. And did you appear for oral argument?
A. Yes.
Q. And did you appear with Mr. Sussman?
A. Yes.
Q. And you testified that you engaged in -- or let me withdraw that. Did you engage in settlement discussions with Ms. Koch and her Attorneys prior to oral argument?
A. That day?
Q. That day.
A. I believe Mr. Sussman may have.
Q. Okay. And I believe you testified you engaged in settlement discussions during a break in oral argument, and correct me if I have your testimony wrong.
A. Yeah. Yes.
Q. So throughout the day you appeared for oral argument, there were some settlement discussions?
A. Yes.
Q. And what happened with those settlement discussions?
A. The proposal was still out there about paying the $5,000, the apology, and again, that's where I think both of us were confused. At least I was confused. I'm not going to say what he thought. Mr. Sussman, that is. And we left -- I was going to think about it, I guess is the best way to say it.
Q. Did you ever ask Mr. Sussman what the apology letter would entail at

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that time?

A. No. He basically said I could draft something regarding the incident, and that's why I thought it was the incident of me going there with [redacted] on December 28th, or whatever day it was. I did not know that day it was for this lawsuit.

Q. And when did you find out that the apology letter would be for the lawsuit?

A. I'm not sure.

Q. It was some time after March 27th?

A. Yes, after the oral arguments.

Q. And was it after Judge Rosa issued her decision on April 4, 2023?

A. I'm not sure, because we did try to accept. I don't know if we had an apology letter drafted. I think we may have, along with the settlement proposal.

Q. And what --

A. I don't remember the date.

Q. Were you agreeing to pay the $5,000 --

A. Yes.

Q. -- at that point?

A. Yes. I was going to. I didn't want to of course, but yes.

Q. And if you could just take a look at Judge Rosa's decision, did she dismiss your complaint with prejudice? If you want to look, you could -- it would be the page 8.

A. That's the appeal.

Q. Oh, page 7, I'm sorry.

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A. It's okay. Yes.
Q. Okay. And she granted Ms. Koch and the Commission's motions to dismiss?
A. Yes.
Q. And did she award -- find that Ms. Koch was entitled to a mandatory award of cost and Attorney's fees?
A. Yes.
Q. And did Judge -- did you agree with Judge Rosa's finding that Ms. Koch's statements in her complaint were protected by absolute privilege. And I'll just -- I should point you to the page. I believe if you look at page 4, and it would be the last paragraph.
A. Oh, yeah, that's the case: *Wiener v Weintraub*. Do I agree now?
Q. No. Did you agree at the time?
A. You mean when I read her decision?
Q. When you read her decision.
A. Based on this, the current law? Yes.
Q. And did you discuss the case law with Mr. Sussman at that time, after you read the decision?
A. I know that -- after I got the decision -- because he sent it to me. I was at -- I was at a function. I remember vividly, I walked out. That's when I called him. And that's -- I know that's when I said about the SLAPP, because he kept telling me it's not a SLAPP suit. And he -- that day he said it: "This it's not a SLAPP suit." And that's when I said, "You could have fooled the Judge because we have the decision, and I don't know if I asked him about this case, per se.

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Q. And I'm just going to go back. You didn't file an appeal of Judge Rosa's decision, correct?
A. No.
Q. And you did not want to file an appeal of Judge Rosa's decision?
A. No.
Q. And did you ultimately enter into a settlement agreement with Stacey Koch?
A. Yes.
Q. Okay. I'm going to show you what's been pre-marked Commission Exhibit 15 which is a settlement agreement between Judge Mora and Stacey Koch.

(Commission Exhibit 15 was marked for identification)

MR. GOLDSTOCK: Thank you.

BY MS. DIPALO:

Q. Judge, do you recognize this document?
A. Yes.
Q. And can you turn to page 6? Is that your signature?
A. Yes.
Q. And is it dated May 16, 2023?
A. Yes.
Q. And if you could turn your attention to page 2, paragraph 2-A. Did you agree to pay Stacey Koch $20,000?
A. Yes.
Q. And what was the reason for that amount?
A. How did we come to that amount?

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Q. Yes. How did you come to that amount?
A. It was negotiated with her Attorney.
Q. Were you part of those negotiations?
A. Well, my Attorney was. And yes, my Attorney was advising me how it was going back and forth.
Q. Did he tell you how they arrived at that amount?
A. No, I think we offered -- well, first we offered the five because that's what was agreed upon. But after the decision, there's basically no reason to agree to that anymore. So I'm not sure how much we offered at first. I think we offered -- I think we offered 15,000.

MR. GOLDSTOCK: Excuse me, I have a question. I'm just trying to understand the timing there was scheduled a hearing on court costs and Attorney's fees on April 27th.

MS. DIPALO: Yes.

MR. GOLDSTOCK: Did that occur?

THE WITNESS: No.

MS. DIPALO: I forgot to ask that. Thank you.

MR. GOLDSTOCK: Okay. And that's because this was being negotiated?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay.

BY MS. DIPALO:

Q. And did you pay Stacey Koch the $20,000?
A. Yes. I mean --

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Q. Through --
A. -- through --
Q. -- her Attorney?
A. Right, through my Attorney to her Attorney.
Q. And if you turn your attention to page 2, paragraph 2-B, did you agree to send an apology letter to Stacey Koch?
A. Yes.
Q. And what was the reason for this provision in the settlement agreement?
A. They wanted an apology. And now I knew it was for the lawsuit.
Q. And did you learn while you were negotiating this settlement agreement that it would be for the lawsuit?
A. I'm not sure if I learned it for that or before it while we were trying to withdraw.
Q. And why did you agree to write an apology letter to Stacey Koch for bringing the lawsuit?
A. Because I was raised when you're wrong, you admit it, you apologize, you correct it, and then you move on.
Q. You felt like you owed Stacey Koch an apology at that point?
A. Based on the law? Yes. Not allowing this type of lawsuit, and based on after contemplating it and that passage I was just telling you that I read as a lector. I was not acting as a good Christian, bringing the suit. I shouldn't -- I should not have brought it, even if legally I could have. And I was going to say that before, but we got off the topic. What I was going to do even if we won this -- this motion, I was going to have my Attorney withdraw the lawsuit.

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Q. If Judge Rosa ruled in your favor?
A. Correct.
Q. Did you tell Mr. Sussman that was your plan?
A. I'm not sure if I did.
Q. And when did you reach -- make this plan?
A. After that, when I was lector at in church reading that passage.
Q. And it was -- do you recall whether it was after you filed your opposition papers?
A. It might have been. It might have been before. I'm not sure. It may well have been. But we were stuck in these motions and not being able to withdraw because I had to pay money and give an apology for something I didn't -- for I thought it was something else that I was apologizing for. It's just one thing led to another. It was like a snowball effect, and it never came to fruition.
Q. And just if you could turn to page 3, paragraph 2-C. Did you agree to have no contact with Stacey Koch or any Seeta Eye location?
A. Yes.
Q. And do you know what the reason for this provision was?
A. Because she was through it -- she's been through enough.
Q. And why did you agree to it?
A. Because I don't want to put her through any more grief.
Q. And you agreed not to be a patient at any Seeta Eye Center --
A. Correct.
Q. -- any longer?
A. Just me.

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Q. Just you, as your --
A. My family was still allowed.
Q. Okay. And have you abided by this provision?
A. Yes.
Q. I'm going to show you -- let's move on to what's been pre-marked Commission Exhibit 16, which is your letter to Stacey Koch dated May 4, 2023.

(Commission Exhibit 16 was marked for identification)

MR. GOLDSTOCK: Thank you.

MR. LAVEGLIA: Thank you.

BY MS. DIPALO:

Q. Judge, are you familiar with this letter?
A. Of course. Yes.
Q. Did you draft this letter?
A. Yes.
Q. And is that your signature at the bottom?
A. Yes.
Q. And you drafted this letter and not Mr. Sussman?
A. Correct.
Q. I'm going to --
A. Before you go, I just want to correct something.
Q. Yes, please.
A. I said, the patron saint of Attorneys. He's not the patron saint of Attorneys, Sir Thomas More. I was mistaken. He's the patron saint of politicians and statesmen. Doesn't change my letter. I just wanted to just

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bring that correction. I found out afterwards. I always thought he was for Lawyers.

Q. I'm going to turn your attention to paragraph 2.

A. Yes.

Q. And if it's okay, I'm going to read from the letter.

A. Sure.

Q. It says, "I'm going to share some very personal things with you. Perhaps if you had known at the time, our exchange would have turned out differently. I do not wear a mask because I suffer from severe acute and parentheses anxiety, which manifests as object phobia." Why did you say perhaps if you had known at the time, our exchange would have turned out differently?

A. Because maybe being in a position that she's in also where she had a -- someone with a health issue, she may have accommodated me the way she did. She actually did accommodate me, but it was later.

Q. Did you at the time of the incident, did you -- had you been diagnosed with acute anxiety that manifests as object phobia?

A. Oh no. No, no, I was not diagnosed. I found out afterwards what it was all called, what I was going through.

Q. And at the time of the incident, did you tell Stacey Koch that you were suffering from anxiety that prevented you from wearing a mask?

A. No.

Q. Did you tell her that you were experiencing -- I believe you testified earlier that you were having a panic attack during the exchange. Did you -- did you tell her that you were suffering during your exchange?

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A. No, I was -- back then. I was very embarrassed of my condition. [redacted] I've learned that there's no reason to be. I don't control it. If I did control it, I would have been wearing a mask.

Q. And I'm just going to turn your attention to paragraph 3.

A. Oh, yeah --

Q. "I apologize." Yeah, you did say that.

A. -- I did say -- I did say that there. I did totally --

Q. Yes.

A. Forgot I had that in there.

Q. I'm going to turn your attention actually to paragraph 4. I apologize. You say, "I now know that this suit should not have been brought in the first instance, and I apologize for doing so."

A. Yes.

Q. What led you to recognize that the suit shouldn't have been brought in the first place?

A. The decision. Judge Rosa's decision.

Q. Did you have any -- apart from Judge Rosa's decision, did you have any reservations about bringing the suit?

A. Yes. I should have just left everything alone and not brought it. I -- I should not -- I should have just moved on with my life and, even if it was a viable suit, not brought it

Q. Now, at the time you filed the lawsuit and while it was ongoing, did you consider the effect that it might have on Stacey Koch?

A. No, I didn't consider the effect. But after hearing your questions before, I understand the effect that it that had and me going there, you know, to see

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to after it.

Q. What do you understand --

A. I understand that it --

Q. -- the fact maybe --

A. It probably affected her poorly. And you know, I checked with Mr. Sussman if I was allowed to go and I was going for my eyes. I had -- I wasn't even -- she didn't even come into my mind, which if it did, and I had empathy for her at that point, I probably wouldn't have gone. I probably would have just seen another doctor. If Mr. Sussman said to me "No, don't go" or "You shouldn't go" or "It's not good for your suit" or anything like that, I would have -- I would have listened to his advice. I'm not faulting him because he told me "You can go legally, you know. You can go, and it doesn't affect your suit and has nothing to do with your suit. And you're not going to see her." But if I could go back, I would not have gone.

Q. And at the time you filed the lawsuit, did you consider that it may deter Ms. Koch from cooperating with the Commission?

A. I did not, because I thought her -- I thought she was done with the Commission. I thought her part was done. She filed the complaint, and then she testified before you, before the Commission. I thought she was done with the Commission. So no, I had no thought that it would affect her cooperating with the Commission because I thought her part was done.

Q. I think you testified earlier that you familiarize yourself with the workings of the Commission, correct?

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A. Yes. Recently.
Q. Recently?
A. Yes.
Q. Not at that -- not at the time you filed the lawsuit?
A. No. No. I see now, if charges are brought, there could be a hearing unless you have, I believe, an agreed statement of facts. And then if we do have a hearing, her and any other witnesses would have to come in. So based on what I know now, I see, yes, it could have a potential effect. And that would never be my intent. Knowing now, you know, the hindsight thing, if I could go back, I'd see that now. I did not think of it then. I totally -- I thought she was totally done with the Commission. I would never stop someone from cooperating or testifying for in court or with the Commission or anything that has to do with our American jurisprudence.
Q. Judge, did you file the defamation lawsuit against Stacey Koch to retaliate against her for filing a complaint against you with the Commission?
A. Absolutely not.
Q. Did you consider that by filing the lawsuit against Stacey Koch you may have created the appearance that you were retaliating against her for filing a complaint against you with the Commission?
A. At that point?
Q. At that point, sure.
A. No.
Q. And now do you see how it may create that appearance?

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A. I do.
Q. Okay. And would you have brought -- from today's perspective, would you have brought the lawsuit against Stacey Koch?
A. Absolutely not.
Q. And is that because you got an adverse decision?
A. No, because and I know anyone can say what I said about withdrawing it even if I got a favorable decision, but I would have.
Q. And just a couple questions. Is -- you had mentioned earlier -- you testified earlier that Mr. Sussman represented you in connection with the lawsuit you brought against the Office of Court or the Unified Court System Office of Court Administration?
A. Yes.
Q. Okay.
A. UCS, OCA, and several individuals.
Q. Was there a determination on your lawsuit?
A. Yes. From the --
Q. From the --
A. -- the District Court.
Q. -- the Southern District?
A. Yeah. Southern District, yes.
Q. And what was the decision?
A. They dismissed it.
Q. Okay. Are you appealing that decision?
A. Absolutely.
Q. And is Mr. Sussman representing you in connection with that loss?

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A. He is.

Q. I'm going to move on unless --

MR. GOLDSTOCK: I have a question, of course. Do you have a copy of the retention letter with Mr. Sussman?

MS. DIPALO: We do not.

MR. GOLDSTOCK: Do you recollect the terms of the agreement?

THE WITNESS: Off the top of my head, it's $2,500. That was going to be the total I had to pay. I've only paid him 500, actually. The initial for the filing fees or whatever. He's never asked me for the rest. And then the contingency, I don't remember the exact amount. It may have been, like, bifurcated. I'm not sure. 25 percent or 30 percent. Maybe if you had a trial, it was more. I don't remember exactly.

MR. GOLDSTOCK: Okay. What would be the financial repercussions, if any, with you withdrawing the suit? That is to say, I'm putting myself in his position and saying -- and you may know more about this than I do, but when you take a case on contingent fee, generally one would say, "I have a chance of winning, and if I win, I will get 25, 35" -- whatever percent is -- "and that's how I make my money for spending all this time on the case. But if he wins and you withdraw, then all of a sudden there is

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nothing. And he has spent all of this time and all of this effort winning the original decision. And then you withdraw and say, "I'm not giving you a penny." Does that work within the retainer letter?

THE WITNESS: I don't know if it spoke about withdrawing, but from what I know of Mr. Sussman, I think he would have went along with it, because that's just, from what I gather in dealing with him, that's how he seems to operate. But I don't think it spoke about that, the retainer, off the top of my head.

MR. GOLDSTOCK: Okay. I ask in part, in part maybe you could withdraw without having paid him anything. But you do seem very concerned about how you affect other people. And this would be a situation where you went to him, asked him to do all this work for you. He did it based on the fact that he had a percentage of any winnings, and then you pulled then the rug out from under him, even if he wins.

THE WITNESS: I never even thought of that. And I'm sure I would have worked something out with him if I did that and he wanted extra money because -- well, it depends on what the retainer said also. But I do want to be fair with people. And if you said "Well, I was banking on this case" and you had a very strong case and "I would have gotten more money," and if he asked me for more, would I

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have given it to him? Knowing me, probably, but I don't know. I mean, that's a hypothetical, so I'm not sure. It's an interesting question.

MR. GOLDSTOCK: And are you the sole Plaintiff in the other case?

THE WITNESS: Yes.

MR. GOLDSTOCK: I don't know anything about the other case.

THE WITNESS: The federal case?

MR. GOLDSTOCK: Yes.

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay. And you're paying him for that?

THE WITNESS: Yes.

MR. GOLDSTOCK: And what are the terms of that?

THE WITNESS: For the appeal? Because we're on to the appeal now.

MR. GOLDSTOCK: No, I'm talking about from the original because he's spending presumably --

THE WITNESS: Yeah.

MR. GOLDSTOCK: -- a fair amount of time on that.

THE WITNESS: Let me see. I think the total amount I had to pay for the underlying case was 13,000.

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And the rest would be, if we won, I think he gets his court, his Attorney's fees paid because it's a federal suit and has to do with First Amendment and all. And again, that's not my area of the law, but I'm pretty sure he gets paid through the Defendant. And if we settle, then I think he got a percentage of the settlement, I believe.

MR. GOLDSTOCK: Okay. But you have copies of the retainer agreements in both cases?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay.

BY MS. DIPALO:

Q. I'm going to turn now to masking in the courthouses, wearing a mask in the courthouse. Judge, have you been diagnosed with any mental health disorders?

A. Yes.

Q. Okay. And what have you been diagnosed with?

A. I'm not sure -- it's severe anxiety or acute anxiety with an object phobia.

Q. Okay. And when were you diagnosed approximately?

A. [redacted] 30 of -- I believe it's 2022. So around then.

Q. And who are you seeing for -- or who did you see on April 30, 2022?

A. Her name is K[redacted] B[redacted].

Q. Okay. And what is Ms. B[redacted]'s profession?

A. Licensed social worker, I think --

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Q. Licensed clinical social --
A. -- clinical social worker. Yes. Thank you.
Q. And how did you find Ms. B[redacted]? Were you --
A. Through my priest.
Q. He referred you to Ms. B[redacted]?
A. Yes, I called up -- I didn't tell him it was for me. I said, "Do you know anyone, preferably Catholic, that does this type of stuff for people with a mental health?" -- said a male around my age. That's basically how I told him.
Q. And he gave you Ms. B[redacted]?
A. Yeah, he gave me her and maybe two others, I believe. At least two, maybe three. I'm not sure. Her and maybe two others.
Q. And roughly like how long before you contacted Ms. B[redacted] or you saw Ms. B[redacted] did you speak to your priest? Did you ask for these referrals?
A. Might be a few days before.
Q. Now, is it fair to say you said you first sought treatment on April 30th -- or you saw Ms. B[redacted] on April 30, 2022? Is it fair to say that you sought help after receiving a letter from the Commission on April 12, '22?
A. Yes.
Q. Inquiring into allegations that you were refusing to wear your mask in Seeta and the courthouse?
A. Yes.
Q. Okay. And did the fact that the Commission was investigating these allegations have any effect on your decision to seek help from a mental health professional?

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A. Yes.
Q. How often -- are you still a patient of Ms. B[redacted]?
A. Yes.
Q. Okay. And --
A. [redacted].
Now, it doesn't work that way, apparently.
Q. [redacted]?
A. [redacted].
Q. [redacted]?
A. [redacted] --
Q. [redacted]?
A. [redacted]
Q. [redacted] --
A. [redacted]
[redacted].
Q. [redacted]?
A. [redacted].
Q. [redacted]
[redacted]?
A. [redacted].
Q. Okay. I'm going to turn to New York State's mask policy. When did you start wearing a face mask?
A. The mask itself?
Q. The mask itself.
A. Not the shield?

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Q. The mask. You had testified about --
A. Yeah, yeah --
Q. -- the black mask with the gold cross.
A. Well, I was wearing that before the mandate.
Q. Yeah.
A. Yes.
Q. When did you start?
A. Prior. I think it was March.
Q. Okay. And the mandate was issued around April 17, 2020?
A. Yes.
Q. Right. And what was your reaction to the mask mandate at that time?
A. At that time, I had no problem with the mandate. Like I said, I was wearing it wherever I went anyway. And if it's going to keep people safe, I didn't even think anything of it.
Q. And were you working virtually at the time the mask mandate went into effect in April of 2020?
A. Yes.
Q. Okay. And would you wear a mask outside your home when you went?
A. Yes.
Q. And how long -- were you able to wear the mask for extended periods of time?
A. Well, yes. I mean, I would wear it and then take it off when I didn't have to have it on, come out of the store or whatever. You know, a lot of people, you see they wore it, like, everywhere, all the time. Some people still do. No, I would take it off when I could, but if I had to wear it, I

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wore it.
Q. And did there come a time when you stopped wearing the face mask?
A. Yes.
Q. And when was that about?
A. Sometime after April, when I was treating with Dr. M[redacted].
Q. So April or May of '22?
A. Yes. Yes.
Q. And why did --
A. June maybe. I don't remember.
Q. Why did you stop wearing the face mask?
A. Because he suggested it. He said he's had some other patients where it's affected them and to give it a try.
Q. And the symptoms you were experiencing at the time were neck pain and headaches?
A. Yes.
Q. Is that correct?
A. Physical, yes.
Q. Physical?
A. Yeah, I think that was pretty much it. Yeah.
Q. And around the time you saw Dr. M[redacted], how long could you wear the face mask before you started developing, let's say, the headaches?
A. I don't even know. I didn't keep track of it.
Q. Was it -- would you go into a store for a half an hour and develop a headache?
A. It seemed to be occurring more and more when I was wearing it, so it's

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hard to say how long.
Q. It didn't make a difference if you were wearing it for five minutes or an hour?
A. No, it started not to, no.
Q. And that was around the time you told Dr. M[redacted] about your anxiety?
A. Right. And it was very -- it was like nonchalantly. I mentioned it because I -- even though he's, like you said, a friend and all that, I didn't want anybody to know. No one. I was embarrassed at that point.
Q. So did you stop wearing the face mask?
A. Yes.
Q. And when -- you said that was around, I believe, April, May, or June of '20?
A. Yes.
Q. Okay. And did you wear a face shield instead at that point, or did you just go without any kind of face covering?
A. I think I went without. And again, if there was an issue -- I don't think there was too many issues then. You know, if anybody had an issue or whatever, we weren't in court at that point. We were virtual.
Q. And when did you -- when did the Poughkeepsie City Court return to in-person operations? Was it around July of 2020?
A. Yes.
Q. Okay. And upon the return to in-person operations, were Judges and court employees required to wear face masks in the courthouse?
A. Yes.
Q. And that's in public areas of the courthouse, like courtrooms?

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A. Yes.
Q. And that was in private areas like chambers or offices?
A. No, not in your chambers, you didn't have to wear.
Q. You didn't have to in June -- July of 2020?
A. No, I don't think at any time in chambers.
Q. Okay. Thank you.
A. I don't think. That's from my recollection.
Q. Okay. And when court returned to in-person operations, were you wearing a face mask?
A. Okay. So before it went to in person, we were back in the courthouse but working virtually out of our chambers.
Q. Okay.
A. So the answer to your question, yes, I would walk in usually through the back door because that's how we would come in. And I would have my mask on and I would hurry in. People would be saying, "Hi." "Hello, everyone." And I'd go right into my chambers, take it off.
Q. And just can you kind of describe the layout of where your chambers is? Just are there any other offices back there? Is your co-Judge's chambers back there?
A. Yeah. So if you're looking out my door to the right, just right is a bathroom. To the left, that's where the little hole that you go into the courtroom. And my co-Judge is to the right of my door. And then our Secretary is to the left of him.
Q. And does your Secretary have an office or does she work in kind of an open area?

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A. Office.
Q. And are you the only three with offices back in that area?
A. No. I'm sorry. Then the Stenographer is right next to the Secretary. And then down a little more is the call -- we call it the Civil Department.
Q. And who is in this? Is it Clerks in the Civil Department?
A. A couple -- yeah, yeah, couple Clerks.
Q. Okay. And when did you begin presiding over cases in person?
A. So in person --
Q. Not virtually in your chambers, but --
A. Was July, and it's in some email.
Q. July 21, 2020, is that --
A. That's exactly it.
Q. Okay. And what types of cases were you hearing?
A. Back then it was very limited. I don't remember, definitely criminal. Maybe emergency order to show causes for evictions.
Q. And were --
A. I don't remember exactly.
Q. Were you on the bench every day at that point?
A. Yes.
Q. And were there any precautions in place in the courtroom at that time? Social distancing, limit on the number of people that could be in the courtroom?
A. Yes.
Q. Okay. Everybody was wearing masks at that time?
A. Yes.

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Q. And were you wearing a mask in the courtroom as of July 21, 2020?
A. No.
Q. No? Okay. So what -- why were you not wearing a mask? What were you --
A. I got approval to wear a face shield.
Q. Okay. And I'm going to show -- when did you request approval to -- let me --
A. Yes.
Q. I'm going to show you. This is -- I'd like to show you what's been pre-marked Commission Exhibit 17, which is an email thread between Judge Mora and Administrative Judge Kathie Davidson. And it's July 2020.

(Commission Exhibit 17 was marked for identification)

MR. GOLDSTOCK: Thank you.

MR. LAVEGLIA: Thank you.

BY MS. DIPALO:

Q. And --
A. So -- okay.
Q. Go ahead. Just to refresh your recollection --
A. Sure.
Q. -- if you want to look at page 3 of this.
A. Yep. July 13th is when I asked her.
Q. Okay. And --
A. Because like I say right in there, the Court Officer gave a face shield to everyone. And I was so thankful because I said, "This is great." I wanted to make sure I could wear that in lieu of a mask. And that's why I

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reached out to her.
Q. And her is Judge Davidson?
A. Yes. Sorry. Judge Davidson.
Q. And had you been wearing a face shield at that point outside of the courthouse?
A. I don't remember.
Q. And did you explain to Judge Davidson the reason you were asking to wear a face shield in lieu of a mask?
A. I just said it was a medical -- hold on. Where is it? It's in here.
Q. I think if you look at page 2 and it's the top.
A. Yes. So I said, "Oh, due to health concerns, I don't normally wear a mask for more than a few minutes," and that's what I was trying to explain. I would walk in. It wasn't even a few minutes technically, because I would walk. Yeah, maybe a minute or whatever. And then I'd get to my chambers and take it off. And then I asked, "Can I get a waiver or whatever you want to call it, to wear the face shield?"
Q. And what health concerns were you referring to?
A. It was this anxiety I was feeling.
Q. But at that time, you hadn't been diagnosed with anxiety?
A. Nope.
Q. And you hadn't seen a mental health professional about your anxiety?
A. I did not.
Q. And was your request granted by Judge Davidson?
A. Yes.
Q. And so after July 21, 2020, were you wearing a face shield in the

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courthouse?
A. Yes.
Q. And that's in your courtrooms, in your courtroom?
A. Yes.
Q. Walking to your courtroom through the hallways?
A. Yes. But as I said in my papers, not always.
Q. As of July 2020, you were --
A. Yes.
Q. Okay.
A. Yes.
Q. Or during July. Now, the face shields, was it the same type of face shield that you wore when you went into Seeta in December of 2021?
A. It was the exact one. I've only had two face shields, and they were both given to me by the Court System.
Q. Now, did there come a time you stopped wearing your face shield in court?
A. Stopped and then resumed if -- I guess would be a --
Q. Yes.
A. Yes.
Q. Okay. When did you stop wearing it?
A. You mean in -- when I was on the bench?
Q. Yes.
A. It was August -- I -- it's in my paper somewhere. I don't remember the exact date.
Q. Would say around August 17 --

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A. Yes.
Q. -- of 2021? Okay. And why did you stop wearing the face mask in the courtroom?
A. The shield, you mean.
Q. Face shield, yes, thank you.
A. You're doing the same thing I'm doing. It just got -- even that got to be too much for my anxiety.
Q. And were you using any other kind of protection in in lieu of the face mask, a face shield when you were in the courtroom?
A. Yeah. Well, first of all, in the courtroom, I'm not near anyone. I'm several feet away from everyone, more than six feet, might be ten, 15. And there was this portable -- I call it a portable face shield. Well, not face shield --
Q. The plexiglass.
A. -- the plexiglass. Thank you. A portable shield that I remember seeing when I walked through. I think we had it in the back room that we would go through to go to the -- our second courtroom. And I asked our Chief Clerk. I said, "What is that? I know what it is. I said, what's it for?" She said, "They told me whatever we want to use it for." I said, "Well, this is great." I said -- I asked my Court Officer. I said, "Can you put that in front of the bench, please? And then I used that.
Q. And who's your Chief Clerk?
A. Back then?
Q. Who was your Chief Clerk at the time?
A. That was Lori Conners.

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Q. Okay. And what did the what did the plexiglass shield look like? How big was it?
A. Maybe four feet wide by -- I think it taller than me. I think six feet tall, maybe. I'm not sure.
Q. And where would you put it? In front of the --
A. Right in front of the -- the bench.
Q. And did a Court Officer or any kind of any court staff sit next to you while you were at the bench? Your Clerk?
A. A Clerk, sat -- sits to the left like over. And when I was doing this part, I was sitting all the way to the right because there's a lot of space where we sit. So I made sure I was pretty far away. It had to be at least six feet. So that's how I did it when the plexiglass was out there.
Q. And who was the Clerk at the time? Who was sitting?
A. It was probably Alicia McHugh, M-C capital H-U-G-H.
Q. Thank you. Now, at the time, you were using the face -- sorry, you removed the face shield in the courtroom and you were using the plexiglass shield. Were you wearing the face shield when you were walking around the other areas of the courthouse?
A. Most of the time, yes. Sometimes I didn't.
Q. So there were times when you walked in the hallways without the face shield on?
A. Correct.
Q. Went to the bathroom without the face shield?
A. Well, no, the bathroom was in -- is in my office, so. But yeah. So no, I didn't have it, but it was in my office.

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Q. But at the time, you were permitted to be in your chambers without any kind of face covering?
A. Correct.
Q. Okay. And did you ever ask permission of an Administrative Judge or Supervising Judge to stop wearing the face shield and to use the plexiglass shield?
A. I did not.
Q. Why didn't -- you had asked permission before? Why not ask permission again?
A. I don't know. When my Chief Clerk said we can use it for whatever we want and I'm so far away from everyone, I figured, since they gave it to us, that would be good to use instead of that, since I'm not near anyone, you know, the public. And looking back, I realized I should have.
Q. How were you presiding over calendars at the time that you started?
A. Limited, but yes.
Q. Did you preside over any kind of hearings when you were using the plexiglass shield?
A. I don't think so. I didn't use it a lot because -- just you're going to get to, I'm sure, Sam Walker (phonetic) got involved.
Q. And how many days would you say you use the plexiglass shields?
A. I'm not -- three, two, three, four. I don't even remember. Again, I wasn't keeping track because who knew?
Q. But it was basically for a few days when you were on the bench, you were using the --
A. Yes.

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Q. -- plexiglass shields and not wearing a face mask?
A. Yes.
Q. And was there any kind of reaction to you wearing the -- to you using the plexiglass shields from your court staff?
A. No.
Q. How about from Attorneys?
A. Yeah, like I said in my papers, one Attorney didn't feel comfortable. And again, she's got to be at least ten, maybe 15 feet away. She had -- I don't know if she had one or two masks on. I don't know if she had a face shield also. I don't remember. But I remember -- I remember that day like it was yesterday. That day it was extremely bad. That's why I was not wearing my shield.
Q. What was extremely bad?
A. My anxiety.
Q. And I'm sorry. Please go ahead.
A. And that's why I was using the plexiglass, and the calendar was midway through. We were getting to, you know, the rest of it. It was -- I don't know how many cases left, not many. And she made a comment to me: "I don't feel comfortable using it." And I just froze. I said, "All right. All case -- the rest of the cases are being adjourned." That's all I said. I stood up. I walked off and went into my chambers, took my -- I didn't have the shield on then and just basically stayed there the rest of the day.
Q. And do you recall who the Attorney was who raised a concern?
A. No.
Q. Was it a private Attorney?

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A. I'm not sure.
Q. Public Defender?
A. I don't remember.
Q. Prosecutor? Okay. And now in August of 2021, were you aware that OCA had a policy that required all Judges and nonjudicial personnel who hadn't received the COVID-19 vaccination to wear masks in the courthouse?
A. Yes, I was aware of that.
Q. I'm just going to show you what's been pre-marked Commission Exhibit 18, which is a memorandum from Nancy J. Barry to all UCS Judges and personnel dated June 14, 2021. And the subject is Revise Mask Policy Program. Are you familiar with this memo, Judge?

(Commission Exhibit 18 was marked for identification)

A. Yeah, I'll say yes. In that we were getting these -- it seemed like at one point almost every other day. So it was very hard to keep track of everything, but I'm sure I saw it at some point after it was issued.
Q. And if you recall this, did this memo introduce what was called a card program?
A. Oh, the orange card.
Q. Yes.
A. Yes.
Q. And under the new policy announced in this memo, were fully vaccinated Judges and court personnel permitted to enroll in a program where they were allowed to go without a mask in the courthouse and carry -- I believe it's an orange card?

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A. Yes.
Q. And Judges and nonjudicial personnel who chose not to participate were required to continue wearing a mask in the courthouse --
A. Yes.
Q. -- correct? So in August of 2021, were you vaccinated against COVID-19?
A. No.
Q. And so --
A. You smiled because we all know that.
Q. And so in August of 2021, were you required to wear at that point -- it was a face shield around the courthouse under OCA's policy?
A. Yes.
Q. And at any point, did anyone contact you about the fact that you were using the plexiglass shield in the courtroom and not wearing the face shield?
A. Yes.
Q. And who was that?
A. My supervising Judge Sam Walker.
Q. Okay. And I'm just going to show you what's been pre-marked Commission Exhibit 19, which is an email dated -- or it's -- sorry, it's a thread of emails between Judge Mora and Judge Walker in August of 2021.

(Commission Exhibit 19 was marked for identification)

MR. LAVEGLIA: Thank you.

MR. GOLDSTOCK: Thank you. You may

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have said this before, but when did you get COVID?

THE WITNESS: I didn't say it. It's in the papers but --

MR. GOLDSTOCK: No, you said you got --

THE WITNESS: Oh, yes. I didn't say when.

MS. DIPALO: Yeah.

MR. GOLDSTOCK: You didn't say when. I just don't remember.

THE WITNESS: Okay. It was the end of August, early September, it would be '21, because that's when I went with [redacted]. It was about four months before, so end of August/September.

MR. GOLDSTOCK: So COVID begins March of 2020, correct?

THE WITNESS: Yes.

MR. GOLDSTOCK: And this would have been a year and like four months after, five months after?

THE WITNESS: August. Yeah, five months. Yes.

MR. GOLDSTOCK: Yeah. okay.

BY MS. DIPALO:

Q. And do you recognize these emails between you and Judge Walker?

A. Yes.

Q. Okay. And I just want to turn your attention to page 2, where Judge Walker -- his email dated August 19, 2021, and he says, "Good morning,

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just in case you may not have received this memo from Judge Marks, please let me know if you have any questions." Do you know the memo he's referring to?

A. I don't remember.

Q. Okay. I'm just going to show you what's been pre-marked Commission Exhibit 20, which is a memorandum dated August 12, 2021. And it's from Nancy Barry to the Administrative Judges.

(Commission Exhibit 20 was marked for identification)

MR. LAVEGLIA: Thank you.

MR. GOLDSTOCK: Thank you.

BY MS. DIPALO:

Q. Judge, do you recognize this memo?

A. Again, there are so many. Yeah, I'm sure I saw it.

Q. Do you believe this is the one that Judge Walker copied or attached to his email?

A. I would think so.

Q. Okay. And did it update the mask policy and require that everyone had to wear a mask in the courthouse?

A. Yes.

Q. Now, just to turn you back to Commission Exhibit 19, did you understand what Judge Walker meant when he forwarded you this memo?

A. When you say memo --

Q. So he said, "Just in case" -- you may have received -- "you may not have received this memo from Judge Marks."

A. Okay.

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Q. Did you read the memo at that time?
A. Most likely.
Q. And did you understand that he was telling you you had to wear a face shield in the courthouse?
A. Well, this says masks, but I would say yes.
Q. And did you have any conversations with Judge Walker about using the plexiglass shield in lieu of the face shield?
A. Yes, at some point we did. Yes.
Q. Okay. And what did Judge Walker tell you?
A. He said, "You can't -- you have to use your -- you have to use your shield."
Q. And how did you respond?
A. I said, "I'm" --

MR. GOLDSTOCK: That's weird. No, I mean, I had it off.

MR. LAVEGLIA: Godfather?

A. In sum and substance I told him I was having an issue wearing even the shield.

BY MS. DIPALO:

Q. And how did Judge Walker respond?
A. Basically, the way he responded to my questions, too bad. He -- I don't think he said too bad, but that's basically what he was saying. You have to comply.
Q. It's OCA policy.
A. That's it. That's correct.

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Q. Okay. Now, on Exhibit 19 you responded to Judge Walker's email, correct?
A. Yes.
Q. And you said yes, "I do have questions"?
A. Yes.
Q. And if we could just turn your attention to question number 1 where you state, "It's my understanding that the U.S.A. is part of the Nuremberg Code which outlaws coerced medical treatments by treating, quote, 'vaccinated people differently than unvaccinated people.' That is coercion."
A. Yes.
Q. What was the purpose of this question to Judge Walker?
A. I was trying to see if they would look at this stuff and change the policies.
Q. Did you believe that Judge Walker had the authority to change the policy?
A. No, not him, but his superiors. I mean, that's who I'm supposed to go to. And then he would run it up the chain. So I thought, "I have no idea if he did or didn't or if he just came up with those answers himself." I don't know.
Q. Why did you refer to the Nuremberg Code?
A. Because it says you're not supposed to do stuff like this without consent.
Q. Well, stuff like what?
A. Make people get vaccinated.
Q. And how was the Nuremberg Code relevant to OCA's revised mask policy?

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A. No, this wasn't referring to the mask policy.
Q. This wasn't? Okay.
A. No, because I -- the rumors were -- well, it wasn't a rumor that the vaccination mandatory was coming, even though Judge DiFiore, months before, I don't know how many, said there will be no mandatory vaccination. It was in one of her -- I call it her propaganda things that she was sending out to us every -- it was every week in the beginning. And then it was every two weeks.
Q. Were they just for Judges and employees of the Unified Court System, or were they the videos that she was -- I believe they were on OCA's website.
A. It may have been on the website also. I mean, they definitely were sent to us. So I heard that this mandatory vaccination policy was coming. Didn't know anything about it yet because it hadn't been sent out. And I was getting nervous because I didn't know what it was going to ask. I didn't know if they were going to allow a religious exemption for it. So I put that in there. That's so -- this isn't just for my masks.
Q. And if I could just turn your attention to question number 3, which states, "What 'science' determines that orange cardholders and not those with natural immunity" -- in parentheses -- "i.e. those who had COVID are allowed to go maskless?"
A. Yes.
Q. Why did you ask this question?
A. Because, as we now know, the CDC on August 11 of, I think it's 2022, finally admitted that those that had COVID have natural immunity. And

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I guess the clinical terms is infection induced immunity. Natural immunity is what I guess us laypeople call it. So I was trying to say, if I have natural immunity and you, a person that's vaccinated, has immunity, which we now know you really don't because -- and I know I'm getting off tangent, but this is all now shown that the vaccines do not stop you from getting the COVID. So those with natural immunity actually have better protection. So I'm trying to say, "Where's the science that says you have better immunity than me? When Biology 101 says that somebody with natural immunity has better immunity than someone else." That was my question for that. And again, this -- I had to go through him because that's who you go through. But I was hoping this would have reached the people that were making the decisions and started saying, "Yeah, that's correct." It never happened, but that's why I sent it.

Q. Just why did you put the word science in quotation?

A. Because it seemed like science wasn't being followed. When people with natural immunity have immunity -- if someone gets the measles, no doctor would tell them, you must now get vaccinated -- or any of the other diseases that are out there. You have it. You now have immunity. So we found out that they weren't actually using science. They were just going along, and I understand the world was under a pandemic that we've never faced before. But you still don't throw away what we learned for the past hundreds of years. That's -- that what I was trying to say.

Q. And just --

MR. GOLDSTOCK: Hang on for one second.

MS. DIPALO: Sure.

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MR. GOLDSTOCK: It's the timing issue. It's now a quarter of four. I would normally have taken a break at 3:30, but everything is a little later. So I'm thinking somewhere around four and then we'll take a break. And then -- and we can start making some decisions.

MS. DIPALO: Sounds good. And I'm just going to show you now, Judge, which is has been pre-marked Commission Exhibit 21, which is a memo from your Supervising Judge or your former Supervising Judge, Sam Walker, to you dated August 23, 2021, with the subject COVID-19 protocols for Judges.

(Commission Exhibit 21 was marked for identification)

MR. GOLDSTOCK: Thank you.

MR. LAVEGLIA: Thank you.

BY MS. DIPALO:

Q. Judge, do you recognize this memorandum?

A. I sure do.

Q. How did you receive it?

A. By email.

Q. By email? And if I could just turn your attention to paragraph 2. Judge Walker states, it has been -- "It was brought to my attention that you have been traversing the courthouse in both the public and private areas without wearing a mask and/or a shield, and you have not provided any proof that you were vaccinated." Is Judge Walker's statement accurate?

A. Yes, I fully admitted that I was. Several times, I did not wear it.

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Q. And what happened after you received this memo from Judge Walker?
A. I don't understand.
Q. Did you resume wearing a face shield --
A. Yes.
Q. -- in the courthouse or in the courtroom?
A. Yes.
Q. Okay. And you resumed wearing the face shield on August 23, 2021, or --
A. Yeah --
Q. -- about that day?
A. -- 23rd, 24th. Yes.
Q. And why did you resume at that point?
A. Because I was -- I was scared. When my Supervising Judge tells me four times here that -- where is it? "You may have to consider reconsider your position." That's basically telling me, "If you can't wear this, if you don't wear it" -- and mentally, I couldn't -- "you're going to be fired." That's the only way I read this. I was scared, and so I complied.
Q. And --
A. I would have -- I just have to add, I would have never imagined an answer like this coming from my Supervising Judge. I couldn't even imagine if somebody had a condition where they come into my court, and there's people that come into my court daily with mental problems or physical problems, et cetera, and if I treated somebody the way I was being treated with this, I would definitely would be before this Commission for grounds for removal. And I would agree with that.

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Q. Judge Mora, in August of 2021, was Judge Walker aware that you suffered from anxiety?

A. No, he knew I -- he knew there was a medical reason for not -- for being allowed to wear a shield. And I should have -- I shouldn't have been embarrassed on my condition.

Q. You didn't tell Judge Walker?

A. I did not, and I regret that tremendously. Learning what I've learned now [redacted] I should have been forthright with my Supervising Judge and Administrative Judge, and if he didn't acknowledge it, then maybe I should have went above him to my Supervising Judge. I regret that sincerely.

Q. So during the three- or four-day period in August of 2021, when you were using the plexiglass shield in the courtroom in lieu of the face -- and no face shield, do you believe that you were in compliance with the Unified Court System's mask policy?

A. I mean, the policy, the way it's written to the letter of the quote/unquote, law? No. The spirit of the law -- or not law -- the spirit of the mandate, I thought I was because everything we did that the world was trying to do was to protect people. And since I wasn't near anyone and couldn't spread a virus that I at that point didn't have, but even if I did, I'm so far away, I thought I was -- I thought I was okay with doing it that way.

Q. But OCA's policy required Judges and court personnel to wear a mask or in your case --

A. A shield.

Q. -- a face shield?

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A. You're correct.
Q. And you were not in compliance?
A. I was not.
Q. And I think you touched on this briefly. As you sit here today, would you have done any done anything differently during that few days in August of 2021?
A. Yes. I would have reached out. I should have reached out to him instead of being confrontational with this email that I sent. I should have told him what was going on with me and asked him, "What am I -- what should I do?" And followed that.
Q. Thank you, Judge. I'm moving on to another topic.

MR. GOLDSTOCK: Okay.

MS. DIPALO: I don't know if you want to break at this point.

MR. GOLDSTOCK: That would be a good idea. I have a question or two, and then we'll break and then -- at the point in which you wrote this, you had COVID already?

THE WITNESS: No.

MR. GOLDSTOCK: Okay. This was August 2021?

THE WITNESS: Funny -- well, I don't know if the word funny is proper or --

MR. GOLDSTOCK: Funny or strange?

THE WITNESS: Strange. Thank you.

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Strangely, it was right after this. It was -- it was the end of August, early September.

MR. GOLDSTOCK: So 3 was not based on --

THE WITNESS: Myself? No.

MR. GOLDSTOCK: Okay.

THE WITNESS: At that point, no.

MR. GOLDSTOCK: Okay.

THE WITNESS: A couple of weeks later, yes. But no, at that point it was not. It was just a question in general, because there are people that had COVID, that had immunity, that had a follow this, that shouldn't have had to follow it. That was -- that's all I was trying to say to get them to look at this. But no, it did not apply to me at that point.

MR. GOLDSTOCK: So this is what I'm trying to understand. There were two things going on here at once, as far as I can tell. You have, on the one hand, the religious issue about --

THE WITNESS: Not vaccinating.

MR. GOLDSTOCK: -- being vaccinated.

THE WITNESS: That's correct.

MR. GOLDSTOCK: And then you have a anxiety issue which stops you from wearing a mask?

THE WITNESS: Totally unrelated.

MR. GOLDSTOCK: Totally unrelated.

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THE WITNESS: Correct.

MR. GOLDSTOCK: With the odds of having both of them being minor, but clearly some people do, right?

THE WITNESS: Well, I --

MR. GOLDSTOCK: That is the -- the odds of somebody both being in both categories has to be very small.

THE WITNESS: I would say sure.

MR. GOLDSTOCK: Yeah.

THE WITNESS: But because I have no problem --

MR. GOLDSTOCK: But there are going to be -- right.

THE WITNESS: -- wearing a mask if I could.

MR. GOLDSTOCK: Right.

THE WITNESS: I'm not out there saying no masks, no mask with a -- with a --

MR. GOLDSTOCK: So that leads me to the next question.

THE WITNESS: Yes.

MR. GOLDSTOCK: Because what's odd is, when I read this -- and I just want to give you a chance to respond to it. This strikes me not having anything to do with you wearing a mask, but you writing a series of

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questions. The first one not being a question, being a statement, but the others being in question form, which have little to do with you not being able to wear a mask, but challenging the court's position on wearing a mask.

THE WITNESS: Absolutely.

MR. GOLDSTOCK: [Unintelligible] Office of the Court Administration's position on wearing a mask. So these don't sort of reflect, okay, I can't wear a mask because -- or the shield bothers me as well. But you're really saying this is not based on science and why are you bothering me kind of thing.

THE WITNESS: Not why you're bothering me, but change the policy. Because if the policy was changed, I would have never had to get help. And actually, I'm kind of glad it didn't because I did get help. If the policy was changed -- let's say I had a magic wand and they said, "Yeah, you're right about this. You don't need to wear masks anymore." I would have never gone for therapy.

MR. GOLDSTOCK: Right. And I guess that's my point is, this doesn't strike me as being responsive to why you're not wearing a mask. It is you challenging the system.

THE WITNESS: You are 100 percent correct.

MR. GOLDSTOCK: Okay.

THE WITNESS: I -- at that point, I didn't want anyone to know of my

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problem. Like I said, when Judge Davidson granted me the approval, I was so thankful because I didn't have to tell anybody of my issues. And so I was wrong. I -- well, I'm not going to say I was wrong. I still think I have every right to challenge something I don't agree with, but I was wrong in not reaching out to my Supervising Judge or higher -- tell them issue I was facing. I should have done that. I was embarrassed. That is my fault.

MR. GOLDSTOCK: Okay. All right. All right. Why don't we take a break now. It is 3:51. And if we're back by a little after 4:00. That would work. Ten minutes.

MS. DIPALO: Yes.

MR. GOLDSTOCK: And then we'll go to -- sort of at 4:30 -- 4:40 -- we'll try to figure out --

MS. DIPALO: I think I can --

MR. GOLDSTOCK: -- what's up.

MS. DIPALO: I don't want to say because I don't want to jinx it but --

MR. GOLDSTOCK: Don't do that. Don't jinx it.

MS. DIPALO: -- but I think I could -- I think I could finish up --

MR. GOLDSTOCK: But you're not the only one --

MS. DIPALO: Yes. I know --

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MR. GOLDSTOCK: -- that is --
MS. DIPALO: -- that's -- so that is --
MR. LAVEGLIA: Yeah.
MS. DIPALO: Yeah.
MR. GOLDSTOCK: Well, let's just --
MR. LAVEGLIA: I'll try to discuss --
MR. GOLDSTOCK: Let's see.
MS. DIPALO: Yeah.
MR. GOLDSTOCK: Well, actually why -- during this break, why don't you go to think a little bit about how long you're going to take.
MR. LAVEGLIA: Absolutely.
MS. DIPALO: Um-hum.
MR. GOLDSTOCK: And that will inform us as to whether or not there's a need to --
MR. LAVEGLIA: Yeah.
MR. GOLDSTOCK: Okay.
MR. LAVEGLIA: That sounds like a --
THE WITNESS: All right. Thank you.
MR. LAVEGLIA: -- good plan.
MS. DIPALO: Thank you.
MR. GOLDSTOCK: And we'll go off --
(Recess from 3:52 p.m. until 4:10 p.m.)
MR. MAISONET: On the record.
MR. GOLDSTOCK: Okay. It is now 4:10.

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We're back.

Please continue.

THE WITNESS: Before you do, can I just make one comment? I --

MS. DIPALO: Sure.

MR. GOLDSTOCK: Go ahead.

THE WITNESS: -- was just thinking a little more about your last question about the email to Judge Walker. At this point in my life, I was very angry not at -- everything that was going on in my life with my wife, the stress I was under -- this doesn't reflect how I really am. And I should have never -- I should have never done that. I should have worked with the administration. So I apologize for that.

I was just frustrated with everything that was going on in my life with my wife and the kids and trying to take care of everything on my own basically. So --

MR. GOLDSTOCK: Yeah. I sort of recognized that when I was asking you the question. I mean -- and I was sort of thinking you were channeling your anger in the wrong way. You could have forgotten thinking about all of these things --

THE WITNESS: Yes.

MR. GOLDSTOCK: -- and thought more about the SLAPP issue --

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THE WITNESS: Yes.

MR. GOLDSTOCK: -- which essentially was sort of -- okay.

THE WITNESS: Thank you.

MS. DIPALO: Just before I move onto the next topic, I was just wondering, Judge and Mr. Laveglia, if you could provide copies of your retainer agreement with Michael Sussman from the *Mora v Koch* case and also in connection with your federal lawsuit against the Unified Court System.

MR. LAVEGLIA: Okay.

MS. DIPALO: And just a couple more questions about Mr. Sussman's representation.

EXAMINATION BY

MS. DIPALO:

Q. Now, you testified -- and I don't want to put words in your mouth, but in words or substance, that you felt like Mr. Sussman maybe gave you some poor advice when it came to whether to withdraw after you saw that it was a -- it was a SLAPP suit. It was alleged to have been a SLAPP suit. Is that right?

A. In sum and substance? Yes. It didn't seem like he was going that route or encouraging that route, if you will.

Q. And do you believe that he gave you maybe poor advice when it came to whether you had a viable claim against Ms. Koch for defamation?

A. Yes.

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Q. Okay. Now, just with that in mind -- Mr. Sussman still representing you in connection with your appeal of the District Court Judge's decision in your lawsuit against OCA -- is that right?
A. Yes.
Q. And do you have confidence in him to represent you in --
A. It --
Q. -- that case?
A. It's funny that you ask that. My wife asked the same exact question. And I actually -- on that area of the law, I do.
Q. Why?
A. Because --
Q. Why is it different than --
A. I -- because of --
Q. -- defamation -- the defamation where you said he'd handled a lot of --
A. I just think --
Q. -- of those cases?
A. -- I think he knows -- or -- I think he knows that one even more. I think that's what he really does. But while he may do defamation suits, I don't think he's -- maybe he's never done it, I should say. I don't think -- I don't know. One with the Judge -- and with -- and the Commission, et cetera. I think -- my type of suit is different -- well, it is different because I'm here -- it's not a viable suit -- than the other suits that he's brought for defamation.
So listen, you're going to either win or lose a suit. But if it's not allowed to be brought, that's a -- that's a totally separate issue. And I don't think I

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was advised properly on that, unfortunately.

Q. You have -- you have confidence in his ability to represent you in connection with your appeal?

A. On the federal --

Q. On the federal suit?

A. -- suit? Yes. I still do. I still do.

Q. All right. At this point I'm going to turn to the Unified Court System's vaccination policy. Okay? Now, did the Unified Court System implement mandatory vaccination policy for its employees including Judges?

A. Yes.

Q. Okay. I'm going to show you, Judge, what's been pre-marked Commission Exhibit 22

(Commission Exhibit 22 was marked for identification)

BY MS. DIPALO:

Q. Which is an administrative order issued by then-Chief Judge Lawrence Marks, dated --

A. Thank you.

Q. -- September 23, 2021. And there are five accompanying attachments to his order.

A. Yes.

Q. And do you recognize this administrative order?

A. Yes.

Q. And do you recognize the attachments to it? I know there are quite a few.

A. Yes.

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Q. And basically, did Judge Marks direct that all Judges and Employees of the Unified Court System had to obtain and submit proof that they were fully vaccinated against COVID-19 by September 27, 2021?

I'm going to -- actually, let me walk you back. I'm going to turn your attention to -- it's Attachment 4. So if you see -- it should be right before the exemption request forms.

A. Got it.

Q. And if you take a look -- it's a memo from Judge Marks to all UCS Judges and Justices, dated September 10, 2021. And the subject is "Mandatory COVID-19 vaccination program."

Have you seen this memo before?

A. Yes.

Q. Okay. And have you had -- read this memo?

A. Yes.

Q. And did it direct that all Judges and employees of the Court System had to obtain and submit proof that they were fully vaccinated against COVID-19 by September 27, 2021?

A. Or provide an exemption.

Q. That was my next --

A. Ah.

Q. And so it also provided that a Judge or an Employee could submit an application for a religious or medical exemption by September 27, 2021?

A. Yes.

Q. And what was your reaction to the Unified Court System's vaccination policy when you read this?

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A. That's hard to answer. I'll answer it this way. When I got to the exemptions, I was excited.
Q. And you didn't provide proof of vaccination against COVID-19 by September 27, 2021?
A. No.
Q. Right? Correct? And did you seek a religious exemption from the vaccination policy?
A. Yes. And I just have to interject.
Q. Sure.
A. I'm sorry. When this came through -- because, you know -- I'd been working with my coworkers for many, many years. People actually came up to me and said, "Frank, did you see the mandatory policy?"
I said, "I did." And they saw a smile on my face.
"Did you see there's an exemption for religion?"
I said, "I absolutely did."
They said, "You're all set."
I said, "It looks like it."
Q. And why did your coworkers say that?
A. Because they know how religious I am. They know -- you know, you talk about your family and what's going on with them. And they know we don't vaccinate because of our religious beliefs. And this was mostly from the people I'm really close with like my former Secretary --
Q. And who was that?
A. Lori Kiernan.
Q. Okay.

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A. She's retired now. And I'm jealous of her. My Stenographer's going to be retiring. Jealous of her. But the people that knew me very well actually commented upon this.

And I said, "Yeah."

A former Judge I know said the same thing: "You should be all set."

I said, "Yeah. I would think so."

Q. And who was that Judge?

A. That was Judge Pagones from Beacon City Court.

Q. And so you sought a religious exemption --

A. Yes.

Q. -- from the policy? I'm going to show you what's been pre-marked Commission Exhibit 3 which is a copy of your exemption request application -- affidavit of religious objection to COVID-19 vaccination.

(Commission Exhibit 23 was marked for identification)

MS. DIPALO: Andy's going to provide a copy for everyone.

Thanks, Andy.

THE WITNESS: Thank you.

MR. LAVEGLIA: Thank you.

MS. DIPALO: I don't think --

THE WITNESS: Okay --

MS. DIPALO: -- you have to untwist the top.

THE WITNESS: Oh.

MS. DIPALO: Mike (phonetic) just told us.

THE WITNESS: Ah. Very nice. Thank you.

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MS. DIPALO: And I didn't want to spill so.

THE WITNESS: Okay.

BY MS. DIPALO:

Q. And Judge, did you prepare this application?

A. Yes.

Q. Okay. And is that your signature on page 3?

A. Yes.

Q. And is that your signature again on the last page?

A. Yes.

Q. And when did you submit the application? If it refreshes your recollection.

A. September 21, 2021.

Q. And can you just briefly -- I recognize that your reasons are in this application, but can you just briefly explain to us the religious reasons that you were seeking an exemption?

A. Because I do not vaccinate or put drugs or anything into a healthy body. I think -- my beliefs are that Jesus says that when he says only -- you know -- only the sick need a doctor. And I misquoted -- where is it -- Mark -- I think it's Mark -- hold on --

MR. GOLDSTOCK: Matthew 12?

THE WITNESS: Matthew. Thank you. Yes. It's Matthew 9:12. But it's Matthew 9:12. It's also in Mark. And it's also in Luke. And I have Mark there. I just didn't put Luke.

A. So he says it in three different spaces. Then when you go to the

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Catechism of the Catholic Church and follow Lamorte -- and you have a letter from him -- he's known me since pretty much birth.

When I was in Law School, I was 23 -- I was just about 24. It was in October of 1994. He mailed to me -- because I went to Memphis -- University of Memphis, as I said -- from New York. He mailed a copy of the Catechism of the Catholic Church. And I took that book and I read it from cover-to-cover -- not only once -- I don't know how -- since then to know I don't even know how many times. It's just too many to count. And highlighted, make notes -- and all that.

And my beliefs are that both the -- Jesus himself in scripture and the Church says you don't do it. So if you're sick, you can have medicine. And -- I don't know if you're going to -- if you have it -- if you're going to do it.

But I applied a year later, and I rewrote it. Because I said, "Maybe they didn't understand. Let me rewrite it so they can understand." And I even compared it to sex.

And actually my uncle read it. And he said, "Why did you put that in there?"

I said, "Because in this secular world, people understand sex. That's just the way it is." And our beliefs as Catholics are sex as -- and I -- and I compared it to a vaccine -- or a medicine -- not just a vaccine. In and of themselves are neither good nor bad -- it's when you do it.

For a Catholic, premarital sex is a sin. It's a grave sin. It's a sin. It's a mortal sin. It'll send you to hell. After you're married, not only is it not a sin, it's beautiful. It's what God intended for us. It's what we're to do.

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So what changed? Marriage changed. It changed the act itself. Whereas you have -- I'll use Ivermectin for an example. That's probably what I should have put in it, but I didn't think of it. Ivermectin, I took -- and I took some other things too when I had COVID. I'd usually try because in the Catechism it says you moderate even medicine. You don't just take anything that's out there.

I usually try to go without it. I went a few days and it was getting worse -- the COVID. So I went to the doctor and he prescribed it and I researched it and said, "Okay."

So I took Ivermectin. Now, Ivermectin by itself is neither good nor bad. If I -- there's people and there's doctors that prescribe Ivermectin -- or were -- maybe they still do -- for a prophylactic to not get COVID. They also use Ivermectin, I believe, for malaria or other things in the world. Like daily, people take this.

I would not do that. So if this order said "Okay, everyone is ordered to take a drug -- Ivermectin -- prophylactically so you don't get COVID," I would have to not. I couldn't do it. I would not be allowed to do it. When I got sick, that's when I was allowed to take the drug, Ivermectin. That's basically my beliefs in a nutshell.

Now, if you have any other questions on it I'm more than happy to answer them.

BY MS. DIPALO:

Q. And how long have you held these beliefs for? Since what age? About vaccinations and medicines.

A. I'm -- oh, right. And the reason I used 18 in there -- it's probably --

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Q. Um-hum.

A. -- before that -- but 18 is when you're an -- a quote/unquote "adult" even though my 19-year-old going on 20 -- I would -- I wouldn't call him that. You know how it goes with kids.

So before that I had these beliefs, it was almost like God spoke to my heart. It's -- when I kept researching my religion and growing stronger in my faith -- and when I got the Catechism, they became more firm and these specific beliefs -- maybe around then 23 -- 24. But the beliefs in general it -- I can't even -- I don't even know how long. When I was a child, I would say.

Q. And --

A. To get -- I'm sorry.

Q. I'm sorry. Were you vaccinated as a child by your parents?

A. Yeah. I mean, it was the minimal ones. But yes, I was vaccinated. I didn't have a choice, obviously. I think it was probably when you were a baby. I don't even --

Q. Yes.

A. -- know. But yes, I was. And my parents understand my beliefs. It wasn't their beliefs. They take medicine galore. And that's fine. That's their beliefs. But I take -- I take it very seriously. And I think I -- we submitted something from the United States Catholic Conference of Bishops. It -- for a Catholic, if you violate your conscience -- it says it right in there -- I don't know why it's not highlighted. It's just like a footnote. You are condemning yourself to hell. You would be condemned. You'd go to hell. I can't do that.

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When I was 14 years old -- during Lent, if you're not aware, Catholics do not eat meat. They abstain from meat on Ash Wednesday, Fridays, up to Good Friday. So I was 14 years old. I got my first job at a restaurant right around my house -- from my house. And we used to finish on Fridays -- because I worked, you know, for a couple years there during Lent -- and the owners didn't have kids, so they kind of took me in. And we would go to like Burger King or McDonald's after work. Sometimes we got done 11:00 -- 11:30.

We'd go back to their place. And most of the times -- this is during Lent on Friday -- they ate and I sat there and I waited until 12:01 a.m. because that's now Saturday and then I ate my cold burger. They couldn't believe it. That's just how I am. Because it's a sin to eat meat on those days I just said. So -- okay. Sorry.

Q. So no -- thank you, Judge. Now, after you submitted your initial application in September of 2021, did -- were you asked to provide supplemental information?

A. Yes.

Q. Okay. And I'm going to show you what's been pre-marked Commission Exhibit 24 which is a copy of your supplemental form.

(Commission Exhibit 24 was marked for identification)

MR. GOLDSTOCK: Your Honor, can I ask a question about --

THE WITNESS: Thank you.

MR. GOLDSTOCK: -- this -- the last statement?

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THE WITNESS: Yes.

MR. GOLDSTOCK: And I certainly don't want to get into a theological debate on this. And I'm just curious because what you said sort of resonated with something you said earlier.

[redacted]."

THE WITNESS: That's not what I said. I said she doesn't prescribe medicine.

MR. GOLDSTOCK: Right.

THE WITNESS: I didn't say I would take medicine.

MR. GOLDSTOCK: No. I didn't say you said that.

THE WITNESS: Oh. I'm sorry.

MR. GOLDSTOCK: No. No.

THE WITNESS: So what's your question?

MR. GOLDSTOCK: So the question is would you take medication for anxiety? I'm just trying to figure out sort of where this falls in the scheme of things.

THE WITNESS: She's asked me that also. And she knows my religious beliefs.

MR. GOLDSTOCK: Right.

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THE WITNESS: If it got to the point where I couldn't even maybe get out of bed, let's say, I would think about it. But no --

MR. GOLDSTOCK: But you couldn't wear a mask?

THE WITNESS: I couldn't wear a mask.

MR. GOLDSTOCK: So assuming that the medication would allow you to reduce anxiety so you could wear a mask?

THE WITNESS: Um-hum. If the [redacted] didn't work on its own --

MR. GOLDSTOCK: Right.

THE WITNESS: -- I probably would because -- yes. My beliefs say my body needs that -- or my mind or whatever.

MR. GOLDSTOCK: Right.

THE WITNESS: So then the answer would be yes if --

MR. GOLDSTOCK: So you could take medication to reduce anxiety so you could wear a mask?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay. But does the anxiety have to be present for you to take the medication? That is to say do you have to be anxious at that second or do you know that putting on a mask makes you anxious so

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you can take the medication beforehand?

THE WITNESS: That's a good question. I don't --

MR. GOLDSTOCK: I only ask -- I actually ask only great questions.

THE WITNESS: I don't know. That, I would have to consider in prayer. Because I -- that I -- that's a good question. I don't know.

MR. GOLDSTOCK: Okay.

THE WITNESS: But if it was an ongoing issue and that's what resolved the issue, I would say most likely, off the top of my head right now.

MR. GOLDSTOCK: Okay.

THE WITNESS: Yes.

BY MS. DIPALO:

Q. I'm showing you what's been pre-marked Commission Exhibit 24 which is your supplemental form. Do you recognize this form, Judge?

A. Yes.

Q. Okay. And is that your signature on the last page?

A. Yes.

Q. And when did you submit this form?

A. November 12, 2021.

Q. And was a determination made on your religious exemption request?

A. Yes.

Q. And I'm going to show you what's been pre-marked Commission Exhibit

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25 which is a copy of the Unified Court System Vaccination Exemption Committee's letter to you dated December 23, 2021.

(Commission Exhibit 25 was marked for identification)

THE WITNESS: Thank you.

BY MS. DIPALO:

Q. And what was the Vaccine Exemption Committee's determination on your request?

A. It was denied.

Q. And what was your reaction to that --

A. I was --

Q. -- determination?

A. -- I was dumbfounded.

Q. And what did the letter direct you to do? If you could just take a look.

A. Sure. Submit the first dose of COVID-19 vaccination.

Q. And did you -- by January 3, 2022?

A. Correct.

Q. And did you submit proof of first dose of vaccination by that date?

A. No.

Q. And why didn't you submit?

A. Because I can't get vaccinated.

Q. And because it's against your --

A. My religious beliefs.

Q. -- religious beliefs?

A. Yes.

Q. Judge, what religion do you identify with?

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A. Catholic.
Q. And how long have you identified as a Catholic?
A. My whole life.
Q. And have you ever received a vaccination -- I think we touched on this -- when you were a child?
A. Yes.
Q. And when did you last -- at what age did you last receive a vaccination?
A. When I was a child.
Q. Child?
A. I -- whatever the schedule was, probably I would think my parents followed it. But I was a child and --
Q. And after you became an adult at 18, have you received any vaccinations?
A. No.
Q. And are you opposed to all vaccinations?
A. Yes.
Q. Not just the COVID-19 vaccines?
A. No. And that's the thing. And COVID-19 vaccination, per se, has nothing to do with my religious beliefs. It just happens to be it's a vaccine and it was mandated. My beliefs -- and it -- it's not only -- it's medicines. It's drugs. It's whatever. So yes, it's all of it.
Q. Medicines and drugs that are prophylactic in nature?
A. Correct.
Q. Is that correct?
A. Correct.

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Q. And just kind of touching on what Mr. Goldstock -- just to get an explanation -- something like high blood pressure medication -- would that something -- would that be something that you would consider if you had high blood pressure?

A. No.

Q. No? Why is --

A. I would --

Q. -- that?

A. -- I would -- I would change my diet and exercise because it's something that I can control.

Q. Now --

A. Because again, the Catechism of the Catholic Church -- I think it's 2290 -- says any -- and I don't have it in front of me. I could pull it up but if -- you don't take -- you take medicines sparingly, I think is. I'm paraphrasing. So if you don't need something, it's saying you don't take it. It says it right in there -- right in our Catechism.

Q. And that's your interpretation of the Catechism --

A. Yes.

Q. -- correct? Other people are entitled to other interpretations; is that fair to say?

A. Of course. Our Pope Francis -- his personal belief -- and he said it -- it's an act of love to get the vaccination. That's his personal belief.

Q. [redacted]?

A. [redacted]

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Q. [redacted]?
A. [redacted].
Q. [redacted]?
A. [redacted].
Q. [redacted]?
A. [redacted].
Q. [redacted]?
A. [redacted]
[redacted].
Q. [redacted].
A. [redacted]
[redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted].
Q. [redacted]
[redacted]
[redacted]
A. [redacted]
[redacted].
Q. [redacted]
[redacted]
A. [redacted].
Q. [redacted]

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A. [redacted]

Q. [redacted]

A. [redacted].

Q. And so just to take you really quickly through -- what happened after you didn't submit proof of vaccination by January 3rd in terms of work?

A. So on January 3rd, Judge Minihan called me and said, "You got to provide your proof of vaccination."

And I told her on the phone, "Judge, I can't vaccinate. It's against my beliefs."

"Well, you were denied."

"I said, I understand I was denied. That doesn't change my beliefs."

"Well, then you can't work from court. You have to work virtually."

I said, "Okay. How's that going to work?"

"I don't know. I'll let you know."

So this wasn't planned for at all. I guess they expected every single Judge to vaccinate. And if you didn't, they're just going to do away with the religious beliefs, I guess -- I have no idea what they were thinking, but they had nothing in place for this.

So I said, "Okay. I'll do whatever you need me to do. Can you please -- can you send me an email regarding that?"

So I called in my Chief Clerk at the time -- Lori Conners, my Co-Judge -- Volkman, Lori Kiernan, and Linda Murray, my Court Attorney -- our Court Attorney. She was both of ours.

They came in. I said, "Okay, guys. Tomorrow I'll be working from home."

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And they're looking at me like a deer in the headlights. "What are you talking about?"

I said that "They denied my religious exemption. I have to work virtually."

"Well, how's that going to work?"

"I have no idea how it's going to work. And I have the criminal calendar tomorrow."

They said, "All right. Well, we'll do whatever we have to do."

So I brought my laptop home and worked virtually.

Q. And --

A. January 4th.

Q. On -- that was my question -- the date you started. And what types of cases did you handle --

A. At --

Q. -- virtually?

A. That day --

Q. At that time.

A. That day was my criminal calendar.

Q. Were you able to handle that virtually?

A. I don't understand the question.

Q. Okay. Were -- you were at home?

A. Yes.

Q. And were you presiding over your criminal calendar --

A. Virtually.

Q. -- virtually?

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A. Yes. Through --
Q. So they livestreamed --
A. -- Teams.
Q. -- through the --
A. Through Teams.
Q. Okay. Through Teams. And was there ever any kind of restriction put in place on the types of cases you could handle after that point?
A. Yes.
Q. Okay. I'm just going to show you what's been pre-marked Commission Exhibit 26, which is an administrative order issued by an Administrative Judge for the Ninth Judicial District --
A. Thank you.
Q. -- Anne Minihan.

MR. LAVEGLIA: Thank you.

MS. DIPALO: And just for the record, it's M-I-N-I-H-A-N. Dated January 31, 2022.

BY MS. DIPALO:

Q. And are you familiar with this administrative order?
A. Yes.
Q. And did Judge Minihan direct that you could only provide -- preside over civil matters in which litigants agreed that you could preside or appear remotely?
A. Yes.
Q. Okay. And it also provided that you could only preside over -- or only issue decisions in orders in criminal cases where motions have been

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submitted that did not require the appearance of a defendant?

A. Yes.

Q. Did Judge Minihan's order -- did it go into effect on January 31, 2022 or prior to that date?

A. Oh, no. That date.

Q. Okay. And did it effectively limit --

A. Well --

Q. Oh, sorry.

A. I'm sorry. At some point, I wasn't doing criminal anymore. It may have been before this. I don't remember. Whatever I was ordered to do -- whatever is through this or an email or whatever I did. But this is the official no more.

Q. And did Judge Minihan's administrative order effectively limit the amount the work you could perform as a Judge?

A. Limit? Yes. I couldn't do criminal cases except for what it said here, but it didn't limit my workload.

Q. That was my question.

A. My workload actually -- it -- I'm not going to say it increased because it's the same amount of work, you know. If both of us were there doing civil and criminal, it would have been the same. But when I went back after 13 and a half months of being banned. I said to Scott -- my -- Judge Volkman. I said, "You know, if I had a switch, I'll take criminal any day." Because I was dealing with small claims, commercial claims, evictions, you know, summary proceedings.

And having a break -- you know -- we'd go a week on, a week off for

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criminal and civil now. It's nice because you get refreshed. I was handling every single case, and I was doing trial after trial of trial. I did get very efficient -- I can tell you that -- at the computer and handling these cases and handling evidence virtually. I don't recommend it, but I got very good at it.

But it was -- I was doing a lot -- a lot of cases -- trials two or three times a day sometimes and doing all these criminal motions. So it relieved him of that. And I was happy to do whatever I could because I felt bad that he was in this position also -- Judge Volkman -- which he didn't complain one time. God bless him.

Q. And during the 13 and a half months you worked remotely, did you continue to collect a full salary?

A. Oh, yes.

Q. Now, were you permitted to access the Courthouse after January 3, 2022 --

A. Yes.

Q. -- when -- okay. And who gave you permission to access the courthouse?

A. Judge Minihan.

Q. And did she put any kind of restrictions on your access if you can recall?

A. In the beginning?

Q. Yes.

A. Yes. I could go -- well, I'm sure you have the email. If I could refresh my recollection -- you want to put it in evidence? Or --

Q. I'm going to have to pull it from -- it's in -- it's -- I'm going to show you what's been pre-marked Commission Exhibit 2.

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(Commission Exhibit 002 was marked for identification)

BY MS. DIPALO:

Q. And it's Judge Mora's letter to the Commission dated June 17th. And I believe --

MR. LAVEGLIA: Do you have our list of the exhibits?

MS. DIPALO: Yes. So it's your letter. If you can just give me a minute, I'm going to find Judge Minihan's email to you. I believe it's Commission --

MR. LAVEGLIA: 15.

MS. DIPALO: Sorry. Your Exhibit 15. Yes.

MR. LAVEGLIA: Yep.

MS. DIPALO: Correct.

BY MS. DIPALO:

Q. So what were -- what did Judge Minihan say you could return to the courthouse for?

A. Getting files, getting equipment -- I don't remember what else. If I could --

Q. Oh, sure.

A. -- refresh my recollection?

Q. Please.

A. Can I read it?

Q. Yes.

MR. LAVEGLIA: Yeah. I've got it.

THE WITNESS: Oh.

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MS. DIPALO: Got it?

MR. LAVEGLIA: Yep.

MS. DIPALO: I have it right here if --

MR. LAVEGLIA: Oh. Okay.

MS. DIPALO: You have it?

THE WITNESS: Thank you.

A. "If you want to --" can I read it?

BY MS. DIPALO:

Q. Please.

A. "If you want to go to the court to retrieve your belongings or to drop off papers or files or get office supplies you need or tech equipment, just go while court is open. You can continue to do that as long as you're working remotely, et cetera."

So -- yeah. All right. I was going to comment on it, but I'll let you ask me --

Q. You can comment on it.

A. So that was very interesting to me. Because I proposed to her -- and it's in there.

"Can I go to the courthouse after hours to get my belongings?" Because this way I can go in the parking garage. I could go through the back -- no one would be there. And I would just get files and do whatever I need. I wouldn't work there but just get whatever I needed. But she told me to go when court was open. And I was -- I wasn't going to complain. I'm like, "Okay." Because then there's people there and I could get the stuff I need from them. But that seemed very strange to me since there's -- they're

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telling me I'm banned from going there to work but I can go there and get files and do whatever else. I just can't work there. I mean, I think she said that at one point: "You just can't work there."

I said, "Okay." And so that's what I did.

Q. And just to refresh your recollection what was the date of Judge Minihan's email when she said -- sorry.

A. That's all right. January 5th.

Q. And how many times would you say you visited the courthouse during January of 2022?

A. I know exactly. It's in there -- one of my exhibits there -- and I only know because of the access. It's 14.

Q. I have it right here.

MS. DIPALO: I'm going to show Judge Mora what is Exhibit 14 to Commission Exhibit 2 which is his letter to the Commission dated June 17, 2022.

THE WITNESS: Talk about small print.

BY MS. DIPALO:

Q. You can estimate.

A. It was on the 5th, 6th, 10th, 11th, 13th, and 18th.

Q. And when you went to the courthouse on those dates, did you wear any kind of face covering?

A. Yes. I wore my shield.

Q. And where did you go when you visited did you -- the courthouse on those dates? Did you go --

A. Oh -- different places.

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Q. Chambers?
A. I went definitely to the chambers because I had all -- you know after ten years you have a lot of personal things. So I was taking stuff out. I went to my Secretary's office because she had files for me. I may have went to the Chief Clerk because she had files that were -- or something. I had to get equipment at some -- you know -- at one point or another. So different places to do what was -- what I was allowed to do.
Q. And when you were going to these different places, were you wearing your face shield?
A. When people were around? Yes. But as you know, there's a -- the article -- the 360 article that showed me holding my face shield, because at that point -- I forgot what day it was -- it might have been on the 18th, but I don't know. I'm not sure. I would carry my face shield because a lot of times there weren't people in that back area that I was describing. And I wouldn't wear it because I -- because of my anxiety. And since nobody's around, I don't need to wear my shield.
Q. And that was the back area by your --
A. The back area.
Q. -- chambers?
A. Yes. Yes. Yes. So at that point, Judge Volkman was out. I think he was at lunch. And it was only me and Lori back there -- my Secretary. And she was going out, and she told me.
And I said, "Okay."
And I was doing stuff from my office. Then I had to go get something in her office. And I walk in, and I had the shield. And if you look at the

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picture, I'm holding my -- I have my file -- those were my files at that point. I had other court files at different times, but at that point I'm holding my files and I'm holding my shield. And I see her and another employee there, and I stop. And you see I'm smiling because I saw them. And I said, "Oh." And you don't see this part of the picture, but I put my shield on. I said, "I didn't know you were here."

"Oh, I'm sorry. I forgot to tell you I was back."

I said, "Oh. No problem."

She was showing -- or the other coworker was showing her pictures or something of her new grandbaby or something. So I went in. I got some files out of a drawer. And she showed me the pictures.

I said, "Very cute." And I went back in my chambers.

Q. Now, did there come a time when your access to the courthouse was revoked by Judge Minihan?

A. It was severely limited, but yes, I will call it revoked. I'll use your term. And that's how I would determine it -- determine -- say it. January 18th -- that's when this reporter got involved. Frank Runyeon.

And she emails me saying, "Until further notice, you have to get approval." From either "me" or I think Sam Walker or different people. And I emailed her, and I said what -- in light of this -- the -- I think she said that "in light of the circumstances."

I said, "What circumstances are you talking about?" I emailed her back. The reporter must have -- or the reporter reached out to Lucian Chalfen who is the --

Q. He was the former spokesperson --

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A. -- the spoke -- that's who --
Q. -- for OCA.
A. -- we're supposed to refer people to. Because, as you know, Judges -- we're not supposed to talk to the press. So my -- when he called looking for me my Secretary -- go ahead -- I said, "Refer them to Lucian Chalfen." So she did. And there's an email too that I put in there. And so Lucian speaks to him. I don't know this because Lucian's not getting back to me. And he must have contacted, I would presume, Minihan who got word that this article's going to be coming out. And then I get that email.
And I'm like, "What's going on?" And little -- do I find out that article comes out and I was blown away by it.
Why Lucian didn't call me after Runyeon saying, "Judge Mora's in there disobeying all these mandates and he's not allowed to be there and he's there, and he is wearing a shield and -- instead of a mask." Why he didn't call me, I have no idea. Because if he had called me or if I was allowed to speak to Frank Runyeon myself, that article still may have come out, but it would have looked totally different. Totally different.
Q. And Judge, I'm just going to show you what's been pre-marked Commission Exhibit 8 which is the Commission's letter to you dated April 12, 2022.
(Commission Exhibit 8 was marked for identification)
And attached to that letter as Exhibit G is a Law360 article dated January 20, 2022, by Frank G. Runyeon. Do you recognize that article?
A. Yes.

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Q. Okay. And is that the article that you're referring to that led to your access being -- my words -- "revoked"?

A. Yes.

Q. Thank you, Judge.

MS. DIPALO: And just for the record, Runyeon is spelled R-U-N-Y-E-O-N.

BY MS. DIPALO:

Q. And I just -- you were referring to Judge Minihan's email to you. I just want to show you what's been pre-marked Commission Exhibit 27 which is an email from Judge Minihan to you dated January 18, 2022.

(Commission Exhibit 27 was marked for identification)

THE WITNESS: Thank you.

BY MS. DIPALO:

Q. And Judge, do you recognize this email?

A. Yes.

Q. Okay. And if I could just direct your attention to the second paragraph, first sentence which states, "Further and in light of recent events, it has become necessary to limit your access to the facility."

I believe you testified your understanding was that your access was limited because Frank Runyeon reached out to Lucian Chalfen --

A. Yes.

Q. -- about -- for comment on whether -- or on the fact that you were allegedly in the courthouse without a face covering?

A. No. That I was --

Q. Oh --

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A. -- there.
Q. Oh. There in --
A. And I --
Q. -- general?
A. In general. I shouldn't have been there --
Q. Okay.
A. -- according to the policy. And according to the general policy, he's correct. He didn't know I had approval to be there -- the reporter.
Q. And just to direct your attention to Judge Minihan's -- the first paragraph -- which states, "In follow-up to our conversation a little while ago, under no circumstances are you permitted to access the Poughkeepsie City Court facility unless you are masked."
A. Correct.
Q. Do you know why -- what prompted Judge Minihan to give you that reminder or directive?
A. She's saying "masked."
Q. Yes.
A. I don't think at this point she knew I had permission to wear a shield. Her personally, that is. Not the office because Judge Davidson, her predecessor, granted that to me. So I don't think she had -- I don't -- I don't think she knew that. And that's why when I emailed her afterwards asking her a whole bunch of stuff -- and I think that's in there also -- I said, "First of all," I said, "I had permission to wear a shield."
And she outright shut me down and said, "No one in the UCS can wear a shield."

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And I pointed out, "No. Actually, witnesses can."

And I didn't point out to her because I didn't want him to get in trouble at the time -- oh, well, he wouldn't get in trouble. I'm sorry. He had approval. [redacted]. [redacted] Nobody has to wear them anymore.

So while -- and I'm sitting here reading this letter and saying, "So wait. I can't wear a shield, but this other Judge and who knows how many other people throughout the State -- because this is the whole State we're talking about -- are allowed to wear a shield but I'm not?"

But again, I'm not going to point him out and then maybe get his revoked. I would never do that to someone, so I just kept quiet about it. So I did not go back to -- after receiving this email -- this was at night. I did not go back inside the court until September 15 of 2022 when all masking was lifted because I couldn't wear a mask.

I wanted to go in. I had stuff I wanted to get. So my Secretary would actually box up stuff for me and bring it out past the magnemeter [sic] -- or magnetometer. I think that's how you say it. And I would be in City Hall lobby, and I would take it with me.

Can I keep going?

Q. Sure.

A. Because I'm very upset that this even happened. At one point -- so that's where I would meet her. I would meet her out there. And people wold come out all the time and during this 13 and a half months to that spot and see me. I didn't have to wear a mask there or a shield because this

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was City Hall and it wasn't required at that time.
People would come out and they'd take off their mask. And they'd come and hug me or just, you know, "How's everything going?" Et cetera.
I had to -- we had parties -- you know, as you do. I'm sure you do it here also. I felt like a dog. I'm sitting outside the magnetometer celebrating with whoever would come out and see me having a slice of pizza or cake.
I felt like a leper because I wasn't allowed to go in and celebrate with my friends when anyone in the public unvaccinated could walk right in.
My son [redacted], he was with me one day -- he had his mask on.
I said, "Sarge, can my son go into my chambers and grab a box that Lori had put there because it's heavy?"
"Absolutely."
And we just look at each other, my son and I, and we shake our heads. Because he's unvaccinated and he's walking into my chambers to get a box where I can't go to my own chambers. But he's unvaccinated but he's not banned from going there. No one was banned from going there. Anyone unvaccinated could walk into that courthouse every single day except me, actually.
And at one point, Judge Minihan -- oh, actually -- my Secretary, Lori, comes out and she says -- I don't know when this was, but I have an email for it.
And she says, "Judge, I have to meet you outside the building from now on to bring you your stuff."
And I said to her, "What?"
"That's what I was told."

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"Who told you that?"

"Lori -- a Chief -- the Chief told me."

I said, "Well, good luck with that."

And when I said that to her, she looked at me -- and her face turned pale.

And I said -- I realized, "Oh. I think she thinks I'm telling her to violate their order." And I picked up on that right away.

And I said, "Lori, let me explain something to you. I know you're my Secretary." Because she's the only one that reports directly to the Judges.

I said, "If I ever tell you to do something that's contrary to what the Chief tells you or anybody -- anybody here -- you do what they say." And color came right back to her face. I said, "What I meant by that was by the end of today you'll be meeting me in City Hall right where we are."

And I wrote -- I asked the Chief, I said, "Who told you this?"

Q. Who's the Chief?

A. Chief Lori Conners.

Q. Conners. Okay.

A. I'm sorry. Chief Conners.

I said, "Lori" -- that's what I call her -- 'who did you get this from?"

I think she said, "Jim McAllister (phonetic)."

And I said, "Was that in writing?" Because as we know, everything's done in writing.

She said, "No."

I said, "Really?"

She goes, "Really."

I couldn't believe it. She couldn't believe it.

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I said, "Okay."

I went right home, got on my computer, and I wrote the email.

I -- did -- I don't know -- did we submit that? I don't know. If we didn't, I can provide it.

And I said to Judge Minihan, "I'm told that my Secretary now has to meet me outside the building." I said, "This is the City Hall's building which is out -- and City Hall lobby is outside the perimeter of the Court System. I'm sure there's a mistake regarding that."

And sure enough, she got back to me. "Oh, yes. Of course, Judge. She can meet you right there, and we just wanted to make sure you weren't accessing the building using your access card."

And then I said to her -- I said, "Wait, wait -- my access card? Can I park in the building? It's City Hall."

"Not if it's a UCS access card."

And I said, "What does this have to do with anything?" But then so I said, "I would have -- I would ask my Chief, Lori Conners, to chime in. It's not right. No. It's issued by the City of Poughkeepsie." And so I said I could use it.

"Well, I don't know what the City's going to say about your unfit status."

And I wasn't worried about the City. The City was fully supportive of me and hoping I would get back to work.

So I know I went off on a long tangent, but I was just dumbfounded that my Secretary's being told that she couldn't meet me in City Hall lobby.

Q. And who is Jim McAllister?

A. He works for Judge Minihan's office.

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Q. Okay.
A. He's the assistant -- I'm not sure of his title. But he's --
Q. But he's from --
A. He's the administration --
Q. -- the Administrative Judge's --
A. -- yes -- so --
Q. -- office?
A. -- administration. And I know that was a long tangent, but I -- my point was after I had -- was told I can't go there unless I wear my mask, which I couldn't do, the rest didn't mean anything to me because I couldn't even ask for permission. Because I couldn't go in. I did not go in for -- from January 18th -- or the 19th, I should say -- because I was there earlier -- after this email to when it was lifted. And then I asked for permission because I still needed permission.
Q. And that was February 15th, you said --
A. No. No. That was --
Q. Oh. September --
A. September 15 of 2022. So the day I got that my heart was glad. The masks were lifted. I wrote Judge Walker that morning, I think.
"Hey, Sam. It's been lifted. Can I -- can I go in?"
"Okay. You're going to" -- and then he called me. "You're going to wear your mask?"
I said, "Sam, what are you talking about?" I said -- I said, "The masks have been lifted. I haven't gone in my chambers for eight months. Of course, I'm not going to wear it. That's the whole point why I'm asking

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for permission."

"Oh. Let me get back to you."

I said, "Can you email it?" And he emails that I can go in. And I had to get -- I had to check in with the Sergeant. It's almost like I'm a criminal. I have to check in. He has to walk me in the back -- go into my chambers, do what I had to do -- and then leave.

So I said, "Sarge, you have to bring me in."

"Oh, no. Don't worry about it. Just go in."

I said, "Oh, no, no, no, no. You -- we're going to do exactly what they're telling me. I don't need to be violated for this too." And that's what I did.

Q. And did there come a time when you were able to return to the courthouse and preside over cases in person?

A. Yes.

Q. And do you recall the date when that was?

A. Of course.

Q. When was that?

A. It was February 17 of 2023.

Q. And why were you permitted to return at that -- at that time?

A. The reason -- I'll tell you why I was permitted. Because I sued the Federal Courts -- I mean -- I sued the New York State Court System in Federal Court. And my Attorney brought a preliminary injunction motion. And the day before that motion had to be answered, they ended the entire vaccine mandate for the entire Court System. That's why I was allowed to go back in.

And I know the excuse they used was "President Biden is ending the

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Federal Emergency in May." February -- March -- three months later. "And that's why we're ending it."

It made absolutely no sense. But I'm not going to argue with it because I'm back in.

But I kept saying to Mr. Sussman, "I can't wait to see their answer of why I'm still banned after the CDC on August 11 of 2022 said, 'You should not differentiate between the vaccinated and the unvaccinated. And the allegedly followed the CDC's guidance.'" And for six months later until I brought a preliminary injunction motion, I was still not allowed in my courtroom.

So I know it was a long answer, but that's why I was allowed back in my courtroom.

Q. And Judge, as you sit here today, do you believe that you complied with the Unified Court System's policy requiring that Judges be vaccinated against COVID-19?

A. Yes. To the best of my ability. I applied. I applied for the exemption. I did everything they asked. I answered every question, even though they're attempting to say I didn't answer a question because I said I didn't, one of them, see --

Q. Attached?

A. Yeah. See Question 3.

This is fully explained in my statement dated September 21, 2021. And as you know, as Lawyers all of us, we refer back to documents in court proceedings every single day. I actually -- we did it in my responses -- our responses, Mr. Laveglia and I -- see Number 2. See

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Number 3.

And no one has ever said, "Well, Judge, you didn't answer that question." Because of course, we answered the question. If they had a problem with my answer, all they had to do was tell me they had a problem with my answer and I would have -- I would have just restated what I said. And what upset me about this, when I received it the first time -- at first when I got this, I thought this was written specifically for me because I was denied and they had questions based on what I specifically wrote in my statement.

At that time, I had no idea that they sent it to -- I think it's everyone -- or as they say, "Almost everyone." I don't know what that -- almost everyone means -- everyone that provided an exemption.

So for them -- for the Court System to say they didn't understand everyone's beliefs in why they shouldn't have to vaccinate is disingenuous.

So when I read this and they said "You have provided information in a previous statement indicating that your religious faith calls for you to abstain from medicines and vaccines due to concerns regarding safety," my blood pressure went through the roof.

I said, "I never said anything about medicines." Where -- did they read my statement? To come to find out, like I just said, this was sent to everybody. If I had known that, maybe I would have answered it differently. But I'm like, "I can't believe it."

And as you read my answer to these questions, I specifically say to them, "My name is Frank Mora. This is in response to your demand for more

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information regarding my religious faith per Section B. I repeat and reiterate everything in my statement dated September 1st." So I said it there once.

Then I said, "Your statement on Section B wherein you claim that I have provided information on a previous statement indicating that your religious faith calls for you to abstain from medicines" -- and I put that in bold -- "and vaccines due to concern regarding the sanctity of your body or its purity is"-- is. It should be is. It says, in incorrect -- "is incorrect." I stated no such thing regarding medicines.

So they completely conflated my beliefs regarding vaccinations and medicines and said, "Well, if he'll take medicine in the future, then he can't really believe what he believes."

Which you're -- first of all, you're not even allowed to delve into somebody's actual beliefs. You only can say, "Is it religious?" And "Is this sincere?"

And to question my sincerity, I don't -- I don't know how anyone could do that. And is it religious? I don't have one personal or scientific or philosophical statement anywhere because it isn't any of those things. It's completely religious. Like I said, I've taken Ivermectin when I was sick. I just can't take it prior to it.

And Question 1fully answers that. And I couldn't believe when they -- when I filed with my -- with the New York State Division of Human Rights and even in the reply papers from my federal suit they actually redacted the answer to my question, removed things that I said, and said to the Judge or whoever is making the decision, "Look, he

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doesn't really have religious beliefs."

If an -- if an Attorney did that in my court, that Attorney would be sanctioned. That is a fraud -- and I even pointed that out in the -- to the Division. It's a misrepresentation.

I specifically say in here, "I will never vaccinate. Although my beliefs reject vaccinations". They completely left that out.

There is a significant difference between a body in crisis needing help and a body that is healthy accepting a procedure.

I believe God accepts help in a crisis and rejects vaccinations for quote/unquote "prevention." They left all that out.

I'm sorry. Go ahead.

MR. GOLDSTOCK: On this subject, when you wrote the initial application --

THE WITNESS: Yes?

MR. GOLDSTOCK: -- was that all your words?

THE WITNESS: This? The -- my --

MR. GOLDSTOCK: Yeah.

THE WITNESS: -- my statement?

MR. GOLDSTOCK: In your -- in your statement and your letter?

THE WITNESS: Yes.

MR. GOLDSTOCK: Okay.

THE WITNESS: This is 100 percent me. No one else.

MR. GOLDSTOCK: Okay.

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THE WITNESS: Absolutely. And if you -- if you see in there where they say "I swear or affirm," "swear or" is crossed off. And I initial it. And I do it here. Because I don't -- I don't swear oaths. Jesus actually commands us not to in Matthew 5:33 to 37. He says, "Do not swear oaths on anything to God, in heaven, on Earth." That's why I do it, because Jesus himself says not to and James 5:12 also says it.

I'm sorry.

MS. DIPALO: No. Thank you, Judge.

I have just a very limited line of questioning on the final complaint. If -- I don't know what time it is.

MR. GOLDSTOCK: It's 5:06.

MR. LAVEGLIA: I'm fine pushing through if --

THE WITNESS: I'm fine.

MS. DIPALO: Okay.

MR. LAVEGLIA: -- everyone else is.

MS. DIPALO: It will be brief if that's all right with everybody?

MR. GOLDSTOCK: There's only person that counts here.

BY MS. DIPALO:

Q. Okay, Judge. Just we're going to turn to a different topic. Are you familiar with Section 730.30 of the Criminal Procedure Law?

A. Yes.

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Q. Okay. And what's your understanding of this section?
A. It says that if we believe that a person may be incapacitated, we must order a 730 exam.
THE WITNESS: Where's the list?
BY MS. DIPALO:
Q. So does this --
MR. LAVEGLIA: Right here.
BY MS. DIPALO:
Q. -- section give you discretion to order a 730 examination? It's within your discretion --
A. It is definitely --
Q. -- to decide whether a 730 examination should be ordered?
A. Correct. But that's a nuanced question.
Q. Sure.
A. Because if I believe someone may be incapacitated, I don't have any more discretion. The statute then says I must order it. But the discretion I guess isn't in determining your belief.
Q. Or whether you -- whether somebody is incapacitated?
A. Yes.
Q. But a defendant isn't entitled to an exam as a right?
A. Absolutely not.
Q. Okay. Now, in 2021 how many days a week did you preside over the criminal calendar? Or I think you mentioned maybe you did a week on and a week off. Just how often were you presiding over the criminal calendar in 2021?

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A. In 2021, I'm not sure if we were going every other day. We switched eventually to every other week. So literally every other day.

Q. Okay. So two to three days a week?

A. Yes. Yes. Depending on the --

Q. On average?

A. Depending on the day. Correct.

Q. And I'm going to ask you to give some estimates if you can if you -- how many -- approximately how many applications for CPL 730 examinations would you hear in a given week.

A. That, I do not know. And there's -- I asked if there was a way to track it and see, and there wasn't. But what there was -- what we were able to do -- my Chief Clerk reached out to the County of Dutchess Department of Behavioral and Community Health. And on November 3rd, they send a list -- a letter and a list -- if we could mark this and --

Q. Yes.

A. -- put it in -- dated November 3, 2023, going back to 2019 through 2023, so five years. Except for me, it's only really four years because I was banned for pretty much all of 2022. So I handled no, practically speaking, criminal cases that had to do with this.

And in that time frame I ordered 30 exams. And it just happens [redacted] ordered 30 in the five years [redacted].

So how many applications? I can't tell you. But I can tell you this -- and if we could --

Q. Okay.

MS. DIPALO: And Mr. Goldstock, can we --

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MR. GOLDSTOCK: Sure.

MS. DIPALO: -- mark this as Judge's Exhibit A or 1? Judge's Exhibit A?

MR. GOLDSTOCK: Aren't there other exhibits that were --

MS. DIPALO: A?

MR. GOLDSTOCK: -- entered into the record before?

MS. DIPALO: No.

MR. LAVEGLIA: No. Not from us.

THE WITNESS: No.

MR. GOLDSTOCK: No. Okay.

MS. DIPALO: So we will mark letter to Kathleen Carrol, dated November 3, 2023, from Gary Collins of the Dutchess County Department of Behavioral and Community Health as Judge's Exhibit A.

(Respondent's Exhibit A was marked for identification)

MS. DIPALO: Can we take this copy?

MR. LAVEGLIA: Yes.

MR. GOLDSTOCK: Yes.

MS. DIPALO: Thank you.

MR. LAVEGLIA: Thank you.

MS. DIPALO: I'm going to hand this to you.

BY MS. DIPALO:

Q. Now, who typically makes the 730 applications?

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A. The -- normally the Attorney for the defendant.
Q. And in most cases or in -- approximately how many -- how often did the People join the application?
A. That's hard to say. They've joined it in the past. I'm not sure how many times they've objected but a lot of times they would have no opinion because they're not talking to the defendant.
Q. And what factors would you consider in determining whether to order an examination or whether somebody is incapacitated and --
A. Right.
Q. -- an examination must be ordered?
A. So the caselaw to me is very clear. What I would do is I would hear from the defendant's Attorney as to why they think -- that he or she thinks it's needed. I would view the demeanor and the behavior of the defendant. And I would normally, if I could -- if the person was here -- sometimes they're not there -- but I would do a colloquy of the defendant. And I would ask questions, you know, hoping to -- "Do you know where you are?" I would get a feel for if this person knew what was going on. So these three things is what I would take into consideration.
Q. Did you consider whether they had a history of mental illness?
A. So you can take that into account, but the caselaw, again, seems very clear that psych -- a history of psychiatric illness is not determinative.
Q. Okay.
A. But it's a -- it's a factor. There's many different factors.
Q. And the three factors you listed -- did you consider those factors in every case where a CPL 730 examination was requested?

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A. I wouldn't say every case. Because, again, if the person couldn't be brought to court, I wouldn't be able to ask them questions. I would have to base it on whatever the Attorney's saying -- et cetera.

Q. Or would you require that a defendant be produced?

A. If they could and it was safe to do so? Yes. There's a lot of times where defendants aren't produced -- not even -- not only for 730. But they're refusing. And if the Attorney is fine with their appearance being waived, I don't have them brought over. Because why put them at risk? Why put the Deputies at risk, the people in the court at risk? So -- no, I normally would not.

Q. So --

A. Maybe depending on what's going on, I would. But no, normally I wouldn't.

Q. So is it fair to say that if a defendant could not be produced, let's say, for safety appearances -- Counsel waived their appearance -- would you accept the representations of Defense Counsel as to their client's behavior?

A. I normally would.

Q. Okay. And you mentioned before that you undertook a colloquy with a Defendant who was produced. What kind of questions did you ask?

A. Well, I actually have it here. Because an Attorney filed a complaint against [redacted] and I. And you got to remember, I was out for 13 and a half months. So I come back and I almost got thrown into this I think. She filed a complaint.

And I basically said in an email to Judge Williams, who is now my

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Supervising Judge, "What did I -- yeah -- you know -- what I did quote/unquote 'wrong' regarding 730s?"

And we had a meeting with the District Attorney, the Public Defender, myself, Judge [redacted] and Judge Williams. And the Public Defender, [redacted], brought up the -- a case that was on [redacted], [redacted] [redacted]. So I didn't remember off the top of my head.

So I pulled the file and I asked my Stenographer, "Can you please give -- get me a transcript of this?"

So the questions are -- they're right here. And I -- do you want them read or do you want this -- to put this --

MR. LAVEGLIA: Could we mark that in as --

MS. DIPALO: Yeah. We can mark that in --

THE WITNESS: All right. That's --

MR. LAVEGLIA: -- Judge Exhibit B?

THE WITNESS: -- if we could do that.

(Respondent's Exhibit B was marked for identification)

A. And what's so interesting about this -- and I pointed this out to Judge Williams -- is I'm asking her all these -- now, the person was arraigned in front of Judge [redacted] Then it was set down for a preliminary hearing, and I was going to do the preliminary hearing.

But her Attorney, Ms. [redacted] made an application and said the People are joining in -- I think she said that -- a 730 exam. That's all she said.

So I'm sitting here. She doesn't say another word. And again -- as you just stated and the law is clear -- it's not just for the asking.

So I said, "Okay." So I start asking my questions and that's right here.

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You get down to the end and she's answering my questions like she knows what's going on --

BY MS. DIPALO:

Q. This is the Defendant?

A. I'm sorry. Yes.

Q. Ms. [redacted]?

A. Ms. [redacted], the Defendant. And she's answering and answering. We finally get down -- and I'm sorry -- I'm going to keep asking questions. Then I was going to go back to Ms. [redacted] after that and say, "Ms. [redacted] what are your reasons for asking for a 730 exam?"

Well, I didn't get to do that. She cuts me off.

Q. Ms. [redacted] or the --

A. Ms. [redacted]

Q. Okay.

A. Sorry.

Q. And what page is this on just for --

A. It's not numbered.

Q. It's not paginated?

A. It's the -- it's the second-to-last page.

Q. Okay. Thank you.

A. But it's going to be given to you. "Don't answer anymore. I'm going to waive the case to the Grand Jury."

I thought that was strange. But as of right now, I'm not finding any reason to believe this person may be incapacitated, based on my questions.

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MR. LAVEGLIA: Can you read some of the questions you asked?

I'm sorry, I --

THE WITNESS: Yeah.

MS. DIPALO: That's okay.

THE WITNESS: Absolutely.

I said, "Ma'am, what is your name?"

"[redacted]."

"All right. And do you know where you are right now?"

"Yes. I do."

"Where are you?"

"In court."

"And why are you here?"

"I was not in my right state of mind."

I said, "No. Do you know what you're charged with?"

"Yes."

"What are your -- what are your charges?"

[redacted]

"And do you know what my position is here?"

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"No. Can you explain it to me?"

"I'm the Judge. Do you know what the Judge does?"

"Yes."

"What do I do?"

"You oversee everything."

"All right. And your Attorney, Ms. [redacted] do you know what she does?"

"She's representing me."

"All right. And are you able to communicate with her?"

"Yes."

"Okay. Do you know what Mr. [redacted] (phonetic) does? He's with the District Attorney."

"No. I don't. I don't think I've ever met him."

"No. Not him personally. But the District Attorney's Office, do you know what they do?"

"Not really."

"They prosecute the case."

"Okay."

"All right. Do you understand what a Jury is?"

"Yes."

"All right. What does a Jury do?"

"They come for a trial."

"All right. And then what's their duty in that

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trial?"

"To come to a verdict."

"Okay."

Then I'm cut off.

"Don't answer anymore. I'm going to waive the case to the Grand Jury."

So again, I'm not finding any grounds. And she doesn't want me to keep going, and she -- I'm not getting to why she thinks it.

I say, "Now, do you understand you have a right to a preliminary hearing?"

"Yes."

"All right. And your Attorney's asking this to be waived to County Court for action of the Grand Jury. Do you understand that?"

"Can you" --

And I knew what she was saying, so I started speaking.

"I'm going to have Ms. [redacted] explain it to you."

And then it says, "Attorney consulting with Defendant off the record."

"All right. Did Ms. [redacted] explain that to you?"

"Yes."

"Well, once the right -- your rights are explained, I don't need to do it."

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"All right."

This is me. "So we're waiving this matter to the County Court for action of the Grand Jury. All right. Thank you." And here's my Notice of Appearance.

So she didn't even let me finish my questions.

MS. DIPALO: Mr. Goldstock, can we --

MR. GOLDSTOCK: Yes.

MS. DIPALO: -- mark this --

MR. GOLDSTOCK: Yeah.

MS. DIPALO: -- as Judge's Exhibit B which is an uncertified rough draft transcript of [redacted] on [redacted].?

Thank you.

BY MS. DIPALO:

Q. Now, Judge, did this case come back before you? Ms. [redacted]'s case?

A. It came back to court.

Q. Okay.

A. And Judge [redacted] --

Q. Because it went -- it was --

A. Yes.

Q. -- up in --

A. It went to County Court.

Q. -- County Court.

A. Then it came back. And I think -- it -- because we go back and forth sometimes. If somebody's on vacation, we have to cover or

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out -- whatever. So Judge [redacted] I think, ended up ordering the 730 -- a 730 exam. Because when it came back, I guess they had discussions. I don't know. I wasn't part of that.

Q. Sure.

A. So -- excuse me. Yes. It did come back at one point. And then I signed myself a temporary order of observation. Because I believe the reports came in and said both of them were agreeable.

I said, "Anyone want a hearing?"

"No."

I said, "Okay."

Q. That she was incapacitated?

A. That she --

Q. Or --

A. Yes. So I signed that, and off she went. And since it was a felony if she -- when she -- if she recovers, she comes back. She eventually came back. She had capacity. We reduced -- it was -- come back on a 180.40 (phonetic) it's called. We reduced it. They had a disposition. I took the disposition -- did my normal allocution -- and sentenced her I think it was to three years of probation and a surcharge, and the restitution would be determined later on if they didn't agree to it.

Q. And, Judge, you mentioned if somebody -- if a defendant is found to be incapacitated and they're charged with a felony, there's a temporary order of observation issued?

A. Yes.

Q. And the matter will come back to court when they're found to be --

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A. Competent.
Q. -- competent. What happens if a defendant who is charged with a misdemeanor is found to be incapacitated?
A. You sign a final -- what we call a final 730 order.
Q. And what happens to the charges against them?
A. They get dismissed.
Q. I'm just going to ask a couple more questions. Have you ever denied an application for a CPL 730 examination because you believed Defense Counsel may have been trying to manipulate the system?
A. No.
Q. Now, you mentioned earlier that a meeting was held with Supervising Judge Williams?
A. Yes.
Q. When was that?

MR. LAVEGLIA: Do we have that here? I don't remember.

BY MS. DIPALO:

Q. Is it in or around May or June of 2023?
A. Yeah. Actually, I think I do have it here. I'm not sure where it is.
Q. Okay.
A. But yes, it -- I believe that's around when.
Q. And do you know who initiated that meeting?
A. Judge William, I believe.
Q. And were you told what the purpose of the meeting was?
A. Yes. It was regarding this 730 issue.

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Q. Okay. And where did the meeting take place?
A. In our -- we call it our Jury Room where they deliberate.
Q. At the city --
A. Conference room -- yes. Yes.
Q. And I think you mentioned Ms. [redacted] who is with the Dutchess County Public Defender's Office was present?
A. Yes.
Q. A representative from the Dutchess County District Attorney's Office?
A. There might have been two of them there.
Q. Do you recall who it was?
A. I believe it was Cindy Murphy and Kristine Whelan.
Q. And was anybody else present at the meeting?
A. Well, myself, Judge [redacted] and Judge Williams.
Q. Okay.
A. I don't think anybody else. And I did find some stuff here.
Q. If you'd like to introduce it as exhibits?
A. I mean, I don't know -- well, here's the -- here's the email I was talking about. Sure. I'll introduce this. There we go.

MS. DIPALO: Mr. Goldstock, can we mark this as Judge's Exhibit C?

MR. GOLDSTOCK: Well, I would rather --

MS. DIPALO: Okay.

MR. GOLDSTOCK: Counsel has to be --

MS. DIPALO: Here. Here you go. Here you go.

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Let's do that.

MR. LAVEGLIA: Thank you.

MS. DIPALO: Sorry. Yeah. It's late in the day.

MR. LAVEGLIA: I understand.

MR. GOLDSTOCK: You are offering it?

MR. LAVEGLIA: Yes.

MR. GOLDSTOCK: Okay.

MR. LAVEGLIA: Thank you.

MS. DIPALO: Thank you. Sorry --

MR. GOLDSTOCK: Okay.

MS. DIPALO: -- about that.

MR. GOLDSTOCK: Judge's C.

(Respondent's Exhibit C was marked for identification)

MS. DIPALO: So we'll mark is as Judge's Exhibit C which is an email from Judge Mora to Judge Williams, dated Thursday, June 8, 2023. And the subject is "Re: Poughkeepsie 730 Complaint."

MR. LAVEGLIA: Yes.

BY MS. DIPALO:

Q. And just briefly, what was discussed at that meeting?

A. Basically doing this colloquy. The -- they didn't want us to do it. And before we -- it's either before or after we met with them. I think it was after. Me, [redacted], and Judge Williams were in my office discussing it.

And I said to Judge Williams, "The case law is crystal clear that we

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basically should be doing this."

And he directed us not to have a colloquy. And I was dumbfounded. That's why I followed up on June 8th, saying how it -- the caselaw seems to be very clear that the Judge is allowed to have a colloquy with the Defendant.

There's also the Bench Card that was put out by the Court System telling us at how we should proceed and all that. And I like to probably -- maybe we should introduce that too.

But I said, "However, based on your directive not to have any more colloquy with Defendants, I have not had any further colloquy since the Teams meeting with you, Scott, and I on May 17th." And that was in 2023.

And after this at some point -- I don't remember when -- because I'm in a dilemma right now. The caselaw -- I know what the caselaw says. And I have a Supervising Judge telling me not to do what the caselaw says. So I called up Laura Smith. I should have a -- it should be like the Bat Phone. I'm on with her all the time. I try to stay out of trouble.

And I asked her, "I have a dilemma. I'm supposed to follow my Supervising Judge, but I know I have to follow the law." And I told her what was going on. And I -- she's never done this before, and I've been talking to her since she's been in this position.

"Hold on. Can I bring in Judge Walsh, the Co-Chair, to help out with this?"

"Absolutely."

She puts her on. And after we're done with the conversation, I am no

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more clear on what to do. And if I'm correct, since there's an investigation on this right now, I'm not even able to write them to get clarification. If I'm wrong, please tell me, because I would love to be able to do that.

Q. I will get you an answer.

A. Please do. And if I'm not allowed, can this Commission please tell me what I'm supposed to do?

Q. We can't -- we cannot give you any type of advice --

A. All right. Well, then --

Q. -- but I --

A. -- if --

Q. -- will try to get you an answer to your previous question.

MR. GOLDSTOCK: I will say to put this on the record, but actually it's for me. Who these people are?

MS. DIPALO: Oh. Who Laura Smith is?

MR. GOLDSTOCK: Yeah.

MS. DIPALO: Okay.

THE WITNESS: She's the Chief Counsel to the Advisory Committee on Judicial Ethics. They're the ones that issue the opinions --

MR. GOLDSTOCK: Right.

THE WITNESS: -- to keep us out of trouble.

MS. DIPALO: And Judge Walsh is the --

THE WITNESS: She's the Co-Chair --

MS. DIPALO: -- Co-Chair.

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THE WITNESS: -- of that Committee.

MR. GOLDSTOCK: And did you ask for a written opinion?

THE WITNESS: No. I said -- you know, I could write in for her. And I know I could write in for an opinion. Because I've written in probably 20 different times over the last 13 years. But I -- again, I don't think I'm allowed to when you have a pending charge.

Or actually -- I don't have a charge. I'm sorry. A pending investigation. Please, if you could let my Attorney know --

MS. DIPALO: I'll certainly --

THE WITNESS: -- then he'll let me know. Because if I can write --

MS. DIPALO: (Unintelligible).

THE WITNESS: -- I'd really want to do that because this is very difficult. This is a tool in our toolbox to help us determine -- and I'm being told not to do it.

MR. GOLDSTOCK: And one more question. When you say the law is very clear on this --

THE WITNESS: Yes.

MR. GOLDSTOCK: -- did you cite cases when you were -- because I haven't seen your exhibits.

THE WITNESS: Cited them -- cite them where or when?

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MR. LAVEGLIA: In your --

MR. GOLDSTOCK: Well, you were asking both through the Supervising Judge when you had your meeting and through --

THE WITNESS: No. I do have -- I do have cites. I just got to find it.

MR. GOLDSTOCK: -- the Judicial Ethics Commission.

THE WITNESS: Oh, no. No. I didn't cite it. Because you'd have to put that in writing to them and all that.

Should we?

MR. LAVEGLIA: I don't think we need.

THE WITNESS: No? All right.

No. But some cases are -- there's a Court of Appeals one, *People v Morgan* 87 N.Y. 2d 878.

MR. GOLDSTOCK: Which says what?

THE WITNESS: It says, "While the Trial Court may depend to some extent on Counsel to bring issues into focus, Defense Counsel's observations and representations without more do not and should not serve as an automatic substitute for the Court's statutory discretion.

"Counsel's representations here consisted simply of personal observations and lay opinion that Defendant was an incapacitated person. Defendant's history of

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psychiatric illness alone does not serve to mandate relief -- to mandate relief to Defendant, nor do repeated conclusory protestations by Defense Counsel.

"The Trial Judge's opportunity to observe the Defendant and his behavior personally is also entitled to some deferential -- to some deference and weight."

And then there's another one that talks about psychiatric illness alone doesn't do it. So --

MR. GOLDSTOCK: I'm sorry. Are there any there that say in particular that the Judge can question the --

THE WITNESS: No --

MR. GOLDSTOCK: -- or engage in colloquy with the --

THE WITNESS: I --

MR. GOLDSTOCK: -- Defendant?

THE WITNESS: I don't know if I --

MR. LAVEGLIA: (Unintelligible) .

THE WITNESS: Yes. *People v Mathis*. It's a First Department Appellate Division. 37 A.D.3d 212.

"Trial Court properly declined to order 730 exam because Defendant consistently demonstrated his capacity to understand the proceedings against him and to assist in his own defense."

And the Bench Card that was given to us by the Office of Court Administration can -- contemplates us

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having a colloquy -- a talking to the Defendant --

MR. GOLDSTOCK: And did you put that in as well on it? As long as you're referencing this, we ought to have them in the record.

THE WITNESS: Well, the case law? Yes. I just cited -- and yeah. The Bench Card, I think we should put in.

What do you think?

MR. LAVEGLIA: I think so too.

THE WITNESS: I just got to find it again. Oh. Where did it go? Oh. It's right here.

MR. GOLDSTOCK: Well, if you didn't have to put it in as Referee's --

MS. DIPALO: Yeah.

MR. GOLDSTOCK: -- something.

MR. LAVEGLIA: Yes. Thank you. Thank you. Do you want to put the caselaw in as well?

THE WITNESS: Well, no, I just -- I just put it on the record, so they have it.

And while you're looking at that, the colloquy wasn't the only thing I used. It's just one part of the picture -- of the puzzle I should say.

MS. DIPALO: If I could just ask.

BY MS. DIPALO:

Q. Was Defense Counsel's issue -- or was the issue that you were conducting

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a colloquy or was it with the colloquy itself? What was your understanding of what the problem was?

A. I still don't know. I don't think they want us to ask any questions of the Defendant. And I'm talking -- not questions obviously about the case or anything about facts or about -- you're asking me to order a 730 exam and I'm trying to gather information to do so. So that's what they were saying they don't want us to do, and then we were directed not to.

MR. GOLDSTOCK: I tried to look through this quickly. I didn't see anything. Is there anything here that says there should be a colloquy with the --

THE WITNESS: No. On the second page, I think it talks about that. And I don't know the case -- the cases -- but, by implication, it says to do that -- the ones that I cited. But there may be others also.

MR. GOLDSTOCK: Well, my only concern is you said before that the law is clear. And now we've gotten to the point where there are no cases on point, but there are "implications."

THE WITNESS: Well --

MR. GOLDSTOCK: So --

THE WITNESS: -- when I say the law is clear --

MR. GOLDSTOCK: -- when I say -- you know --

THE WITNESS: -- the law is clear that you

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don't just give it for the asking. And we have reason -- we have ways that we try to determine if they're supposed to do it. I don't -- I know of many Judges that do that throughout the state that ask these questions to get a feel for if they have their understanding of where they are in the proceedings and who the parties are. So --

MR. GOLDSTOCK: Well, let me go back again because, again, I just want to clear this up.

You said before that you were torn because you have a presiding Judge who tells you not to do it --

THE WITNESS: A Supervising Judge.

MR. GOLDSTOCK: A Supervising Judge that tells you not to do it, and yet the law is clear that you're supposed to do it. And I -- in everything you've pointed out, I didn't see any clarity in the law that says you're supposed to do it. At best, by implication, you might be able to do it even though I could see there would be some issues in making the Defendant before the Judge answer certain kinds of questions. I can see the issue there at least.

So clarity is not something that it appears to me to exist.

THE WITNESS: It seemed clear to me that that's what we were supposed to do, but since I've been directed not to since that day, I haven't done it.

MR. GOLDSTOCK: Okay.

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THE WITNESS: And I'm not going to do it unless I get clarification that I can. So -- because I will follow that.

MS. DIPALO: I'm just going to mark this --

MR. GOLDSTOCK: Yes.

MS. DIPALO: -- Judge's Exhibit D. And it is Judge's Bench Card -- "Judge's Guide to Mental Illnesses in the Courtroom."

(Respondent's Exhibit D was marked for identification)

THE WITNESS: Oh. I'm sorry. In *People v Morgan*, yes, "Judge personally interacted with Defendant on several occasions in which Defendant evinced a particularized understanding of the nature of the proceedings and what was unfolding."

Now, these are just bullet points that I have. So the case you know speaks more to it. So that's where I -- that's where I get it from. And that's the Court of Appeals.

BY MS. DIPALO:

Q. And prior to this meeting in 2023 with Supervising Judge Loren and representatives from the District Attorney's Office and the Public Defender's Office and your Co-Judge, had you had any prior meetings about 730 examinations?

A. Yeah. We had -- there was a meeting with a lot of the stakeholders. I don't remember what year it was. There was many different departments

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there, me, [redacted], our Court Attorney -- I know Probation was there, the District Attorney, Public Defender -- maybe someone from the Jail. I'm not sure. A lot of different stakeholders were there.

Q. And do you recall what that meeting was about in --

A. That's a good question.

Q. -- terms of 730?

A. Because everybody thought they were there for a different reason. Some at the Jail thought about transporting. Others thought about 730s. Others thought -- it's called a 2-PC (phonetic) Psychiatric Consultation. So it was -- it morphed into a whole -- many different things. And I'm not going to say they admitted -- but they said a lot of times they're trying to use the 730 to get them seen to get them help, because they're bombarded over there and they don't have enough psychiatrists.

Q. Who's "they"? You said, "They said".

A. I forgot which department said it. I don't know if it was Probation? I'm -- I don't know.

Q. Was it the Public Defender's Office?

A. Not sure. Tom Angel was the Public Defender at the time. He may have -- he may have conceded that. I don't remember exactly. But I said -- well, we have to follow the statute and the caselaw. And I want to get people as much help as they can. But if they're competent you can't use 730 for that purpose, is what we were saying.

Q. And did that statement that -- you know, maybe they were using these 730 exams to get defendants seen by mental health practitioners -- is that what was said in sum and substance?

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A. In some and substance.
Q. Did that influence your decision on whether to order 730 examinations moving forward?
A. Oh, no.
Q. Because --
A. Because I knew that was the way it's always been. No. It didn't change my opinion at all or the way I conducted myself.
Q. I don't have any further questions.

MS. BUCKLEY: I have just a handful questions. And I'm awful sorry. It will just take a few minutes.

THE WITNESS: I'm good.

MS. BUCKLEY: It's just so we can be done today. And are -- is everybody okay for a few minutes?

MR. GOLDSTOCK: It's too late to have --

MS. BUCKLEY: How are you doing, Mike? Are you okay?

MR. MAISONET: Yes. Yes.

MS. BUCKLEY: Great. Great.

Andy? You're doing -- great. Thank you. I appreciate it. Okay?

EXAMINATION BY

MS. BUCKLEY:

Q. So Judge, earlier today your Attorney put a statement on the record on your behalf. So correct me if I'm wrong, but I believe when he described

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the incident at Seeta Eye Center with Stacey Koch, he described Stacey Koch as someone with a personal vendetta by a disgruntled employee. Is that correct? Is that -- do you agree with that statement?

A. Well, a personal vendetta? I don't know. It just seemed like she had it in for me that day. I don't know why. And then afterwards what Mike Brown told me she said -- and if she didn't say it, that's a different story. So if she did do that stuff and she's trying to get me fired, then it seems like that would be the case.

Q. Okay.

MS. BUCKLEY: Mike, do you need me to repeat that for the record or is that okay?

MR. MAISONET: No. That's okay.

MS. BUCKLEY: Okay.

BY MS. BUCKLEY:

Q. Okay. Thank you. As you sit here today, is it your belief that Ms. Koch had a personal vendetta against you?

A. No. I think she was very fearful of the virus, as many people were. She had her -- I think it's her husband -- I'll say family member at home sick. And I think that -- what was driving her that day.

Q. Okay. Thank you. Now, you mentioned at one point that during the interaction with Ms. Koch at Seeta Eye Center your tone of voice was calm and level. Is that fair to say?

A. Yes.

Q. Now, how do you square that with your testimony that you were also having a panic attack at the time? Did you -- did your panic impact your

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tone of voice or your level?

A. No. The panic attack was internal. It was the dizziness, the shortness of breath, sweating, that type of thing.

Q. Okay.

A. And so when I say calm -- this -- how I'm talking here is -- that's how I am. I'm animated. So to some other people, it may not seem calm. Even in court this is how I operate. I love my job. I love life. And when I'm passionate about something, I -- that's how I am. So some other person may not think I was calm, but I know I was calm. And my son -- I even asked him. I said -- because after I got this complaint -- I said, "[redacted] was" -- and my kids will throw me under the bus any chance they can.

I said, "[redacted] -- no.

My wife asked, "[redacted] was Daddy out of hand?" Or however she said it.

"No." He almost said, surprisingly, "He was fine."

Because I get animated. And I said, "Huh. Well, there you go."

But so -- there -- that's an answer to that.

Q. Now, you were asked the question at one point -- is it true that your face shield did not cover your mouth? And I believe your answer was, "No." So it's your testimony that your face shield covered your mouth; is that correct?

A. Absolutely.

Q. Now, did -- would a mask provide greater coverage over your mouth than a face shield?

A. Greater coverage? Well -- that's a hard answer. For what purpose?

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Q. Well, let me clarify the question.
A. Yeah.
Q. So the face shield that you were wearing -- was it open at the bottom of the --
A. At the --
Q. -- shield?
A. Yes.
Q. And a face mask would not be open. It would actually provide complete covering of the mouth. Would that be fair to say?
A. Yes. It -- you're right. It wouldn't be open. Well, it is open. I mean, it's open all around. But yes, I understand what you're saying. It's -- yes.
Q. Right. So in other words, a face mask -- you can breathe through it but it covers your mouth, but you can breathe through it. Is that fair to say?
A. Sure. It covers your mouth. And it stops most droplets or spittle, and same thing with a shield. It stops spittle -- droplets.

MR. GOLDSTOCK: Can you just put in for the record how the shield sits on your head? What holds it there?

THE WITNESS: So there was two different ones. I think the first one that we were given was like a band that went around the head and then the shield came down. And then the second one we were given, which was much better I thought -- it was like glasses.

So you put them on your -- like glasses. They were glasses. You put them on your head and the shield

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was attached to it, and it covers all the way from the top of your head down past your chin.

MR. GOLDSTOCK: And which one were you wearing in the initial time?

THE WITNESS: I don't remember. Because I don't remember when the Court System gave us the second one which is the eyeglass one.

MR. GOLDSTOCK: All right. So would it be fair to say on the second one the shield essentially was in the same position, but in the first one it could change positions depending on how you placed it around your head?

That is to say they're always going to be the same if they're on your ears and over your nose, but they are going to be different depending on how you put them around your --

THE WITNESS: Possibly. But the -- I think the first one -- that one that goes -- the band -- I think that was even longer than the one with the glasses. So I think it was -- it was -- it was longer. So it covered your full -- all the way down past your chin.

But yeah. Yeah, I mean, technically if you put it up on the top of your head, yeah, then it wouldn't be covering anything. But if you put it the way it's supposed to -- on your forehead -- oh, no. It covers -- it covers

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everything down past your chin.

BY MS. BUCKLEY:

Q. Now, at the time you were wearing the face shield at Seeta Eye Center when this interaction with Ms. Koch occurred, you didn't have any issues in terms of anxiety with wearing a face shield; is that correct?

A. It's less. I still had anxiety but it wasn't to the point of being debilitating.

Q. And why did you have less anxiety with the face shield than with the mask?

A. That's a very good question. [redacted].

Q. Could it have something to do with the fact that you felt a face shield was less restricting than a face mask?

A. Maybe. [redacted].

Q. Okay. And again, the face shield that you were wearing at that time at Seeta Eye Center -- it was open at the bottom; wasn't it?

A. Yes.

Q. Okay. I need to clarify the timeline for when M[redacted] recommended you see a mental health professional. Is it fair to say that he recommended you see a mental health professional?

A. Pretty much. I mean, he said he doesn't do that, which I knew. And he said, "You would have to see" -- I don't know the exact language he used. But yes, in that field.

Q. When he made that recommendation to you, was that somewhere between April of 2020 and June of 2020?

A. Approximately. Yes.

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Q. Okay. And is it your testimony that you didn't actually attempt to seek any kind of professional mental health treatment until April of 2022?
A. That's correct.
Q. And that was after you received the letter from the Commission attaching Ms. Koch's complaint. Is that fair to say?
A. Absolutely.
Q. What was the name of the priest that you spoke to? To get that referral?
A. Father Mizzi-Gilli.
Q. Okay. What's his first name -- Father Mizzi-Gilli -- by any chance?
A. My goodness. I'm trying to find --
Q. No. That's okay. That's -- he's a Mets fan; isn't he?
A. Yes. Oh, you know him?
Q. Yeah. I know Father Mizzi-Gilli. So he used to be at St. Barnabas in the Bronx?
A. Yes.
Q. Yeah. Yeah.
A. And he was transferred down to -- back to Staten Island.
Q. Right. Right.
A. Yes.
Q. Okay.
A. That's funny. Small world.
Q. Small world. Exactly. I know. Okay. All right. So we clarified the time frame. And Ms. B[redacted] is the only person that you've sought any kind of mental health care from; is that fair to say?
A. Yes.

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Q. Okay. And now -- and just finally, I have to ask you if you wouldn't mind -- if you could look again at Commission Exhibit Number 16. And that's the apology letter -- the May 4, 2023, apology letter?

A. Got it.

Q. Okay. Now, you -- I think you mentioned earlier you wrote this on your own. Is that fair to say?

A. Yes.

Q. These are all your words? It wasn't Mr. Sussman's wording?

A. No.

Q. Okay. I'm curious about that last line in the letter.

It says, "Please forgive me for any angst I have caused you."

What did you mean by "angst"?

A. Well, when you're sued, I would say you're nervous.

Q. Okay. So it just -- you were referring to nervousness that the lawsuit may have caused --

A. Sure.

Q. -- Ms. Koch?

A. Absolutely. And in general, everything.

Like as I said in the top, "If I -- if I told you what I was experiencing that day, maybe this wouldn't have happened."

You know -- it -- I can say if she said in January -- well, to come in this office without -- you're going to need medical documentation, I would have -- I would have gotten it or I would have asked my chiropractor for it because that's all -- the only person I was seeing at the time. So I meant -- that specifically for this. But in general, this whole thing, I

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never wanted this to happen. I would have never gone in there if I knew it was going to happen. I'm extremely sorry that it happened. I'm extremely sorry that the article came out.

It makes the Court System look bad and it makes me look terrible like I'm -- I just don't follow the rules. I try to follow the rules every day of my life. As you can see by not going into court when I was banned the second time -- well, not the second time, but from January 18th to September 15th, I followed the rules. I didn't go in the back door and use the access card. I tried to follow it exactly as the best I can.

Do I make mistakes? Of course I do. Do I make mistakes on 730 exams? I might. I don't intend to. I try to follow the law as best I can. I'm always trying to better myself in learning and trying to do the best job I can do. I love this job.

Q. Thank you. Now, in that letter you didn't make any mention of an apology for your behavior at the Seeta Eye Center. Did -- was it your intention to apologize for your behavior in the Seeta Eye Center or just apologize for the lawsuit?

A. This was specifically for the lawsuit. That's what they wanted. That's the apology they wanted.

Q. Okay. Do you feel like you owe Ms. Koch an apology for your behavior at the Seeta Eye Center?

A. Well, my behavior, per se -- I don't -- I still don't think I did anything wrong going in there. Should I have left? Yeah, I probably should have. And called her back up and said, "What do you need for me to come in?" I should have done that. But I -- again, I try to follow the rules.

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I knew the mandate. I knew 10 NY-CRR 2.60. I knew what it said in there. I knew if I didn't -- I wasn't able to tolerate. I can go into places. That's what it said. And the reason you're able to set a mask policy is because of that.

So I tried to follow it. So I still don't know how it was wrong going in based on the law at the time which was found to be unconstitutional later but at that time that's what it was. I was trying to follow it. And again, if I wasn't trying to follow it, I wouldn't have even worn a shield because I was trying to help out as much as I could.

[redacted]

I'm sorry. I don't know if I answered the question.

Q. Thank you. You used the word "angst" to describe how you believe the lawsuit may have made Ms. Koch feel. Do you think Ms. Koch had any reason to feel angst because of anything you did or said to her at the Seeta Eye Center back on December 28 of 2022?

A. I don't -- I don't think so. And again, you don't hear everything that was said. I wish there was a recording of everything because I don't deny when I do things. If we had a recording and a video and a voice -- and I say something -- and if it was wrong -- I don't think I did, but if I did, again, I would fully admit it and I would apologize for it. So -- I don't think I said anything that was wrong.

Q. Well, let me put it this way. You concede that the waiting room was full that day, correct?

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A. Yes.
Q. And there was a mask policy that was in place at Seeta Eye Center and in fact in all public places in New York at that time, correct?
A. Correct.
Q. And that was because of the COVID-19 pandemic, correct?
A. Yes.
Q. And people were dying from COVID at that time; isn't that fair to say?
A. Yes.
Q. A very serious illness; would that be fair to say?
A. Yes.
Q. So you have this Office Manager. She's got a policy if you can't wear a mask because there's this deadly illness out there that people can contract from breath; is that fair to say?
A. If you're close to them and you have COVID and you get -- breath -- I don't know. If you get spit on them or whatever, yes, you could -- the -- I would think that's how it was contact -- contracted by everybody.
Q. Okay. So can you imagine now -- just think about -- put yourself in the place of Ms. Koch. She's there. She's got a full waiting room of people. She's got this no-mask policy. She -- there's a deadly illness out there that's trans --

MR. GOLDSTOCK: She has a mask policy?

MS. BUCKLEY: She has a -- she has -- the office has a mask policy in place.

MR. GOLDSTOCK: You said no-mask.

MS. BUCKLEY: She has -- apologies.

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BY MS. BUCKLEY:

Q. There's a mask policy in place.

MS. BUCKLEY: Thanks for spotting that.

BY MS. BUCKLEY:

Q. And there's this disease that's transmissible in the air. She's mentioned that she's living with someone who's had [redacted] three times, and you're standing in her waiting room and you refuse to put a mask on. Can you see how that would cause her angst?

A. I could see how it would cause her -- because of everything you've just described, yes, now I -- yes, I can.

Q. Okay.

A. It wasn't even going through my mind then because I knew I didn't have COVID and I wasn't near her. I wasn't near anyone.

Q. But she doesn't know whether or not you have COVID. Isn't that right? When --

A. Right.

Q. -- you (unintelligible) on December 28th?

A. Right. No. Of course -- yeah. Right. Right.

Q. Right? So you do see now when you look at it now -- you can see how that would be a very stressful experience for her?

A. I see how it could be. Yes.

Q. Okay. I have nothing further. Thank you so much.

MR. GOLDSTOCK: One last question. The doctor -- when you had COVID what doctor did you see?

THE WITNESS: So I saw -- well, okay. I

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didn't -- [redacted] (phonetic) which I think -- I up -- no I think -- I updated the Commission. My wife was treating with -- it was a phone. It wasn't even virtual. It was a phone. What -- [redacted] is what it's called. And I think she's a nurse practitioner.

And I was -- I wasn't feeling well, either, because we got it at basically the same time. She got it a little bit before me. So we're -- I think we were in bed. And she's talking to me. And she put her on the phone with me and I talked to her, and she diagnosed that I had it also and prescribed Ivermectin. So that's one.

And then the second one I went to was Dr. D[redacted] (phonetic). And that's when -- because she -- the Ivermectin she gave me wasn't sufficient. You need it -- per body weight and -- it's whole formula for -- I don't know anything like that. So I went to him. He gave me vitamins -- Vitamin C drops, Ivermectin, and a couple other -- two or three other things. I don't remember the names of them.

MR. GOLDSTOCK: And did they prescribe it to you or did you ask for it?

THE WITNESS: Oh, no. He prescribed it.

MR. GOLDSTOCK: He being?

THE WITNESS: The doctor. D[redacted].

MR. GOLDSTOCK: Oh. This is in the second

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time after you were taking it. But the first time?

THE WITNESS: [redacted]?

MR. GOLDSTOCK: Yeah.

THE WITNESS: Oh. She prescribed it.

MR. GOLDSTOCK: Okay. I know she prescribed it to you. Did you ask for it?

THE WITNESS: Oh, no. No, no, no.

MR. GOLDSTOCK: Okay. No?

THE WITNESS: She said, "I'm going to give you Ivermectin."

I said, "Okay." And saw some research that it was helping. So --

MR. GOLDSTOCK: Okay.

MR. LAVEGLIA: I have no questions.

MR. GOLDSTOCK: No --

MS. DIPALO: Nothing further.

MR. GOLDSTOCK: -- final statements?

MS. DIPALO: No, thank you.

MR. GOLDSTOCK: Good. Okay. 5:55. We beat six o'clock.

(Proceedings concluded at 5:55 p.m.)

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COMMISSION EXHIBITS

	Description	Ident.
1	October 13, 2023, IA letter, 212 pp	13
2	Letter from LaVeglia to Comm dated June 17, 2022, 154 pp	42
3	Audio Recording of 911 call between Stacey Koch and 911 Dispatcher: December 28, 2021 (1:17)	51
4	Audio Recording of call between Stacey Koch and Town of Poughkeepsie Police Dispatcher: December 28, 2021 (2:45)	53
4-A	Portion of Audio Recording of call between Stacey Koch and Town of Poughkeepsie Police Dispatcher: December 28, 2021 (9 seconds)	54
4-B	Portion of Audio Recording of call between Stacey Koch and Town of Poughkeepsie Police Dispatcher: December 28, 2021 (5 seconds)	56

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4-C	Portion of Audio Recording of call between Stacey Koch and Town of Poughkeepsie Police Dispatcher: December 28, 2021 (22 seconds)	58
5	Letter from G[redacted] M[redacted], dated December 28, 2021, 1pp	66
6	Treatment Records from M[redacted] Chiropractic	68
7	Letter from Michael Brown 6/13/2022	77
8	4/12/2022 Commission Inquiry Letter	94
9	Complaint in *Mora v Koch*	99
10	Mid Hudson News Article 1/3/2023	111
11	Koch's Motion to Dismiss 2/2/2023	134
12	Commission Motion to Intervene/Dismiss 2/6/2023	139
13	Mora's Opposition to Motion to Dismiss 3/6/2023	143
14	Decision and Order 4/5/2023	146

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15	Settlement Agreement, 6 pp	152
16	Mora's Apology Letter to Koch dated May 4, 2023, 1 pp	156
17	Email thread between Judge Minihan and Judge Mora (July 2020), 3 pp	173
18	Mask Policy Memo dated June 14, 2021, 4 pp	180
19	Email thread between Judge Walker and Judge Mora (Aug 2021), 2 pp	181
20	Updated Mask Policy dated August 12, 2021, 2 pp	183
21	Memo from Judge Walker to Judge Mora dated August 23, 2021, 4 pp	188
22	Memo from Judge Walker to Judge Mora dated August 23, 2021, 4 pp	200
23	Mora's Religious Exemption Application, 7 pp	203
24	Mora's Supplemental Application, 4 pp	208

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25	VEC Denial Letter dated December 23, 2021, 1 pp	212
27	Email from Judge Minihan to Judge Mora dated January 18, 2021, 1pp	227

RESPONDENT EXHIBITS

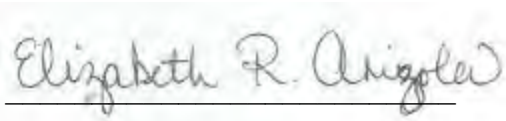
	Description	Ident.
A	Letter to Kathleen Carroll from Gary Collins, November 3, 2023, 3 pp	242
B	Uncertified Transcript, *People v* [redacted], 7 pp	250
C	Email Hon. Mora to Hon. Williams June 8, 2023, re Poughkeepsie 730 [redacted] 1 pp	254
D	Bench Card, Judges' Guide to Mental Illnesses in the Courtroom, 2 pp	263

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CERTIFICATION

I, Elizabeth Arizola, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: March 13, 2024



Elizabeth Arizola

v.

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COMMISSION EXHIBIT 1

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CONFIDENTIAL

October 13, 2023

Via USPS Certified Mail

Hon. Frank M. Mora
c/o Chad J. LaVeglia, Esq.
Law Office of Chad J. LaVeglia PLLC
626 RXR Plaza, Suite # 613
Uniondale, New York 11566

Re: File Nos. 2021/N-0723, 2021/N-1120, 2021/N-1176, 2023/N-0369, 2023/N-0606

Dear Judge Mora:

Pursuant to Article 2-A of the Judiciary Law, the Commission on Judicial Conduct ("Commission") is investigating complaints alleging that you: (1) refused to wear a face mask in public areas of the courthouse (2021/N-0723); (2) refused to wear a face mask at a private business (2021/N-1176); (3) failed to comply with an administrative mandate requiring that all judges and employees of the Unified Court System be vaccinated against COVID-19, after your request for a religious exemption to the vaccination requirement was denied (2021/N-1176); (4) brought a defamation suit against Stacey Koch, *Frank Mora v Stacey Koch*, in the Supreme Court, Dutchess County, in retaliation for Ms. Koch filing a complaint against you with the Commission (2023/N-0369); and (5) have a policy of refusing to order examinations for criminal defendants to determine whether they are fit to proceed under Criminal Procedure Law

article 730, rather than inquiring and considering each matter on its individual merits (2023/N-0606). Copies of the above complaints are enclosed.

Also enclosed are copies of the court files and the Settlement Agreement in *Mora v Koch*, Index No. 2022-53141 (Sup. Ct. Dutchess Co.). You may be questioned about these items during your appearance. For your reference, the Rules Governing Judicial Conduct, the Commission's Operating Procedures and Rules, the Commission's Policy Manual and other documents are available on the Commission's website.[1]

In connection with these investigations, the Commission requires that you appear to give testimony on November 17, 2023, at 10:00 A.M., at the Commission's office in Manhattan at 61 Broadway, 12th Floor. In addition, please provide to this office, on or before November 3, 2023, a copy of the "signed apology letter" referenced in paragraph 2(b) and attached as Exhibit A to the Settlement Agreement.

Your appearance is required in accordance with Section 44, subdivision 3, of the Judiciary Law. This is not a hearing as provided by Section 44, subdivision 4, of the Judiciary Law. Your testimony will be sworn and recorded, and a copy of the transcription thereof will be provided to you at no cost. You have the right to be represented by counsel and to present material relevant to the complaint.

At your appearance, you may make opening and/or closing statements. After being questioned by Commission counsel, you may be questioned by your own lawyer, subject to further questioning by Commission counsel.

Please provide confirmation of your scheduled appearance by November 3, 2023, either by letter or phone call at 646-386-4800. Please

[1] http://www.cjc.ny.gov/Legal.Authorities/legal.authorities.htm

feel free to have your attorney call me or Principal Attorney Melissa DiPalo with any questions.

Thank you for your prompt attention to this matter.

Very truly yours,

MARK LEVINE
Deputy Administrator

Enclosures

Certified Mail # 9402809105156541923114
Return Receipt Requested

Complaint No. 2021/N-0723

ADMINISTRATOR'S COMPLAINT

In the Matter of: Frank M. Mora
Poughkeepsie City Court Judge
Dutchess County

Complaint # 2021/N-0723

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Based upon the attached anonymous complaint, it is alleged that Judge Mora has refused to comply with the COVID-19 safety protocols of the Unified Court System, which require *inter alia* that judges and non-judicial staff wear a mask or face covering in public areas of the court or facility, or whenever physical distancing is not possible.

Robert H. Tembeckjian

New York, New York — **Robert H. Tembeckjian, Administrator**

Date Signed: February 11, 2022 — Authorized on February 3, 2022

August 20, 2021

Dear ~~Judge St. George~~: Commission

It has come to everyone's attention that Judge Mora, of the City Of Poughkeepsie City Court, refuses to wear any type of protective mask, thereby endangering everyone who works and appears in that court. Apparently, Judge Mora believes he is making a stand, a la Rosa Parks and/or Martin Luther King, Jr. And I am serious about that. Just ask him.

This is obviously a very serious situation. I know that swift disciplinary action would be taken against any civil service employee who refused to wear a mask. Why isn't Judge Mora being disciplined, or suspended without pay ?

Judge Mora sets a very poor example given his position. Why should any City Of Poughkeepsie Court employee wear a mask if the top judicial official doesn't, and is not disciplined for the outrageous disregard of court rules. It is equally disturbing that he compares his refusal to keep court employees and the court-using public safe to the protests of the greatest civil rights icons of our time.

Thank you for your attention to this matter.

A Concerned Court Employee...

I cant sign my name for fear of reprisals.

RECEIVED
AUG 23 2021
NYS COMMISSION ON JUDICIAL CONDUCT
NYS - LEGAL

Complaint No. 2021/N-1120

SCJC- Legal Email 12/29/2021

From: no-reply@weebly.com
To: SCJC
Subject: New Form Entry: Complaint Form
Date: Wednesday, December 29, 2021 2:05:13 PM

You've just received a new submission to your Complaint Form.
Mark as Spam

Submitted Information:

Title
Mrs.

Name
Stacey Koch

M.I.

Phone Number 1
18454541025

Phone Number 2

Email
[redacted]@seetaeye.com

Address Line 1
27 Davis Avenue

Address line 2

City
Poughkeepsie

State

New York

Zip
12603

Are you or were you represented by a lawyer?
No

Lawyer's Name

Lawyer's Phone Number

Lawyer's Address

Lawyer's City

Lawyer's State
New York

Lawyer's Zip

Judge's Name
Frank Mora

Judge's Court
City of Poughkeepsie Court

Judge's County
Dutchess

Date(s) of Incidents(s)
12/28/21

Name of Case (if applicable)

Index Number of Case (if applicable)

In the space below, please describe the alleged misconduct. Include as much detailed information as possible, such as what happened, where and when; the names of witnesses; who said what to whom, and in what tone of voice; etc.

Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police where on their way to our practice. He then had a letter created from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [redacted] year old boy. After receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora.

Today's Date

12/29/21

Judiciary Law § 44 requires that all complaints be signed and in writing. I understand that by clicking “I agree” below I am electronically signing this complaint, which has the same legal effect as my handwritten signature

I agree

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Complaint No. 2021/N-1176

ADMINISTRATOR'S COMPLAINT

In the Matter of: Frank M. Mora
Poughkeepsie City Court Judge
Dutchess County

Complaint # 2021/N-1176

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Based upon the attached letter from Chief Administrative Judge Lawrence K. Marks dated January 6, 2020, it is alleged that Judge Mora has not complied with an administrative mandate requiring that all judges and employees of the Unified Court System be vaccinated against COVID-19, in that Judge Mora failed to submit proof of his first COVID-19 vaccination to the Office of Court Administration following the denial of his request for an exemption to the mandatory vaccination requirement on religious grounds.

Robert H. Tembeckjian, Administrator

New York, New York

Date Signed: February 11, 2022

Authorized on February 3, 2022

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

January 6, 2020

New York State Commission on Judicial Conduct
c/o Robert Tembeckjian, Administrator and Counsel
61 Broadway, Suite 1200
New York, NY 10006

Dear Mr. Tembeckjian:

On September 27, 2021, the Unified Court System implemented a Mandatory Vaccination Policy requiring that all state-paid judges and non-judicial employees provide proof of COVID-19 vaccination or submit a request for medical or religious exemption. By the close of business on that date, all judges and non-judicial employees were required to upload proof of vaccination or an exemption request to the UCS Employee Web Portal.

Poughkeepsie City Court Judge Frank Mora submitted a request for a religious exemption. That request was ultimately denied on December 23, 2021, and in accordance with stated policy Judge Mora was required to submit proof of COVID-19 vaccination (one dose) within ten days. As of this date, Judge Mora has failed to do so.

Accordingly, I am referring this matter to the Commission for its consideration and appropriate action.

Very truly yours,

Complaint No. 2023/N-0369

ADMINISTRATOR'S COMPLAINT

In the Matter of: Frank M. Mora
Poughkeepsie City Court Judge
Dutchess County

Complaint # 2023/N-0369

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Judge Mora brought a defamation lawsuit against Stacey Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), in the Supreme Court, Dutchess County, in retaliation for Ms. Koch's having filed a complaint against him with the New York State Commission on Judicial Conduct.

Robert H. Tembeckjian

New York, New York — **Robert H. Tembeckjian, Administrator**

Date Signed: April 27, 2023 — Authorized on April 20, 2023

Complaint No. 2023/N-0606

ADMINISTRATOR'S COMPLAINT

In the Matter of: Frank M. Mora
Poughkeepsie City Court Judge
Dutchess County

Complaint # 2023/N-0606

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Based upon information obtained in connection with the Commission's investigation of a complaint against another judge, it is alleged that Judge Mora has a policy of refusing to order examinations for criminal defendants to determine whether they are fit to proceed under article 730 of the Criminal Procedure Law, rather than inquiring and considering each matter on its individual merits.

Robert H. Tembeckjian, Administrator

New York, New York

Date Signed: June 22, 2023

Authorized on June 1, 2023

Court Files in *Mora v. Koch*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff(s),

-against-

STACEY KOCH

Defendant(s).

Index No. [type in Index No]

Summons

Date Index No. Purchased:

To the above named Defendant(s)

Stacey Koch
27 Davis Avenue
Poughkeepsie, NY 12603

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the County of Dutchess
which is where Plaintiff and Defendant reside

Dated: Goshen, NY
December 21, 2022

Sussman & Associates
by
Michael H. Sussman
Attorneys for Plaintiff
Frank Mora
Sussman & Associates
1 Railroad Ave - Suite 3
PO Box 1005
Goshen, NY 10924

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 12-29-2022 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Summons # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/30/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF DUTCHESS Index No.

----------x

FRANK MORA, **VERIFIED COMPLAINT**

Plaintiff,

vs.

STACEY KOCH,

Defendant.

----------x

PRELIMINARY STATEMENT

This is a defamation claim arising from the false and damaging statements written by defendant concerning plaintiff, a sitting Judge, to the New York State Commission on Judicial Conduct. Through her false and libelous statements, defendant intentionally sought to imperil and jeopardize plaintiff's ability to practice his profession and has caused plaintiff substantial emotion distress and humiliation.

PARTIES

1. Plaintiff Frank Mora is a resident of the City of Poughkeepsie, County of Dutchess and is a person of legal age who may sue and be sued.

2. Defendant Stacey Koch is a person of legal age who lives in the City of Poughkeepsie, works in the County of Dutchess, is of legal age and may sue and be sued.

JURISDICTION

3. The events giving rise to this Verified Complaint arose in the County of Dutchess as and between residents of this County and the sum in controversy is in excess of the jurisdiction of any inferior court. Accordingly, this Honorable Court has jurisdiction over this matter.

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 12-29-2022 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Complaint # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/30/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

AS AND FOR A FIRST CAUSE OF ACTION

4. On December 28, 2021, within the last year, plaintiff brought one of his sons to Seeta Eye, an ophthalmology office in the County of Dutchess.

5. Defendant Koch was the office manager of Seeta Eye at the time and was at work when plaintiff entered the business with his son.

6. Plaintiff had a patient/provider relationship with Seeta Eye and known defendant Koch for more than twenty years.

7. Earlier in 2021, when visiting Seeta Eye, plaintiff explained that he did not medically tolerate face masks and wore a shield.

8. He was then permitted to enter the waiting room/reception area with his face shield to pay for medical services which one of his sons received.

9. On December 28, 2021, plaintiff again attended to the reception area wearing a face shield with another son.

10. A receptionist asked him to put on a mask and plaintiff advised he could not do so.

11. The receptionist asked plaintiff to speak with Ms. Koch, the office manager, and she then called Ms. Koch.

12. Upon her arrival, Ms. Koch demanded that plaintiff don a mask even though earlier in 2021, he had explained to her that he was unable medically to tolerate a mask; when he began to again explain why he could not do so, Koch began yelling at plaintiff in a rude and disrespectful manner.

13. Koch demanded that plaintiff provide medical documentation of his incapacity to wear a mask.

14. Such a demand of a patient was unlawful [under Interim Guidance provided by the Governor's office on April 17, 2020].

15. After Ms. Koch continued yelling and screaming at plaintiff, she called the police.

16. After calling the police, defendant claimed that it was plaintiff who was upsetting other patients.

17. After demanding that plaintiff stop talking, defendant again called the police, this time reporting she was facing an emergency.

18. During defendant's second phone call to the police, plaintiff decided to try to further defuse the situation by obtaining and providing a doctor's note attesting to his inability to wear a mask.

19. He advised defendant Koch he was going to seek such a note and left the medical office with his son.

20. Plaintiff reached his chiropractor who emailed a note which plaintiff forwarded to defendant Koch.

21. Koch received this note and allowed plaintiff and his son to return that afternoon to the eye doctor's office.

22. The visit occurred without further incident.

23. Thereafter and on the following day, Koch wrote statements about the incidents which are false, professionally damaging to the plaintiff as a jurist and calculated to subject him to personal ridicule and shame.

24. Specifically, on December 29, 2021, defendant wrote the following false and libelous statements on a complaint form provided by the New York State Office of Judicial Conduct:

a) "Mr. Mora *created a huge scene* in our waiting room..."

(b) "He *taunted me in front of a waiting room of @20 people*..."

(c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice*."

(d) "He *then had a letter created* from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask."

(e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice."* See Exhibit 1 which is attached.

25. Each statement is materially false in that: [a] plaintiff did not cause a scene, let alone a "huge scene" in the waiting room; defendant Koch lost her temper and began screaming and yelling as plaintiff sought to explain the situation; [b] plaintiff did not taunt Koch at any time; [c] plaintiff has abiding respect for the police and would never intimate or state the belief that, if called, police would not attend to a situation and plaintiff had no information as to what the police conveyed to defendant about their intent to come, or not to come, to the medical office; [d] plaintiff would never "have a letter created," which intimates to a reasonable reader the exercise of some authority he did not wield over a medical provider to make misrepresentations

concerning his medical condition and [e] at all times, plaintiff acted in a professional manner and the contrary claim is without any factual basis and diminishes plaintiff's reputation and his capacity to properly discharge his duties and responsibilities as a City Judge, his profession.

26. The account provided by Koch is further refuted by one eyewitness, an employee of Seeta, who, at great personal risk, attested to plaintiff's professional behavior during the December 28, 2021 incident with Koch.

27. Defendant's conduct has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct.

28. By libeling plaintiff and avowedly and intentionally seeking to interfere thereby with his capacity to perform the duties of his profession, defendant engaged in defamation per se.

WHEREFORE, plaintiff requests that this Honorable Court accept jurisdiction over this matter, empanel a jury to hear and decide this matter and enter judgment including compensatory damages of $250,000 and punitive damages of $175,000 against defendant and in favor of plaintiff, and order defendant to pay the costs and disbursements arising from this matter and enter any other order the interests of law and equity require.

Dated: December 16, 2022

Yours, etc.

MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES
1 Railroad Avenue, Ste 6
Goshen, NY 10924
[redacted]

Counsel for Plaintiff

VERIFICATION

STATE OF NEW YORK)
)ss:s.
COUNTY OF ORANGE)

MICHAEL H. SUSSMAN, an attorney licensed to practice law in the State of New York and in good standing to do so, hereby affirms and verifies as following:

1. I am counsel for plaintiff in this matter.
2. Plaintiff is a resident of Dutchess County.
3. My principal law office is in Goshen within Orange County.
4. I have discussed the contents of the annexed Verified Complaint with my client and reviewed relevant documents and things.
5. I hereby verify that, to my knowledge and information, the facts set forth in the annexed Verified Complaint are true and accurate.
6. I make this Verification under the authority of CPLR section 3020(d)(3).

MICHAEL H. SUSSMAN 12/16/22

Affidavit of Service
(Please print)

State of New York, County of Dutchess Supreme City Court

FRANK MORA Plaintiff/Petitioner Index No. 2022-54141
vs.
Court Date
Stacey Koch Defendant/Respondent

Mark M Kurtt being duly sworn, deposes and says that deponent is over the age of eighteen years and is not a party in this proceeding. Deponent served a true copy of Summons & Verified Complaint
In the above entitled proceeding, such service having been made in the following manner stated herein; and said person being the proper and authorized person to be served in this proceeding, the name of said person, complete address, time and date is as follows:
On Tuesday - January 3, 2023 at 27 Davis Ave. Poughkeepsie N.Y. I served Stacy Koch at 1630 AM. PM

☒ By delivering to and leaving personally with Stacey Koch, known to the deponent to be the same person mentioned and described in the above named proceeding as the person to be served.

☐ By delivering to and leaving personally with _____, on the person to be served and associated with him/her and after conversing with him/her, deponent believes him/her to be a person of such suitable age and discretion; and by mailing a copy of the proceeding herein to said authorized person to the address and at the time stated above, which is his/her last known address or actual place of business mailed in a post paid envelope marked "personal and confidential."

☐ By delivering to and leaving with _____, the agent, for service an the person in this proceeding an designated under Rule 318 of the CPLR. Service having been made to such person at the place, time, and date stated above.

☐ By affixing a true copy of the same to the door of the actual place of business, dwelling place, or usual place of abode as stated above; and by mailing a copy of the proceeding herein to said person to the address and on the date and time as stated above. Service was made in the manner stated in this paragraph because deponent was unable, with due diligence, to find the proper or authorized person to be served; or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode as stated above, having called there at the following times and dates:

☐ By delivering to and leaving with the person named above at said address, upon information and belief, the person served is an officer of the domestic corporation _____ named in this proceeding authorized to be served herein.

Deponent further states upon information and belief that said person so served is not in the Military Service of the State of New York or of the United States as the term is defined in either the State or Federal statutes.
Deponent further states that he/she describes the person actually served as follows:

Gender	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)	Other Features:
☐ Male	☒ White	☐ Light	60	5'4	150	
☒ Female	☐ Black	☐ Medium				
☐ Other	Other:	☒ Dark				
		☐ White/Gray				

Sworn to before me this _____ day of January, 20 23

Notary Public

Server's Signature

Print Name

MICHAEL HOWARD SUSSMAN
Notary Public, State of New York
No. 02SU6332584
Qualified in Orange County
Commission Expires Nov. 09, 20___

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 01-05-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Affidavit of Service 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY

AUG 30 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA,

Plaintiff,

- against -

STACEY KOCH,

Defendant.

Index No. 2022-54141

STIPULATION EXTENDING TIME FOR DEFENDANT TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for Plaintiff Frank Mora ("Plaintiff") and for Defendant Stacey Koch ("Defendant"), as follows:

1. Defendant does not contest service of the Summons and Verified Complaint. The parties agree that Defendant's time to answer, move against, or otherwise respond to Plaintiff's Complaint is hereby extended to February 6, 2023.

2. A facsimile copy of the signature block of this stipulation is deemed as an original for purposes of filing and judicial endorsement.

Dated: January 13, 2023

By: _____
Michael H. Sussman
SUSSMAN & GOLDMAN
1 Railroad Avenue - Suite 3
PO Box 1005
Goshen, NY 10924
Phone: [redacted]
Email: [redacted]@sussman.law

Attorneys for Plaintiff Frank Mora

Dated: January 13, 2023

By: _____
Victor A. Kovner
Raphael Holoszyc-Pimentel
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax: [redacted]
Email: [redacted]@dwt.com
[redacted]@dwt.com

Attorneys for Defendant Stacey Koch

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 01-13-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Stipulation #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

AUG 30 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 **ORAL ARGUMENT REQUESTED**

NOTICE OF MOTION TO DISMISS COMPLAINT

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, the Affirmation of Victor A. Kovner, dated February 2, 2023, and the exhibits annexed thereto, and all pleadings and proceedings hereto and herein, Defendant Stacey Koch will move before this Court, at an I.A.S. Motion Term, at the Courthouse located at 10 Market Street, Poughkeepsie, New York, on February 28, 2023, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order dismissing the Complaint with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, awarding her attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1, and granting such other and further relief as this Court deems appropriate.

PLEASE TAKE FURTHER NOTICE that, pursuant to N.Y. C.P.L.R. 2214(b), Plaintiff Frank Mora's answering papers shall be served upon the undersigned at least seven (7) days before the date on which this motion is noticed to be heard.

This is an action for defamation.

Dated: February 2, 2023

Respectfully submitted,

By: */s/ Victor A. Kovner*
Victor A. Kovner
Raphael Holoszyc-Pimentel
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax: [redacted]
Email: [redacted]@dwt.com
[redacted]@dwt.com

Attorneys for Defendant Stacey Koch

To: Michael H. Sussman
SUSSMAN & ASSOCIATES
1 Railroad Avenue - Suite 3
PO Box 1005
Goshen, NY 10924
Phone: [redacted]
Email: [redacted]@frontiernet.net

Attorneys for Plaintiff Frank Mora

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 02-02-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Notice # 2023-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 30 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 **ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW IN SUPPORT OF KOCH'S MOTION TO DISMISS COMPLAINT

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 02-03-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Memorandum of 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 30 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

DAVIS WRIGHT TREMAINE LLP

Victor A. Kovner
Raphael Holoszyc-Pimentel
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax: [redacted]
[redacted]@dwt.com
[redacted]@dwt.com

Attorneys for Defendant Stacey Koch

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Defendant Stacey Koch ("Koch") respectfully submits this memorandum of law in support of her motion to dismiss the Verified Complaint of Plaintiff Frank Mora ("Mora") with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, and for attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1.[1]

I. PRELIMINARY STATEMENT

In December 2021, at the height of the Omicron surge of the COVID-19 pandemic, Mora caused a disturbance at the medical practice where Koch is employed. Mora repeatedly refused to abide by the practice's rules that required masks pursuant to CDC guidelines. The disagreement resulted in the police being called to the practice.

Upon learning that Mora was a sitting judge, Koch felt that it was her civic duty to notify the appropriate authorities of the unprofessional behavior by a government official that she had witnessed. Koch filed a confidential complaint with the New York State Commission on Judicial Conduct (the "Commission").

No good deed goes unpunished. One year later, Mora filed this lawsuit against Koch, claiming that certain of Koch's statements in her complaint to the Commission were defamatory.

This claim is frivolous and should be dismissed. It is well established that complaints to the official bodies that govern the conduct of attorneys are immunized from defamation claims under the absolute privilege for statements in a judicial proceeding, regardless of the truth, falsity, or motive of those statements. *Wiener v. Weintraub*, 22 N.Y.2d 330 (1968). The

[1] The Complaint and Exhibit 1 to the Complaint were filed at NYSCEF Doc. Nos. 1 and 2, and are attached as Exhibits A and B to the accompanying Affirmation of Victor A. Kovner, respectively.

Commission is such a body, and consequently, Koch's statements to the Commission are clearly immunized against Mora's defamation claim under the absolute privilege.

The fundamental defects in the Complaint call into question Mora's motive for filing it. Indeed, the notion that Mora seeks redress for "humiliation" and "embarrassment" caused by Koch's *confidential* complaint is belied by the fact that Mora *publicly* filed that very complaint as an exhibit to his pleading. The purpose of this lawsuit appears to be to retaliate against Koch and to intimidate her or other witnesses in the pending judicial misconduct inquiry of Mora—the very harms that the absolute privilege is meant to prevent. This Court should not countenance these tactics and should promptly dismiss this case with prejudice.

This case is a classic "SLAPP" (Strategic Lawsuit Against Public Participation)—the use of the legal system to chill the right to free speech or to petition the government. Under New York's recently amended anti-SLAPP statute, this case must be summarily dismissed, and Koch is entitled to a mandatory award of her attorneys' fees and costs.

II. FACTUAL BACKGROUND

A. The Parties

Mora is a sitting Poughkeepsie City Court judge.[2] Compl. at 1.

Koch is the office manager of Seeta Eye, an ophthalmology practice in Poughkeepsie. Compl. ¶¶ 4–5.

[2] Mora is no stranger to controversy surrounding rules intended to stem the COVID-19 pandemic. In early 2022, Mora reportedly violated court rules by regularly entering the courthouse maskless (wearing only a face shield) and without having been vaccinated, and by presiding over criminal arraignments by video. *See* Frank G. Runyeon, *Unvaxxed NY Judge Stripped of Most Criminal Cases*, LAW360 (Feb. 1, 2022, 6:50 p.m.), https://www.law360.com/articles/1460655/unvaxxed-ny-judge-stripped-of-most-criminal-cases. Mora has also filed a federal lawsuit challenging the New York courts' vaccine requirement. *See Mora v. N.Y. State Unified Ct. Sys.*, No. 7:22-cv-10322 (S.D.N.Y. filed Dec. 6, 2022).

B. Mora Flouts Seeta Eye's COVID Masking Rules

In December 2021, as a medical practice, Seeta Eye required anyone entering the premises to wear a mask, pursuant to CDC and health department guidelines. Compl. Ex. 1.[3] On December 28, Mora entered the waiting room of Seeta Eye without a mask, instead wearing a face shield. Compl. ¶ 9. At the time, there were approximately 20 other individuals in the waiting room, plus Seeta Eye's staff. Compl. Ex. 1. Upon being asked to wear a mask, Mora refused. Compl. ¶ 10. Koch asked Mora several times to either leave or wear a mask that Seeta Eye offered to him. Compl. Ex. 1. Mora claimed to have a medical condition that prevented him from wearing a mask. Compl. ¶ 12; Compl. Ex. 1.

When Mora persisted in refusing to either leave or wear a mask, Koch called the police. Compl. ¶¶ 15, 17; Compl. Ex. 1. In Koch's words, Mora caused "a huge scene" and "taunted" her that the police would not come. Compl. Ex. 1. When it became clear that the police would respond to the call,[4] Mora finally left the premises. Compl. ¶¶ 17–19; Compl. Ex. 1.

Mora then contacted his chiropractor to obtain a note stating that Mora had an unspecified "medical condition," and provided the note to Koch. Compl. ¶ 20; Compl. Ex. 1. Koch called the chiropractor to obtain the specific diagnosis, but the chiropractor refused to

[3] On a motion to dismiss, "the Court may consider both the facts alleged in the complaint as well as the documents attached to it as exhibits, which may be incorporated by reference." *Shuman v. N.Y. Mag.*, 72 Misc. 3d 1211(A), at *2 (Sup. Ct. N.Y. Cnty. 2021), *aff'd*, 211 A.D.3d 558 (1st Dep't 2022). Thus, the Court may consider Koch's complaint, which was attached as Exhibit 1 to Mora's pleading and is cited herein for background. Insofar as Mora alleges that five specific statements in Koch's complaint are false, *see* Compl. ¶ 24(a)–(e), the Court need not resolve those factual issues because falsity "is irrelevant" where the statements are absolutely privileged, as explained *infra* p. 12. *Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).

[4] According to Koch, the police affirmatively stated that they would come to the office. Compl. Ex. 1. According to Mora, Koch told the police that it was an "emergency," which would naturally trigger a police response. Compl. ¶ 17.

provide that information and instead began an unsolicited lecture criticizing masks. Compl. Ex. 1.

At this point, Seeta Eye decided to accommodate Mora given that he was there to oversee an eye exam for his [redacted] son. Compl. ¶ 21; Compl. Ex. 1. Mora claims that the exam then occurred "without further incident." Compl. ¶ 22. In fact, Seeta Eye had to escort Mora and his son into and out of the practice through a side door so as to not expose the other patients to Mora, who remained unmasked. Compl. Ex. 1.

C. Koch Files a Complaint with the Commission on Judicial Conduct

Koch was aware that Mora was an attorney and contacted the Dutchess County Bar Association to inquire why an area attorney would behave as he did in a medical practice in defiance of CDC and health department guidelines. Compl. Ex. 1.

Upon learning that Mora was a judge, Koch was "shocked." *Id.* Out of a sense of civic duty, on December 29, Koch decided to file a complaint with the Commission reporting Mora's "unprofessional behavior" that she had witnessed the day before, by completing and signing the Commission's online complaint form. *Id.* In Koch's words, she "simply fe[lt] our government needs to know" about his behavior, because "[t]his man should not be allowed any decision making for others when he can not act professionally in this medical practice." *Id.*

D. The Commission Commences a Confidential Investigation

The Commission is authorized to receive and investigate complaints of judicial misconduct, including but not limited to "conduct, on or off the bench, prejudicial to the administration of justice." N.Y. Judiciary Law § 44(1). "Upon receipt of a complaint," the Commission "shall conduct an investigation of the complaint," or it may summarily dismiss the complaint if it lacks merit on its face. *Id.* In the course of an investigation, the Commission may

require the judge to appear before it, in which case the judge is notified and served with the complaint. *Id.* § 44(3).

By law, all complaints, proceedings, and records of the Commission are confidential. *Id.* § 45(1). However, in this lawsuit, Mora has disclosed that the Commission is investigating him and that he was "required . . . to answer [Koch's] claims before" the Commission. Compl. ¶ 27. Mora also disclosed the full text of Koch's allegations in the complaint that initiated the Commission's investigation. Compl. Ex. 1.[5]

E. Mora Files This Action Against Koch

On December 29, 2022 (exactly one year after Koch's complaint to the Commission), Mora filed this action against Koch, claiming that her complaint to the Commission defamed him. Compl. ¶ 24. Mora takes issue with five statements in Koch's complaint, including that Mora "created a huge scene" and "can not act professionally in this medical practice." *Id.* ¶ 24(a)–(e). Mora seeks $425,000 in compensatory and punitive damages, including for "humiliation, shame and embarrassment." *Id.* at 5 & ¶ 27.

Koch now moves to dismiss this action pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a.

III. ARGUMENT

A. The Amended Anti-SLAPP Statute Applies to This Action

This lawsuit is precisely the type of action that New York's recently amended anti-SLAPP statute was meant to deter. SLAPP suits "are characterized as having little legal merit

[5] Mora's lawsuit has generated media coverage of the Commission's investigation, which, but for his lawsuit, would have otherwise remained confidential. *See Judge Suing Office Manager for Defamation After Argument over Mask Policy at Doctor's Office*, MID HUDSON NEWS (Jan. 3, 2023, 4:24 a.m.), https://midhudsonnews.com/2023/01/03/judge-suing-office-manager-for-defamation-after-argument-over-mask-policy-at-doctors-office/.

but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." *Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 28 (1st Dep't 2022) (quoting *600 W. 115th St. Corp. v. Von Gutfeld*, 80 N.Y.2d 130, 137 n.1 (1992)).

The anti-SLAPP statute applies to an "action involving public petition and participation," which is defined to include a claim based on "any . . . lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition." N.Y. Civ. Rights Law § 76-a(1)(a)(2). Clearly, Koch's complaint to the Commission concerning inappropriate behavior by a sitting judge implicates her constitutional right to petition the government, as well as her right to free speech on an issue of public interest. *See Pulizotto v. McMahon*, 406 F. Supp. 3d 277, 290, 296 (S.D.N.Y. 2019) ("The nature of reporting ethical misconduct within the judiciary as a 'right to petition for a redress [of] grievances' is 'among the most precious of the liberties safeguarded by the Bill of Rights.'"); *Aristocrat Plastic Surgery*, 206 A.D.3d at 29 (recognizing that an issue of "public interest" is "construed broadly" and includes "matters of political, social, or other concern to the community"). Because this action arises from Koch's exercise of her protected rights, the anti-SLAPP statute applies.

Because the anti-SLAPP statute controls this action, special procedures apply. Where, as here, the defendant moves to dismiss for failure to state a claim, the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law." N.Y. C.P.L.R. 3211(g)(1). This provision shifts "the burden . . . upon the plaintiff to establish that its claim has the requisite substantial basis." *Sackler v. Am. Broad. Cos.*, 71 Misc. 3d 693,

700 (Sup. Ct. N.Y. Cnty. 2021) (quoting *Duane Reade, Inc. v. Clark*, 2 Misc. 3d 1007(A), at *5 (Sup. Ct. N.Y. Cnty. 2004)). In order to avoid dismissal, the "plaintiff must establish by clear and convincing evidence a 'substantial basis' in fact and law for its claim." *Id.* (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5). A "substantial" basis is "a more stringent standard than the 'reasonable' standard that would otherwise apply." *Id.* (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5).[6]

B. Koch's Statements Are Immunized Under the Absolute Privilege for Statements in a Judicial Proceeding

Mora cannot establish that his claim has a substantial basis in law or sets forth a cognizable cause of action, because the allegedly defamatory statements are protected under the absolute privilege for statements in a judicial proceeding. "The question of whether a statement is privileged is a question of law for the court and proper to determine on a motion to dismiss." *Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).[7]

[6] Mora's Complaint also fails to state a claim under the traditional motion-to-dismiss standard of N.Y. C.P.L.R. 3211(a)(7). Under the traditional standard, the "court must determine whether the factual allegations taken from the four corners of the complaint manifest any cognizable cause of action." *Klepetko v. Reisman*, 41 A.D.3d 551, 551 (2d Dep't 2007). While the court considers "any reasonable view of the facts stated," *Strujan v. Kaufman & Kahn, LLP*, 168 A.D.3d 1114, 1115 (2d Dep't 2019), "bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss for failure to state a cause of action," *Parsippany Const. Co. v. Clark Patterson Assocs., P.C.*, 41 A.D.3d 805, 806 (2d Dep't 2007) (quoting *Meyer v. Guinta*, 262 A.D.2d 463, 464 (2d Dep't 1999)). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

[7] Should this litigation proceed, Koch reserves her right to assert additional defenses, including that her statements were substantially true, were not made with actual malice, and constituted protected opinion.

1. Koch's Complaint to the Commission Commenced a Judicial Proceeding

For over fifty years, the New York Court of Appeals has recognized that complaints to the official bodies that govern the conduct of attorneys are immunized from defamation claims under the absolute privilege for statements in a judicial or quasi-judicial proceeding. *Wiener v. Weintraub*, 22 N.Y.2d 330, 332 (1968); *see Bisogno*, 31 Misc. 3d 1203(A), at *4 (recognizing that *Wiener*'s holding is "abundantly clear"); *see also Kilkenny v. L. Off. of Cushner & Garvey, LLP*, 76 A.D.3d 512, 513 (2d Dep't 2010). In *Wiener*, the Court of Appeals held that the filing of a complaint letter concerning an attorney with the Grievance Committee of the New York City Bar Association initiated a judicial proceeding and thus came within the absolute privilege. *Wiener*, 22 N.Y.2d at 332. This rule furthers "the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a . . . designated body for investigation." *Id.* "[T]he necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined," without fear that the complainant will be sued for libel. *Id.*

In reaching this conclusion, the Court of Appeals relied on two factors present in attorney grievance proceedings that rendered them a "judicial proceeding" for purposes of the absolute privilege. First, the grievance committee investigates the complaint and determines whether or not the charges are supportable in the course of "quasi-judicial" proceedings. *Id.* at 331–32. In that regard, the committee employs safeguards characteristic of a judicial proceeding, namely, that "it is adversarial, results in a determination that derives from the application of appropriate provisions in the law to the facts and is susceptible to judicial review." *Herzfeld & Stern, Inc. v.*

Beck, 175 A.D.2d 689, 691 (1st Dep't 1991); *see also Allan & Allan Arts Ltd. v. Rosenblum*, 201 A.D.2d 136, 141–42 (2d Dep't 1994).

Second, the grievance complaint and proceedings are, by statute, "private and confidential." *Wiener*, 22 N.Y.2d at 332 (quoting N.Y. Judiciary Law § 90(10)). This confidentiality "eliminate[s]" any risk of reputational damage arising from a defamatory complaint. *Id.*[8]

Here, Koch's complaint to the Commission is indistinguishable from the complaint to the grievance committee in *Wiener* and is thus absolutely privileged. Just like the grievance committee, the Commission is a "quasi-judicial" body. *Doe v. Comm'n on Jud. Conduct*, 246 A.D.2d 409, 409 (1st Dep't 1998); *Harley v. Perkinson*, 187 A.D.2d 765, 766 (3d Dep't 1992); *Cunningham ex rel. Unnamed Town & Vill. Justs. v. Stern*, 93 Misc. 2d 516, 517–18 (Sup. Ct. Erie Cnty. 1978). The Commission's organic statute and Mora's own Complaint bear this out.

First, as Mora himself admits, the Commission's proceedings are adversarial, "requir[ing] him to answer her . . . claims before" the Commission. Compl. ¶ 27. The Commission is empowered to "require the appearance of the judge" and to take his and witnesses' testimony in the course of its investigation, and it may draw up formal charges that the judge must answer in writing and that are adjudicated at a hearing. N.Y. Judiciary Law § 44(3)–(4). In either case, the

[8] While confidentiality protection strongly supports the absolute privilege, the privilege may even apply to nonconfidential statements where procedural safeguards and substantial public interests are present. *See Rosenberg v. MetLife, Inc.*, 8 N.Y.3d 359, 368 & n.7 (2007) (extending absolute privilege to employee termination notice filed with National Association of Securities Dealers).

judge has the right to be represented by counsel and to present evidence relevant to his defense.[9] *Id.*

The Commission's proceedings result in a determination by applying the relevant law to the facts. If the complaint lacks merit, the Commission may dismiss the complaint. *Id.* § 44(1), (6). After a hearing, the Commission issues a written determination (together with findings of fact and conclusions of law) that the judge be admonished, censured, removed, or retired. *Id.* § 44(7). In evaluating whether the judge committed misconduct, the Commission considers whether the judge abided by New York and federal laws, the Code of Judicial Conduct, the Chief Administrator's rules governing judicial conduct, and any other rules applicable to New York judges. 22 N.Y. C.R.R. 7000.9(b); *see id.* pt. 100 (rules governing judicial conduct).

The Commission's proceedings afford judicial review. The judge may appeal the Commission's determination to the Court of Appeals. N.Y. Judiciary Law § 44(7), (9). In sum, the many safeguards of the Commission's proceedings bear all the hallmarks of judicial proceedings. *See Herzfeld*, 175 A.D.2d at 691.

Finally, Koch's complaint and the Commission's proceedings are, by law, confidential. N.Y. Judiciary Law § 45(1). As such, Koch's complaint presents no risk of prejudice to Mora, which is all the more reason that the absolute privilege applies here. *See Wiener*, 22 N.Y.2d at 332.

The same policy concerns that animated the *Wiener* court apply with equal or greater force here. Clearly, "it is in the public interest to encourage those who have knowledge of" judicial misconduct to report that misconduct to the Commission. *Id.*; *see Stern v. Morgenthau*,

[9] If the matter proceeds to a formal hearing, the judge receives additional safeguards, including the right to inculpatory and exculpatory discovery and the right to call and cross-examine witnesses. N.Y. Judiciary Law § 44(4).

62 N.Y.2d 331, 339 (1984) ("[T]he effective performance of [the Commission's] function necessarily requires the free flow of information to the Commission . . . ."). "[T]he necessity of maintaining the high standards of [the bench]—indeed, the proper administration of justice—requires that there be a forum in which . . . persons, unlearned in the law, may state their complaints" without fear of reprisal. *Wiener*, 22 N.Y.2d at 332. "There is 'hardly . . . a higher governmental interest than a State's interest in the quality of its judiciary.'" *Nicholson v. State Comm'n on Jud. Conduct*, 50 N.Y.2d 597, 607 (1980) (quoting *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 848 (1978) (Stewart, J., concurring)). Surely, "ensuring the integrity of the judiciary is no less important than . . . protecting the integrity of the bar," and that important public interest requires the application of the absolute privilege to complaints concerning judges just as much to complaints about attorneys.[10] *N.Y. State Comm'n on Jud. Conduct v. Rubenstein*, 23 N.Y.3d 570, 582 (2014). Accordingly, Koch's complaint commenced a judicial proceeding and is within the absolute privilege.

2. Koch's Statements in Her Complaint Are Absolutely Privileged

Mora's defamation claim arises from Koch's statements in her complaint to the Commission. *See* Compl. ¶ 24. Because Koch's complaint commenced a judicial proceeding, her statements are absolutely privileged.

Statements in a judicial or quasi-judicial proceeding are absolutely privileged "so long as they are material and pertinent to the issue to be resolved in the proceeding." *Bisogno v. Borsa*,

[10] For these reasons, other states' appellate courts have likewise held that complaints concerning judges are absolutely privileged. *See Bailey v. Superior Ct.*, 130 Ariz. 366, 368 (Ct. App. 1981) ("The public policy considerations that afford an absolute privilege for defamatory statements made in a complaint about a lawyer's conduct to the State Bar apply equally well to a complaint about a member of the judiciary."); *Starnes v. Int'l Harvester Co.*, 141 Ill. App. 3d 652, 654 (1986) ("Illinois public policy is to . . . grant absolute privilege to complaints made to the [judicial inquiry board].").

101 A.D.3d 780, 781 (2d Dep't 2012) (quoting *Kilkenny*, 76 A.D.3d at 513). "The test of pertinency . . . is extremely liberal so as to 'embrace[] anything that may possibly or plausibly be relevant or pertinent.'" *Brady v. Gaudelli*, 137 A.D.3d 951, 952 (2d Dep't 2016) (quoting *Black v. Green Harbour Homeowners' Ass'n, Inc.*, 19 A.D.3d 962, 963 (3d Dep't 2005)).

Here, there is no doubt that Koch's statements were pertinent to the proceeding. Indeed, her "statements concerned the very subject of the . . . proceeding." *Id.* The subject of her complaint was Mora's "unprofessional behavior in [her] medical practice," Compl. Ex. 1, and the Commission must investigate whether Mora's behavior constituted "conduct, on or off the bench, prejudicial to the administration of justice," N.Y. Judiciary Law § 44(1).[11] Each of the five allegedly defamatory statements described the unprofessional behavior that Koch witnessed. *See* Compl. ¶ 24(a)–(e). They are plainly relevant to the proceeding.

Accordingly, Koch's statements are absolutely privileged. Whether her statements are true or false "is irrelevant." *Bisogno*, 31 Misc. 3d 1203(A), at *4. The privilege protects her statements "regardless of the motive for which they were made." *Brady*, 137 A.D.3d at 952. And the privilege applies "irrespective of whether formal charges are ever presented," protecting "every step of the proceeding even if it is preliminary and/or investigatory," such as the filing of Koch's complaint here. *Nineteen Eighty-Nine, LLC v. Icahn Enters. L.P.*, 99 A.D.3d 546, 547 (1st Dep't 2012) (citation omitted). Because Koch's statements are absolutely privileged, Mora's defamation claim fails as a matter of law.

[11] Among other things, the Commission may investigate whether Mora's behavior violated his "higher obligation to insure that his conduct off the Bench does not undermine the integrity of the judiciary or public confidence in his character and judicial temperament." *Quinn v. State Comm'n on Jud. Conduct*, 54 N.Y.2d 386, 392 (1981).

C. Koch Should Be Awarded Her Costs and Attorneys' Fees

Under the anti-SLAPP statute, Koch is entitled to a "mandatory" award of attorneys' fees and costs upon the dismissal of the case. *Golan v. Daily News, L.P.*, 77 Misc. 3d 258, 272–73 (Sup. Ct. N.Y. Cnty. 2022). The statute provides that "costs and attorney's fees ***shall*** be recovered upon a demonstration . . . that the action . . . was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law." N.Y. Civ. Rights Law § 70-a(1)(a) (emphasis added). Such a demonstration mandating attorneys' fees "includ[es] an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven," i.e., the dismissal provision setting forth the "substantial basis" standard that governs this case, as explained *supra* p. 6. *Id.* If Koch prevails on her motion to dismiss, she is entitled to attorneys' fees. *See Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 27–28, 32 (1st Dep't 2022) (holding that defendant is entitled to attorneys' fees on anti-SLAPP motion to dismiss); *Golan*, 77 Misc. 3d at 272–73 (awarding counsel fees on anti-SLAPP motion to dismiss); *Gillespie v. Kling*, No. 158959/2021, 2022 WL 16699233, at *3–5 (Sup. Ct. N.Y. Cnty. Nov. 2, 2022) (same); *Kerns v. Ishida*, No. 161364/2020, 2022 WL 5519650, at *2 (Sup. Ct. N.Y. Cnty. Oct. 7, 2022) (same); *Vaughn v. Xu*, No. 160322/2020, 2022 WL 3446931, at *5 (Sup. Ct. N.Y. Cnty. Aug. 17, 2022) (same).[12]

Alternatively, the Court should award costs and attorneys' fees because this action is "frivolous" under N.Y. C.P.L.R. 8303-a and/or 22 N.Y. C.R.R. 130-1.1. An action is frivolous if

[12] Koch reserves her right under the anti-SLAPP law to seek compensatory and punitive damages, which may be awarded where the action was filed for the "purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights." N.Y. Civ. Rights Law § 70-a(1)(b)–(c). Koch's damages include, inter alia, emotional distress arising from being named as a defendant and media coverage of the lawsuit.

it is "without any reasonable basis in law or fact" or "the primary purpose in commencing [it] was to harass." *Doscher v. Meyer*, 177 A.D.3d 697, 699 (2d Dep't 2019). Courts frequently award attorneys' fees against plaintiffs who file meritless defamation claims that are barred by the absolute privilege for statements in a judicial proceeding, like the claim here. *See id.*; *Carniol v. Carniol*, 288 A.D.2d 421, 422 (2d Dep't 2001); *Grasso v. Mathew*, 164 A.D.2d 476, 480 (3d Dep't 1991).

As one justice sternly warned, bringing a defamation suit based on a privileged report of attorney misconduct is antithetical to "the proper administration of justice" and, to put it bluntly, "abhorrent." *Bisogno*, 31 Misc. 3d 1203(A), at *4. A sitting judge should know better, and should bear the costs of defending this meritless lawsuit.

IV. CONCLUSION

For all the foregoing reasons, the Court should dismiss the Complaint with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, and award Koch her attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1.

Dated: February 2, 2023

Respectfully submitted,

By: /s/ Victor A. Kovner
Victor A. Kovner
Raphael Holoszyc-Pimentel
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax: [redacted]
Email: [redacted]@dwt.com
[redacted]@dwt.com

Attorneys for Defendant Stacey Koch

Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Victor A. Kovner, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Memorandum of Law in Support of Koch's Motion to Dismiss Complaint contains 4,461 words.

/s/ Victor A. Kovner
Victor A. Kovner

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001

AFFIRMATION OF VICTOR A. KOVNER IN SUPPORT OF KOCH'S MOTION TO DISMISS COMPLAINT

Victor A. Kovner, an attorney duly admitted to practice before this Court, hereby affirms under penalty of perjury pursuant to N.Y. C.P.L.R. 2106(a) as follows:

1. I am a member of Davis Wright Tremaine LLP, attorneys for Defendant Stacey Koch ("Koch"). I submit this affirmation in support of Koch's motion to dismiss the Complaint and to award her attorneys' fees and costs.

2. The grounds for Koch's dismissal motion are set forth in the accompanying memorandum of law. I submit this affirmation for the limited purpose of annexing documents relevant to the motion.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint filed in this action by Plaintiff Frank Mora. *See* NYSCEF Doc. No. 1.

4. Attached hereto as **Exhibit B** is a true and correct copy of Exhibit 1 to the Complaint filed in this action by Plaintiff Frank Mora. *See* NYSCEF Doc. No. 2.

Dated: February 2, 2023
New York, New York

/s/ Victor A. Kovner
Victor A. Kovner

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 02-02-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Affirmation # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 30 2023
DUTCHESS COUNTY SEAL
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Victor A. Kovner, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Affirmation of Victor A. Kovner in Support of Koch's Motion to Dismiss Complaint contains 152 words.

/s/ Victor A. Kovner
Victor A. Kovner

REQUEST FOR JUDICIAL INTERVENTION

UCS-840
(rev. 11/24/2022)

SUPREME COURT, COUNTY OF DUTCHESS

Index No: 2022-54141 Date Index Issued: 12/29/2022

For Court Use Only:
IAS Entry Date
Judge Assigned
RJI Filed Date

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

Frank Mora
Plaintiff(s)/Petitioner(s)

-against-

Stacey Koch
Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.

COMMERCIAL

- ○ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
- ○ Contract
- ○ Insurance (where insurance company is a party, except arbitration)
- ○ UCC (includes sales and negotiable instruments)
- ○ Other Commercial (*specify*): _____

NOTE: *For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the* ***COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C).***

TORTS

- ○ Adult Survivors Act
- ○ Asbestos
- ○ Environmental (*specify*): _____
- ○ Medical, Dental or Podiatric Malpractice
- ○ Motor Vehicle
- ○ Products Liability (*specify*): _____
- ○ Other Negligence (*specify*): _____
- ○ Other Professional Malpractice (specify): _____
- ◉ Other Tort (specify): Defamation

SPECIAL PROCEEDINGS

- ○ Child-Parent Security Act (*specify*): ○ Assisted Reproduction ○ Surrogacy Agreement
- ○ CPLR Article 75 – Arbitration [see ***NOTE*** in **COMMERCIAL** section]
- ○ CPLR Article 78 – Proceeding against a Body or Officer
- ○ Election Law
- ○ Extreme Risk Protection Order
- ○ MHL Article 9.60 – Kendra's Law
- ○ MHL Article 10 – Sex Offender Confinement (*specify*): ○ Initial ○ Review
- ○ MHL Article 81 (Guardianship)
- ○ Other Mental Hygiene (*specify*): _____
- ○ Other Special Proceeding (*specify*): _____

MATRIMONIAL

- ○ Contested

NOTE: *If there are children under the age of 18, complete and attach the* ***MATRIMONIAL RJI ADDENDUM (UCS-840M).***

For Uncontested Matrimonial actions, use the Uncontested Divorce RJI ***(UD-13).***

REAL PROPERTY Specify how many properties the application includes: _____

- ○ Condemnation
- ○ Mortgage Foreclosure (*specify*): ○ Residential ○ Commercial

Property Address: _____

NOTE: *For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the* ***FORECLOSURE RJI ADDENDUM (UCS-840F).***

- ○ Partition

NOTE: *Complete and attach the* ***PARTITION RJI ADDENDUM (UCS-840P).***

- ○ Tax Certiorari (*specify*): Section:_____ Block:_____ Lot:_____
- ○ Tax Foreclosure
- ○ Other Real Property (*specify*): _____

OTHER MATTERS

- ○ Certificate of Incorporation/Dissolution [see ***NOTE*** in **COMMERCIAL** section]
- ○ Emergency Medical Treatment
- ○ Habeas Corpus
- ○ Local Court Appeal
- ○ Mechanic's Lien
- ○ Name Change/Sex Designation Change
- ○ Pistol Permit Revocation Hearing
- ○ Sale or Finance of Religious/Not-for-Profit Property
- ○ Other (*specify*): _____

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

	YES	NO		
Has a summons and complaint or summons with notice been filed?	◉	○	If yes, date filed:	12/29/2022
Has a summons and complaint or summons with notice been served?	◉	○	If yes, date served:	01/03/2023
Is this action/proceeding being filed post-judgment?	○	◉	If yes, judgment date:	

NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.

○ Infant's Compromise			
○ Extreme Risk Protection Order Application			
○ Note of Issue/Certificate of Readiness			
○ Notice of Medical, Dental or Podiatric Malpractice	Date Issue Joined:		
◉ Notice of Motion	Relief Requested:	Dismissal of complaint and award of fees and costs	Return Date: 02/28/2023
○ Notice of Petition	Relief Requested:		Return Date:
○ Order to Show Cause	Relief Requested:		Return Date:
○ Other Ex Parte Application	Relief Requested:		
○ Partition Settlement Conference			
○ Poor Person Application			
○ Request for Preliminary Conference			
○ Residential Mortgage Foreclosure Settlement Conference			
○ Writ of Habeas Corpus			
○ Other (specify): _____			

RELATED CASES List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank.
If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case
In re Frank Mora	Unknown; filed 12/29/2021	New York State Commission on Judicial Conduct		Misconduct complaint giving rise to instant defamation action

PARTIES For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided.
If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3rd party plaintiff, etc.)	Attorneys and Unrepresented Litigants For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined For each defendant, indicate if issue has been joined.	Insurance Carriers For each defendant, indicate insurance carrier, if applicable.
☐	Name: Frank Mora Role(s): Plaintiff	Michael H. Sussman, Sussman & Associates, 1 Railroad Avenue - Suite 3, PO Box 1005, Goshen, NY 10924, [redacted], [redacted]@frontiernet.net	○ YES ○ NO	
☐	Name: Stacey Koch Role(s): Defendant	Victor A. Kovner, Davis Wright Tremaine LLP, 1251 Avenue of the Americas, 21st Floor, New York, NY 10020, [redacted]@dwt.com Raphael Holoszyc-Pimentel, Davis Wright Tremaine LLP, 1251 Avenue of the Americas, 21st Floor, New York, NY 10020, [redacted]@dwt.com	○ YES ◉ NO	The Hartford
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	
☐	Name: Role(s):		○ YES ○ NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: **02/02/2023**

/s/ Victor A. Kovner
Signature

1155688
Attorney Registration Number

Victor A. Kovner
Print Name

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme

I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 02-02-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF RJI #2023-54141

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

AUG 30 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

FILED: DUTCHESS COUNTY CLERK 02/06/2023 03:29 PM INDEX NO. 2022-54141
NYSCEF DOC. NO. 12 RECEIVED NYSCEF: 02/03/2023

ORDER AND

REASON FOR RECUSAL (JUD. LAW §9)

(Name of proceeding)

Mora v. Koch (Index No. 2022-54141)

I hereby recuse myself in the above-entitled proceeding. In accordance with section 9 of the Judiciary Law (check as appropriate):

☐ I decline to provide a reason for this recusal because: (i) pursuant to the exception prescribed in section 9, provision of a reason may result in embarrassment, or is of a personal nature, affecting me or a person related to me within the sixth degree by consanguinity or affinity; or (ii) pursuant to statute or caselaw, the reason for my recusal must be kept confidential.

☒ I am recusing myself because:

☒ A. I wish to avoid any potential appearance of impropriety that my impartiality might be questioned as it may appear that (provide reason):
Plaintiff is a judicial colleague.

☐ B. I have a personal bias or prejudice concerning a party to the proceeding

☐ C. I have personal knowledge of disputed evidentiary facts concerning the proceeding

☐ D. I served as a lawyer in the matter in controversy in this proceeding

☐ E. A lawyer with whom I previously practiced law served, during my association with him or her, as a lawyer concerning the matter in controversy in this proceeding

☐ F. I have been a material witness concerning the matter in controversy in this proceeding

☐ G. I (or my spouse or minor child residing in my household) may have an economic interest in the subject matter in controversy in this proceeding or in a party to the proceeding, or I may have any other interest that could be substantially affected by the proceeding

☐ H. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) am a party in this proceeding

☐ I. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) am an officer, director, or trustee of a party in this proceeding

☐ J. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) have an interest that could be substantially affected by the proceeding

☐ K. I (or my spouse or a person I know to be within the fourth degree of relationship of either myself or my spouse or the spouse of such person) am acting as a lawyer in this proceeding or am likely to be a material witness in this proceeding

☐ L. While a candidate for judicial office, I made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or, at any time, I have made a public statement not in my adjudicative capacity that commits me with respect to an issue in the proceeding or to the parties or controversy in the proceeding

☐ M. I am otherwise required by law (identify statute: _____) to recuse myself

☐ N. I am recusing myself for a reason other than one listed in B through L hereof on the basis of an advisory opinion issued to me by the Advisory Committee on Judicial Ethics pursuant to section 212(2)(l) of the Judiciary Law

So Ordered:

Title: _____
HON. MICHAEL G. HAYES, A.J.S.C.

Date: February 3, 2023

NOTE: USE OF THIS FORM TO COMPLY WITH SECTION 9 OF THE JUDICIARY LAW IS NOT REQUIRED, ONLY SUGGESTED. A JUDGE OR JUSTICE RECUSING HIM OR HERSELF IN A PROCEEDING MAY INSTEAD PROVIDE THE REASON THEREFOR IN ANY OTHER WRITTEN FORM OF HIS OR HER CHOICE. ALTERNATIVELY, HE OR SHE MAY PROVIDE SUCH REASON ON THE RECORD OF THE PROCEEDING OR, IF NO RECORD IS MADE OF THE PROCEEDING, IN ANY OTHER WRITTEN FORM THAT HIS OR HER COURT MAKES AVAILABLE FOR PUBLIC VIEW, INCLUDING BUT NOT LIMITED TO A COURT WEBSITE.

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Order # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Davis Wright Tremaine LLP

21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

Raphael Holoszyc-Pimentel
[redacted] tel
[redacted] fax

[redacted]@dwt.com

Maria G. Rosa, J.S.C. Request For Oral Argument is Granted/~~Denied~~
New Date: 3/8/23 @ 9:30a.m.
Failure To NOTIFY OPPOSING SIDE OR COUNSEL May Result In **SANCTIONS**

February 2, 2023

VIA NYSCEF

Chief Clerk Michael Thompson
Dutchess Supreme Court
10 Market Street
Poughkeepsie, NY 12601

Re: *Frank Mora v. Stacey Koch*, Index No. 2022-54141 (N.Y. Sup. Ct. Dutchess Cnty.)

Dear Mr. Thompson:

We represent Defendant Stacey Koch ("Koch") in the above-referenced matter. Pursuant to Rule 202.8-f(b) of the Uniform Civil Rules for the Supreme Court, we write to request oral argument on Koch's motion to dismiss the Complaint and to award her attorneys' fees and costs. *See* Mot. Seq. No. 001.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

/s/ Raphael Holoszyc-Pimentel

Raphael Holoszyc-Pimentel

STATE OF NEW YORK SS: Supreme
COUNTY OF DUTCHESS
I, **BRADFORD KENDALL**, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 02-03-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 30 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

NEW YORK STATE SUPREME COURT
DUTCHESS COUNTY
10 MARKET STREET
POUGHKEEPSIE, NEW YORK 12601
TEL: (845) 431-1752 FAX: (845) 431-1726

HON. MARIA G. ROSA
JUSTICE OF THE SUPREME COURT
Ninth Judicial District

MICHAEL R. FRASCARELLI
PRINCIPAL COURT ATTORNEY

MAUREEN MOSS
SECRETARY TO JUDGE

February 3, 2023

Michael H. Sussman, Esq.
Sussman & Associates
1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, NY 10924

Raphael Holoszyc-Pimentel, Esq.
Davis Wright Tremaine, LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020

Re: Mora v. Koch
Index No. 54141/22

Dear Counselors:

This is written in response to Defendant's attorney's letter of February 2, 2023 requesting oral argument on the motion to dismiss. The request is granted. The motion shall be fully submitted, as noticed, on February 28, 2023. Oral argument is scheduled for the following week, March 8, 2023 at 9:30 a.m. in person at the Dutchess County Courthouse. If either counsel is unavailable on that date at that time, counsel are directed to consult with one another and provide at least three dates within the following 30 days when both counsel are available. The court is not available the week of March 13, 2023. Please note that in accordance with Rule 202.8-f(b) counsel should also be prepared to discuss settlement.

Thank you.

Very truly yours,

Maria G. Rosa, J.S.C.

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-3-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

NOTICE OF MOTION

Index No. 54141/2022

PLEASE TAKE NOTICE that upon the annexed Affirmation of Robert H. Tembeckjian, Administrator of and Counsel to the New York State Commission on Judicial Conduct ("Commission"), the accompanying Memorandum of Law, the proposed Answer and upon all prior pleadings and proceedings had herein, the Commission will move this court at the Dutchess County Courthouse, 10 Market Street, Poughkeepsie, New York, on the 28th day of February 2023 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order allowing the Commission to intervene in this action pursuant to CPLR 1012(a)(2) and/or 1013, and dismissing the Complaint in its entirety pursuant to CPLR 3211(a)(7), or, alternatively, in the event that the motion to dismiss the Complaint is denied, granting the Commission leave pursuant to CPLR 3211(f) to serve the within

Answer within ten (10) days of service of the Order deciding this motion with Notice of Entry, and for such other relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering affidavits, and any notice of cross-motion, with supporting papers, if any, shall be served upon the Commission at least seven days before the return date of this motion.

Oral argument is requested.

Dated: New York, New York
February 6, 2023

Robert H. Tembeckjian

ROBERT H. TEMBECKJIAN
Administrator and Counsel
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
Tel. (518) 453-4600

TO: Michael Sussman, Esq.
Sussman & Associates
Attorney for Plaintiff
1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, New York 10924
Tel: [redacted]

Victor A. Kovner, Esq.
Raphael Holoszyc-Pimentel, Esq.
Davis Wright Tremaine
Attorneys for Defendant
1251 Avenue of the Americas, 21st Floor
New York, NY 10020
Tel: [redacted]

STATE OF NEW YORK
COUNTY OF DUTCHESS SS:
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Notice of Motion # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURT

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

AFFIRMATION IN SUPPORT OF MOTION TO INTERVENE AND DISMISS

STACEY KOCH,

Defendant.

ROBERT H. TEMBECKJIAN, an attorney duly admitted to practice in the State of New York, hereby affirms and states the following to be true under the penalties of perjury:

1. I am the Administrator and Counsel to the New York State Commission on Judicial Conduct ("Commission"), proposed intervenor in this proceeding, and am fully familiar with all the facts and circumstances set forth herein.

2. I make this affirmation in support of the Commission's motion to intervene pursuant to CPLR 1012(a)(2) and/or 1013, and to dismiss the matter pursuant to CPLR 3211(a)(7). As part of its submission on this motion, the Commission is also filing a memorandum of law and a proposed Answer pursuant to CPLR 1014.

3. The plaintiff in this action is a judge of the Unified Court System who is currently under investigation by the Commission. The defendant in this action is a private citizen who filed the complaint with the Commission that led to its current investigation of the plaintiff.

4. As set forth more fully below, and in the accompanying memorandum of law, the Commission has a unique and substantial interest in this proceeding. Plaintiff's frivolous lawsuit is clearly intended to intimidate a complainant/witness in an ongoing Commission investigation and will likely deter other witnesses from coming forward, inasmuch as plaintiff's lawsuit has already been reported in the press.[1] On information and belief, the matter appeared in a newspaper before the defendant was even served. If the plaintiff's suit is permitted to proceed, his public attack against a Commission complainant would have a chilling effect on witnesses in every Commission investigation, who might reasonably seek to avoid the costs of defending against such litigation.

5. In addition, because Commission investigations are confidential pursuant to Judiciary Law § 45, the defendant is not as equipped to provide this Court with factual information about our investigatory and adjudicatory processes that is relevant to the adjudication of this motion to intervene and dismiss. In this

[1] https://midhudsonnews.com/2023/01/03/judge-suing-office-manager-for-defamation-after-argument-over-mask-policy-at-doctors-office/

regard, I note that it was plaintiff's own lawsuit that first made public the Commission's confidential investigation of him and the defendant's allegedly defamatory statements about him.

The Commission's constitutional mandate to accept and investigate complaints of judicial misconduct, and its complaint process.

6. Pursuant to Article VI, Section 22, of the New York State Constitution and Judiciary Law § 44(1), the Commission is required to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge or justice of the unified court system."

7. Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," the Commission has a "duty to preempt and mitigate these potential consequences by quickly and effectively investigating allegations of judicial misconduct." *New York State Commission on Judicial Conduct v Rubenstein*, 23 NY3d 570, 582 (2014).

8. The Commission's "concern is [thus] institutional, to protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984).

9. To facilitate that mandate, the Commission's website has an online complaint form, which permits private citizens to file complaints of judicial

misconduct from their computers or other electronic devices. *See* https://www.nyscjcforms.com. The form requires a name and contact information for the complainant, which enables Commission staff to conduct follow-up interviews in furtherance of its investigations.

The defendant's complaint before the Commission alleging that the plaintiff committed judicial misconduct.

10. On December 29, 2021, Stacey Koch – an employee of an ophthalmology practice in New York State – utilized that online form to file a complaint with the Commission against the Poughkeepsie City Court Judge Frank Mora. A copy of Ms. Koch's complaint to the Commission is annexed to the Plaintiff's Summons and Complaint as Exhibit 1.

11. The complaint alleged that, on December 28, 2021, Judge Mora "exhibited unprofessional behavior" in Ms. Koch's medical practice by refusing to wear a mask in the waiting room (which the practice required) and "creat[ing] a huge scene."

12. Ms. Koch alleged that she called the police after Judge Mora refused several requests to put on a mask, and that Judge Mora "taunted" her "in front of a waiting room of [about] 20 people" by "stating the police won't come."

13. The complaint further alleged that Judge Mora subsequently proffered a letter from a chiropractor "stating Mr. Mora has a 'medical condition' that prevents him from wearing a mask." Despite believing that the letter from the

chiropractor was "bogus," Ms. Koch had her staff "escort[ ] Mr. Mora and his son into the practice through a side door . . . so as not to expose [the practice's] patients to Mr. Mora."

The Commission's pending investigation into the complaint against the plaintiff.

14. Pursuant to Judiciary Law § 44(1) and 22 NYCRR 7000.3(b), the Commission authorized an investigation into Ms. Koch's complaint.

15. On April 12, 2022, after conducting preliminary witness interviews, Commission Counsel wrote a letter to Judge Mora asking him to answer a number of questions about his alleged conduct at the ophthalmology practice. Pursuant to Commission Policy 2.6(D), the letter included a copy of Ms. Koch's complaint.[2]

16. Judge Mora, through counsel, responded by letter dated June 17, 2022.

17. To date, Judge Mora has not been formally charged with misconduct related to Ms. Koch's December 29, 2021, complaint.

18. The investigation currently is ongoing and additional witness interviews are being scheduled.

19. Pursuant to Judiciary Law § 44(3), Judge Mora will also be called to testify at the Commission.

[2] The Commission's Policy Manual is available online at: https://cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.pdf

The plaintiff's instant defamation action.

20. By papers dated December 21, 2022, Judge Mora – through counsel – filed the instant defamation suit against Ms. Koch.

21. The plaintiff's Verified Complaint alleged that five particular statements made by Ms. Koch in her December 29, 2021, complaint to the Commission were materially false. Verified Complaint ¶¶ 24-25.

22. The Verified Complaint further alleged that Ms. Koch's indicated conduct "has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct." Verified Complaint ¶ 27.

23. The demand for relief at the end of the Verified Complaint seeks a judgment against Ms. Koch in the aggregate amount of $425,000. Verified Complaint p. 5.

Due process during Commission proceedings.

24. The plaintiff will be afforded a full and fair opportunity to contest the veracity of Ms. Koch's allegations during the Commission's proceedings.

25. As indicated above, Judge Mora has already been provided with a copy of Ms. Koch's complaint and an opportunity to respond in writing, with the assistance of counsel.

26. Pursuant to Judiciary Law § 44(3) and 22 NYCRR 7000.3(e), the Commission has authorized me to require Judge Mora to appear and give testimony under oath. I will set the date and send him notice after additional witnesses have been interviewed. During his testimonial appearance, Judge Mora has the right to the assistance of counsel, and to submit evidentiary material relevant to the complaint. *Id.*

27. In the event the Commission authorizes service of a Formal Written Complaint, Judge Mora would be entitled to file an Answer to the charges therein, exchange pre-hearing discovery and participate in a hearing before a neutral referee, at which the rules of evidence applicable to nonjury civil proceedings would apply. Judiciary Law § 44(4); 22 NYCRR 7000.6(g),(h), (i).

28. Upon receipt of the referee's report, Judge Mora would be entitled to briefing and oral argument before the full Commission. 22 NYCRR 7000.7.

29. Finally, if the Commission renders a public determination finding that Judge Mora has committed judicial misconduct, he is entitled to review as of right in the Court of Appeals. Judiciary Law § 44(7). *See also Matter of Raab,* 100 NY2d 305, 311 (2003).

Conclusion

30. The Commission has a substantial constitutional interest in this matter that the defendant cannot adequately represent (Const Art VI, § 22). The

defendant, as a Commission complainant and witness, has absolute immunity against a defamation claim such as plaintiff has brought against her (*Wiener v Weintraub,* 22 NY2d 330, 332 (1968)). And plaintiff's lawsuit, if allowed to continue, would have a chilling effect on other Commission witnesses and as such interfere with the Commission's investigation and resolution of the complaint against him.

WHEREFORE, the Commission respectfully requests that this Court issue an order: (1) granting the Commission's motion to intervene as a third-party defendant; (2) dismissing the matter pursuant to CPLR 3211(a)(7), for the reasons noted here and further articulated in the accompanying memorandum of law; and (3) granting such other and further relief as the Court may deem just and proper.

Dated: February 6, 2023
Albany, New York

Robert H. Tembeckjian

ROBERT H. TEMBECKJIAN
Administrator and Counsel
New York State Commission on Judicial Conduct
Empire State Plaza
Corning Tower, Suite 2301
Albany, New York 12223

TO: Michael Sussman, Esq.
Sussman & Associates
Attorney for Plaintiff
1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, New York 10924

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Affirmation # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Victor A. Kovner, Esq.
Raphael Holoszyc-Pimentel, Esq.
Davis Wright Tremaine
Attorneys for Defendant
1251 Avenue of the Americas, 21st Floor
New York, New York 10020

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

PROPOSED VERIFIED ANSWER

STACEY KOCH,

Defendant.

Third-Party Intervenor Defendant New York State Commission on Judicial Conduct ("Commission") answers the Verified Complaint in the above-entitled proceeding allege as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Verified Complaint.

2. With respect to the allegations contained in paragraph 24 of the Verified Complaint, admits that defendant Stacey Koch submitted a complaint to the Commission on December 29, 2021, using the Commission's complaint form, denies knowledge and information sufficient to form a belief as to the remaining allegations contained in that paragraph, and respectfully refers the Court to Exhibit 1 of the Verified Complaint as the best evidence of the statements contained in Ms. Koch's complaint to the Commission.

3. With respect to the allegations contained in paragraph 27 of the complaint, admits that the Commission is empowered to investigate allegations of judicial misconduct, admits that the Commission required plaintiff to provide

information relative to Ms. Koch's complaint, and denies knowledge or information sufficient to form a belief as to the remainder of the claims contained in that paragraph.

AS AND FOR A FIRSTAFFIRMATIVE DEFENSE:

4. Defendant Koch's communication to the Commission, which forms the basis of the plaintiff's instant defamation action, is entitled to absolute immunity under *Wiener v Weintraub*, 20 NY2d 330 (1968) and its progeny, such that the instant matter must be dismissed pursuant to CPLR 3321(a)(7).

WHEREFORE, the third-party intervenor defendant respectfully requests judgment denying the relief requested by the plaintiff in its entirety and dismissing the Verified Complaint.

Dated: February 6, 2023
Albany, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
New York State Commission on Judicial Conduct
Empire State Plaza
Corning Tower, Suite 2301
Albany, New York 12223
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TO: Michael H. Sussman, Esq.
Sussman & Associates
Counsel for plaintiff
1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, NY 10924
Tel. [redacted]

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Proposed Answer #2022-54141
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AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY

Victor A. Kovner, Esq.
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1251 Avenue of the Americas, 21st Floor
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Tel: [redacted]

SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

MEMORANDUM BY COUNSEL TO THE COMMISSION ON JUDICIAL CONDUCT IN SUPPORT OF MOTION TO INTERVENE AND TO DISMISS.

ROBERT H. TEMBECKJIAN
Administrator and Counsel
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
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DUTCHESS COUNTY
AUG 31 2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Of Counsel:

Edward Lindner
Denise Buckley
David Stromes

Dated: February 6, 2023

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of a motion to intervene in the above-captioned matter pursuant to CPLR 1012(a)(2) and/or CPLR 1013, and to dismiss the matter pursuant to CPLR 3211(a)(7) because the communications at issue, which were part of a complaint to the Commission, are shielded by absolute privilege and thus are immune from defamation actions.

BACKGROUND AND PROCEDURAL HISTORY

Pursuant to Article VI, Section 22, of the New York State Constitution and Judiciary Law § 44(1), the Commission is required to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge or justice of the unified court system." Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," the Commission has a "duty to preempt and mitigate these potential consequences by quickly and effectively investigating allegations of judicial misconduct." *New York State Commission on Judicial Conduct v Rubenstein*, 23 NY3d 570, 582 (2014). The Commission's "concern is [thus] institutional, to protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984).

To facilitate that mandate, the Commission's website has an online complaint form, which permits private citizens to file complaints of judicial misconduct from their computers or other electronic devices. *See* https:// www.nyscjcforms.com. The form requires a name and contact information for the complainant, which enables Commission staff to conduct follow-up interviews in furtherance of its investigations.

As indicated by Exhibit 1 to the plaintiff's complaint, on December 29, 2021, Stacey Koch – an employee of an ophthalmology practice in New York State – utilized that online form to file a complaint with the Commission against Poughkeepsie City Court Judge Frank Mora. The complaint alleged that, on December 28, 2021, Judge Mora "exhibited unprofessional behavior" in Ms. Koch's medical practice by refusing to wear a mask in the waiting room (which the practice required) and "creat[ing] a huge scene." Ms. Koch alleged that she called the police after Judge Mora refused several requests to put on a mask, and that Judge Mora "taunted" her "in front of a waiting room of [about] 20 people" by "stating the police won't come." The complaint further alleged that Judge Mora subsequently proffered a letter from a chiropractor "stating Mr. Mora has a 'medical condition' that prevents him from wearing a mask." Despite believing that the letter from the chiropractor was "bogus," Ms. Koch had her staff "escort[ ] Mr. Mora and his son into the practice through a side door . . . so as not to expose

[the practice's] patients to Mr. Mora." A copy of Ms. Koch's complaint to the Commission is annexed to the plaintiff's Summons and Complaint as Exhibit 1.

The Commission authorized an investigation into Ms. Koch's complaint (Tembeckjian Aff ¶ 14). On April 12, 2022, after conducting preliminary witness interviews, Commission Counsel sent Judge Mora a copy of Ms. Koch's complaint and asked him to answer a number of questions about his alleged conduct at the ophthalmology practice (Tembeckjian Aff ¶ 15). Judge Mora, through counsel, responded by letter dated June 17, 2022 (Tembeckjian Aff ¶ 16).

To date, Judge Mora has not been formally charged with misconduct related to Ms. Koch's December 29, 2021, complaint (Tembeckjian Aff ¶ 17). The investigation currently is ongoing, additional witness interviews are being scheduled, and Judge Mora will be called to testify at the Commission (Tembeckjian Aff ¶¶ 18, 19).

By papers dated December 21, 2022, Judge Mora – through counsel – filed the instant defamation suit against Ms. Koch, alleging that five particular statements she made in her December 29, 2021, complaint to the Commission were materially false (Verified Complaint ¶¶ 24-25). The Verified Complaint further alleged that Ms. Koch's indicated conduct "has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial

misconduct" (Verified Complaint ¶ 27). The Verified Complaint's request for relief seeks a judgment against Ms. Koch in the aggregate amount of $425,000 (Verified Complaint p. 5).

ARGUMENT

POINT I

THE COMMISSION HAS A SUBSTANTIAL INTEREST IN THIS PROCEEDING SUCH THAT INTERVENTION IS APPROPRIATE.

The Commission has a substantial and unique interest in this matter, warranting intervention. By bringing this frivolous defamation action against a witness in an ongoing Commission investigation – a witness who has absolute immunity from such a suit – the plaintiff has interfered with the Commission's constitutional mandate to investigate complaints against New York State judges. Plaintiff's suit threatens to intimidate not only this defendant, but other witnesses in this same investigation who now may be reasonably reluctant to come forward with relevant information. Equally importantly, if allowed to go forward, plaintiff's suit will have a chilling effect on every Commission investigation by discouraging citizens from reporting instances of judicial misconduct for fear of being sued for hundreds of thousands of dollars.

Intervention by the Commission is also appropriate because defendant Koch is not privy to the confidential details of the Commission's investigation, and thus

is not as equipped to provide the court with factual information about the Commission's investigatory and adjudicatory processes that is relevant to the application of absolute immunity. As set forth in Point II below, those processes provide the plaintiff with multiple opportunities to contest Ms. Koch's allegations. In light of that fact, binding precedent provides that communications by witnesses to the Commission are entitled to absolute immunity from suit, and this defamation proceeding against Ms. Koch should be dismissed pursuant to CPLR 3211(a)(7).

A. Motions to intervene should be liberally granted.

Under CPLR 1012(a)(2), a "person shall be permitted to intervene in any action . . . when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Under CPLR 1013, a court may grant permissive intervenor "when the person's claim or defense and the main action have a common question of law or fact."

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action." *Yuppie Puppy Pet Prods Inc v St. Smart Realty LLC*, 77 AD3d 197, 201 (1st Dept 2010). Although they arise under two different rules, "[d]istinctions between intervention as of right and discretionary intervention are no longer sharply applied." *Id.* (citing Siegel, NY Prac § 178, at 307 [4th ed]). "Regardless of whether intervention is sought as a matter of right pursuant to CPLR 1012 or as a

matter of discretion pursuant to CPLR 1013, intervention should be permitted where the intervener has a real and substantial interest in outcome of the proceedings." *Clarke v City of New York*, 43 Misc 3d 1202(A) (Sup Ct Queens Co 2014) (citing *Berkowski v Board of Trustees of Inc Vil of Southampton*, 67 AD3d 840, 843 [2d Dept 2009]; *Perl v Aspromonte Realty Corp*, 143 AD2d 824, 825 [2d Dept 1988]).

Judged by those standards, intervention should be granted.

B. The Commission has a unique and substantial interest in this proceeding, warranting intervention.

In order to protect its interest and constitutional mandate in ensuring public confidence in a fair, impartial, and ethical judiciary, the Commission must safeguard the ability of private citizens to lodge complaints of judicial misconduct and to serve as witnesses in such proceedings when circumstances require. If prospective complainants believe that a judge may retaliate against them with a civil defamation suit for filing a complaint and/or testifying in ensuing proceedings, the resulting chilling effect would silence many would-be complainants and severely frustrate the Commission's ability to fulfill its constitutional duties.

In *Matter of Kopf*, 169 AD2d 428 (1st Dept 1991), the Appellate Division, First Department, found that a similar institutional interest in protecting the integrity of ongoing proceedings was a sound basis for intervention. There, a

plaintiff shareholder sued a corporation alleging that a transfer of certain shares was fraudulent. While the suit was pending, the United States government commenced a criminal investigation into the plaintiff and convened a grand jury. The United States then moved to intervene in the civil suit under CPLR 1012(a)(2). The trial court denied the motion, but the First Department reversed and granted the motion to intervene, holding that "the Government has a unique interest in protecting the integrity of ongoing Grand Jury proceedings," which "constitutes the compelling interest required for intervention as of right." 169 AD2d at 428-29 (citing *Cascade Natural Gas v El Paso Natural Gas*, 386 US 129 [1967]).

Just as the government had an interest in "protecting the integrity of ongoing Grand Jury proceedings" in *Kopf*, the Commission in this matter has an interest in protecting the integrity of both its ongoing investigation of Judge Mora, as well its broader constitutional mandate. As to the former, Ms. Koch is a material witness in the case against Judge Mora, having witnessed an incident at her place of work during which the plaintiff allegedly exhibited temperament unbecoming of a judge, in violation of Sections 100.1, 100.2, and 100.4(A)(2) of the Rules Governing Judicial Conduct. By suing Ms. Koch for defamation during the pendency of that investigation, the plaintiff has intimidated and frightened a Commission witness whose continued cooperation is necessary to investigate, and perhaps prosecute, the open complaint against him.

To the broader point, the Commission has an interest in protecting the integrity of its constitutional mandate to investigate complaints against New York State judges, which depends upon private citizens who witness misconduct being willing to come forward with non-anonymous complaints. As the Court of Appeals has explained, the Commission has an "institutional" concern in "protect[ing] the integrity of the judiciary and thereby preserv[ing] and enhanc[ing] the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984). "Experience teaches that the effective performance of that function necessarily requires the free flow of information to the Commission." *Id.*

Here, Judge Mora's defamation suit has imperiled that "free flow of information" and will have a chilling effect as to future would-be complainants who witness judicial misconduct but are deterred from filing complaints for fear of reprisal in the form of a defamation suit. Ms. Koch – a private citizen who is unfamiliar with the Commission's procedures and the investigative status of the open case against Judge Mora – cannot adequately represent and defend the Commission's interests in defending the integrity of its pending case against Judge Mora or its broader constitutional mandate. As a result, the Commission's motion to intervene should be granted.

POINT II

THIS MATTER SHOULD BE DISMISSED BECAUSE THE DEFENDANT'S COMPLAINT TO THE COMMISSION IS ENTITLED TO ABSOLUTE IMMUNITY AS A MATTER OF LAW.

New York Courts have long shielded certain classes of communications from defamation litigation behind a specially enacted privilege, based on the "recogni[tion] that the public interest is served by shielding [such possibly defamatory] communications . . . rather than risk stifling them altogether." *Stega v New York Downtown Hospital*, 31 NY3d 661, 669 (2018) (quoting *Liberman v Gelstein*, 80 NY2d 429, 437 [1992]) (quotation marks omitted). In particular, the Court has held, because the "social benefit in encouraging free speech or the discharge of governmental responsibility sometimes outweighs [an] individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements." *Id.* (quoting *Park Knoll Assoc v Schmidt*, 59 NY2d 205, 208 [1983]) (quotation marks omitted).

Two types of privilege exist: qualified and absolute. If a communication is entitled to qualified privilege, the person who initiated it may be sued in a defamation action, but the plaintiff bears the burden of proving that the communication was made with malice – that is, "spite or ill will" or "reckless disregard of whether [it was] false or not." *Stega*, 31 NY3d at 670 (quoting

Lieberman, 80 NY2d at 437-38) (quotation marks omitted); *see Toker v Pollack*, 44 NY2d 211, 219 (1978). By contrast, communications entitled to absolute privilege "entirely immunize[ ]" the individual who made them "from liability in a defamation action." *Stega*, 31 NY3d at 669; *Rosenberg v MetLife, Inc*, 8 NY3d 359, 365 (2007); *Toker*, 44 NY2d at 219.

A. Communications made in the course of a Commission proceeding are entitled to absolute privilege.

Absolute privilege is reserved for communications that occur in the course of "a proceeding in a court" or before "an administrative body exercis[ing] a quasi-judicial function" – *i.e.*, a body that is empowered to hold a hearing at which both parties are entitled to participate and take remedial action, "whether it be an award of compensation, disbarment, or revocation of a license." *Stega*, 31 NY3d at 670-71 (quoting *Toker*, 44 NY2d at 222) (quotation marks omitted). Notably, the Court of Appeals has explicitly held where the communication at issue is made to an administrative body exercising a quasi-judicial function, "the absolute privilege can extend to preliminary or investigative stages of the process, particularly where compelling public interests are at stake." *Rosenberg*, 8 NY3d at 365.

Consistent with those standards, the Court of Appeals held more than half a century ago that a complaint to a state attorney grievance committee is entitled to "absolute privilege." *Wiener v Weintraub*, 22 NY2d 330, 332 (1968). The Court's application of absolute privilege in *Wiener* hinged on its finding that the state

attorney grievance committee constituted "a quasi-judicial body." *Id.* Since then, the Court of Appeals and Appellate Division have repeatedly reaffirmed that rule. *Stega*, 31 NY3d at 670; *Rosenberg*, 8 NY3d at 365-66; *Casa de Meadows Inc (Cayman Islands) v Zaman*, 76 AD3d 917, 920 (1st Dept 2010); *Kilkenny v Law Office of Cushner & Garvey LLP*, 76 AD3d 512, 513 (2d Dept 2010); *Sinrod v Stone*, 20 AD3d 560, 561-62 (2d Dept 2005); *Jonas v. Faith Properties, Inc*, 221 AD2d 959, 961 (4th Dept 1995).

As the *Wiener* Court explained, "it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a Grievance Committee or some other designated body for investigation." 22 NY2d at 332. The Court acknowledged that "on occasion false and malicious complaints will be made," but held that "the necessity of maintaining the high standards of our bar -- indeed, the proper administration of justice --" outweighs that potential harm, which is adequately addressed in any event by the Grievance Committee's exercise of its function as a quasi-judicial body and the confidentiality provision applicable to attorney grievance complaints. *Id.*

The holding and reasoning of *Wiener* apply with equal force to complaints made to the Commission. Indeed, the analogy is ironclad, and the application is indistinguishable. The quasi-judicial nature of the Commission has been

recognized by the Court of Appeals and lower courts. *See Nicholson v State Com. on Judicial Conduct*, 50 NY2d 597, 606 (1980); *Doe v Commission on Judicial Conduct*, 246 AD2d 409, 409 (1st Dept 1998); *Cunningham v Stern*, 93 Misc 2d 516, 517-18 (Sup Ct Erie Co 1978). Moreover, the Commission bears all of the characteristics of a quasi-judicial body. Like the attorney grievance committee in *Wiener* the Commission "functions as a quasi-judicial body through its investigation of complaints and administration of disciplinary proceedings." *Rosenberg*, 8 NY3d at 365-66. Furthermore, it holds hearings "at which both parties [are] entitled to participate," after which it "takes remedial action." *Stega*, 31 NY3d at 670. Judges who are subject to a Commission investigation have multiple opportunities to contest the veracity of a complainant's allegations, including: (1) opportunities to respond to the allegations in writing and under oath during the investigation; (2) the right to a full evidentiary hearing if the Commission authorizes a Formal Written Complaint; and (3) review as of right in the Court of Appeals if the Commission renders a determination imposing public discipline (Tembeckjian Aff ¶¶ 26-29). *See also* Judiciary Law §§ 42-45.

Given these facts, the public policy articulated by the *Wiener* Court requires that complaints made to the Commission are protected by absolute privilege. As in *Wiener*, "it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of" judges to remit that knowledge to the

Commission. 22 NY2d at 332. Indeed "[t]here is hardly . . . a higher governmental interest than a State's interest in the quality of its judiciary" (*Nicholson*, 50 NY2d at 607) (quotation marks omitted), which the Court of Appeals has explicitly held to be "no less important than . . . protecting the integrity of the bar." *Rubenstein*, 23 NY3d at 582. Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," ensuring "public confidence in the judiciary is of singular importance." *Id.* at 581-82.

The same chilling effect that the *Wiener* Court sought to combat threatens the Commission now as a result of plaintiff's lawsuit: "If a complainant were to be subject to a libel action by the accused [judge]," as has happened here, "the effect in many instances might well be to deter the filing of legitimate charges" against judges in the future. *Wiener*, 22 NY2d at 332. That result – which is utterly incompatible with the Commission's constitutional mandate – is unacceptable. Fortunately, the solution is simple, requiring no more than an application of *Wiener* and its progeny to the logical conclusion that correspondence in the course of a Commission proceeding, including complaints made in the "preliminary or investigative stages of the process," are entitled to absolute privilege that confers full immunity against a defamation suit. *Rosenberg*, 8 NY3d at 363; *see Stega*, 31 NY3d at 670-71; *Toker*, 44 NY2d at 219; *Wiener*, 22 NY2d at 332.

B. Dismissal under CPLR 3211(a)(7) is an appropriate remedy.

CPLR 3211(a)(7) permits a court to dismiss a claim where the pleading fails to state a cause of action. Courts of this state have routinely invoked this statute to dismiss a defamation claim where the communications specified in the complaint were entitled to absolute privilege. *See eg, Credit Agricole Corporate and Inv Bank New York Branch v BDC Finance LLC*, 114 AD3d 552, 553 (1st Dept 2014); *Rufeh v Schwartz*, 50 AD3d 1002, 1004 (2d Dept 2008); *Allan and Allan Arts LTD v Rosenblum*, 201 AD2d 136, 137 (2d Dept 1994); *Capoccia v Couch*, 134 AD2d 806, 807 (3d Dept 1987); *see also Wiener*, 22 NY2d at 331, 333 (granting motion to dismiss pursuant to "CPLR 3211 (subd. (a))").

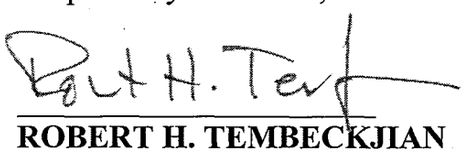
Accordingly, this Court should dismiss the claim against Ms. Koch pursuant to CPLR 3211(a)(7).

CONCLUSION

For the foregoing reasons, Commission Counsel respectfully requests that the Commission's motion for intervention be granted and the plaintiff's action be dismissed based on the absolute privilege attached to the defendant's complaint alleging judicial misconduct.

Dated: February 6, 2023
Albany, New York

Respectfully submitted,



ROBERT H. TEMBECKJIAN
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DAVID P. STROMES
LITIGATION COUNSEL

CONFIDENTIAL

February 6, 2023

VIA NYS-CEF
Chief Clerk Michael Thompson
Dutchess County Supreme Court
10 Market Street
Poughkeepsie, NY 12601

Re: ***Mora v. Koch***, Index No. 2022-54141

Dear Mr. Thompson,

I am a Senior Litigation Counsel with the New York State Commission on Judicial Conduct.

Submitted herewith for electronic filing in this matter please find the Notice of Motion, Affirmation of Robert H. Tembeckjian, Proposed Answer and Memorandum of Law, in support of the Commission's motion to intervene in this action and to dismiss the Petition in its entirety. This matter is assigned to Hon. Maria G. Rosa.

Please note that the Commission is requesting oral argument. It is our understanding that Judge Rosa has scheduled oral argument of the motion by defendant Koch for March 8, 2023 at 9:30 AM. We would like to have oral argument on the same date and time as defendant Koch's motion.

As the Commission is an agency of the State of New York, no fee is required to be paid for the filing of this motion.

Thank you for your attention to this matter.

Respectfully,

Denise Buckley

Denise Buckley
Senior Litigation Counsel

Enclosures

cc (via NYSCEF):
Michael H. Sussman, Esq.
Sussman & Associates
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Raphael Holoszyc-Pimentel
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1251 Avenue of the Americas, 21st Floor
New York, NY 10020
Tel: [redacted]

STATE OF NEW YORK
COUNTY OF DUTCHESS SS:
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter No Fee Auth. # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY SEAL

AUG 31 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

FILED: DUTCHESS COUNTY CLERK 02/07/2023 03:00 PM INDEX NO. 2022-54141
NYSCEF DOC. NO. 19 RECEIVED NYSCEF: 02/07/2023
FILED: DUTCHESS COUNTY CLERK 02/06/2023 04:36 PM INDEX NO. 2022-54141
NYSCEF DOC. NO. 19 RECEIVED NYSCEF: 02/06/2023

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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DAVID P. STROMES
LITIGATION COUNSEL

CONFIDENTIAL

February 6, 2023

Maria G. Rosa, J.S.C.
Request: Granted/~~Denied~~
Date: oral argument 3/8/23 @ 930a.m.
Failure To NOTIFY OPPOSING SIDE OR
COUNSEL May Result In **SANCTIONS**

VIA NYS-CEF
Chief Clerk Michael Thompson
Dutchess County Supreme Court
10 Market Street
Poughkeepsie, NY 12601

Re: ***Mora v. Koch,*** Index No. 2022-54141

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I am a Senior Litigation Counsel with the New York State Commission on Judicial Conduct.

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1 of 2

As the Commission is an agency of the State of New York, no fee is required to be paid for the filing of this motion.

Thank you for your attention to this matter.

Respectfully,

Denise Buckley

Denise Buckley
Senior Litigation Counsel

Enclosures

cc (via NYSCEF):
Michael H. Sussman, Esq.
Sussman & Associates
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1 Railroad Avenue, Ste 3
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Raphael Holoszyc-Pimentel
Davis Wright Tremaine LLP
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DUTCHESS COUNTY

AUG 31 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

2 of 2

Maria G. Rosa, J.S.C.
Adjournment Request: Granted/~~Denied~~.
New Date: ~~X~~
Failure To NOTIFY OPPOSING SIDE OR COUNSEL May Result In **SANCTIONS**

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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LITIGATION COUNSEL

February 21, 2023

VIA NYSCEF

The Honorable Maria G. Rosa
New York State Supreme Court
Dutchess County Chambers
10 Market Street
Poughkeepsie, New York 12601

The briefing schedule suggested in Mr. Sussman's letter is acceptable. The time for responsive papers and oral argument on the Commission's motion shall be the same as for the parties.
* oral argument is adjourned to 3/27/23 at 9:30 a.m.
* A settlement conference will be held 3/8/23 at 9:30 a.m.

Re: Frank Mora v. Stacey Koch, Index No. 2022-54141

Dear Justice Rosa:

We are in receipt of Mr. Sussman's February 18, 2023, letter (NYSCEF No. 21) requesting an extension of plaintiff's time to answer defendant Stacey Koch's motion to dismiss the complaint and that oral argument on the matter be rescheduled from March 8, 2023, to either March 27th or 31st.

As the Court and the parties are aware, the Commission's motions to intervene and to dismiss the plaintiff's complaint were scheduled to be heard on March 8th at the same time as defendant's motion.

Mr. Sussman has not contacted the Commission regarding an extension of time to answer or an adjournment of oral argument on the Commission's motions. Given the substantial overlap between the issues raised in the defendant's and Commission's motions, and in the interest of judicial economy, we respectfully request that if the Court grants Mr. Sussman's application as to the defendant's motion to dismiss, that the time for

responsive papers and argument on the Commission's motions be rescheduled for the same days and time.

I am available for argument on either March 27th or 31st, the dates proposed by Mr. Sussman.

Respectfully submitted,

Edward Lindner
Deputy Administrator

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, **BRADFORD KENDALL**, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 2-21-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY

AUG 31 2023

COUNTY CLERK AND CLERK OF SUPREME AND COUNTY

Maria G. Rosa, J.S.C.
Adjournment Request: Granted/~~Denied~~.
New Date: ~~X~~
Failure To NOTIFY OPPOSING SIDE OR COUNSEL May Result In **SANCTIONS**

NEW YORK STATE
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February 21, 2023

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~~X~~ oral argument is adjourned to 3/27/23 at 9:30 a.m.

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AUG 31 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURT

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF DUTCHESS Index No. 2022-54141

----------x

FRANK MORA,

Plaintiff,

vs.

STACEY KOCH,

Defendant.

----------x

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Assigned: Rosa, J.S.C.

PRELIMINARY STATEMENT

This is a defamation claim arising from the false and damaging statements written by defendant concerning plaintiff, a sitting Judge, to the New York State Commission on Judicial Conduct. Through her false and libelous statements, defendant intentionally sought to imperil and jeopardize plaintiff's ability to practice his profession and caused plaintiff substantial emotion distress and humiliation.

STATEMENT OF FACTS [1]

[1] Violating the most basic rules governing adjudication of motions to dismiss, (*Cohn v Lionel Corp.*, 21 N.Y.2d 559, 562 [1968], defendant Koch presents her own version of events and requests that this Court adjudicate the case on her narrative. But doing so would be plain error and the facts set forth below should control resolution of this motion. Judge Mora has a medical condition in which he is not able to tolerate the wearing of masks. He was given specific permission from his Administrative Judge, Hon. Kathie Davidson, and Deputy Chief Administrative Judge for Courts Outside of New York City, Hon. Vito C. Caruso, to wear a face shield in lieu of a mask due to his condition. In addition, Judge Mora was given specific permission to be in the Poughkeepsie City Court for each and every time that he was there. Further, Judge Mora was directed by his Administrative Judge to conduct criminal cases virtually. Surely, the headline "Unvaxxed NY Judge Defies Courthouses Ban As Others Ousted" is a sensational one. If the reporter had integrity, he would have published the truth. But the truth is not as interesting as the fiction he created.

According to the Verified Complaint, the factual statements of which control disposition of this motion, Plaintiff Frank Mora is a resident of the City of Poughkeepsie, County of Dutchess, and is a person of legal age who may sue and be sued, and Defendant Stacey Koch is a person of legal age who lives in the City of Poughkeepsie, works in the County of Dutchess, is of legal age and may sue and be sued. The events giving rise to this Verified Complaint arose in the County of Dutchess as and between residents of this County and the sum in controversy is in excess of the jurisdiction of any inferior court. Accordingly, this Honorable Court has jurisdiction over this matter. In addition, the matter was timely filed, and defendant and intervenor make no contrary claim.

The Underlying Event

On December 28, 2021, within the last year, plaintiff brought one of his sons to Seeta Eye, an ophthalmology office in the County of Dutchess. *See* Complaint, para. 4. Defendant Koch was then the office manager of Seeta Eye and at work when plaintiff entered the business with his son. Plaintiff had a patient/provider relationship with Seeta Eye and had known defendant Koch for more than twenty years.

Earlier in 2021, when visiting Seeta Eye, plaintiff explained that he did not medically tolerate face masks and wore a shield. Defendant then permitted him to enter the waiting room/reception area with his face shield to pay for medical services which one of his sons received.

This court should completely disregard the Law360 article and Judge Mora's federal lawsuit that has been brought up by Defendant Koch. They are both completely irrelevant to the instant matter and are only submitted in an attempt to prejudice the court against Judge Mora.

On December 28, 2021, plaintiff again attended to the reception area wearing a face shield with another son. A receptionist asked him to put on a mask and plaintiff advised he could not do so as he does not medically tolerate masks. The receptionist asked plaintiff to speak with defendant Koch, the office manager, and then called her. Upon her arrival, Koch demanded that plaintiff don a mask even though, earlier in 2021, he had explained to her that he was unable medically to do so.

When plaintiff began to again explain why he could not do so, Koch began yelling at him in a rude and disrespectful manner and demanded that plaintiff provide medical documentation of his incapacity to wear a mask. Such a demand of a patient was unlawful [under Interim Guidance provided by the Governor's office on April 17, 2020]. The authority for entities to set a mask policy is governed by 10 NYCRR 2.60. This regulation is very clear stating that only those "able to medically tolerate a face-mask may be required to cover their nose and mouth with a mask or face-covering...." Accordingly, any mask policy must except a person who is not able to medically tolerate a mask. This was not done.

Judge Mora had clearly advised Koch eleven (11) months prior to this incident that he did not medically tolerate a mask. He then again advised both the receptionist and Koch at the time of the incident. Further, the regulation does not require, nor does it make any mention of, proof of medical documentation. Even so, Judge Mora provided medical documentation, which Defendant Koch unilaterally deemed bogus. Even after Defendant Koch verified directly with Dr. M[redacted] that he had sent the documentation, Defendant Koch still wrote in her complaint to the Commission that it was "seemingly bogus."

After defendant Koch yelled and screamed at the plaintiff, she called the police and after calling the police, she again claimed that plaintiff was upsetting other patients. After demanding

that plaintiff stop talking, defendant again called the police, this time reporting she was facing an emergency.

During defendant's second phone call to the police, plaintiff decided to try to further defuse the situation by leaving to obtain a doctor's note attesting to his inability to wear a mask. He advised defendant Koch he was going to seek such a note and left the medical office with his son.

Plaintiff reached his chiropractor who emailed a note which plaintiff forwarded to defendant Koch who received this note and allowed plaintiff and his son to return that afternoon to the eye doctor's office. The visit occurred without further incident.

Defendant Falsely Reports the Event to the New York State office of Judicial Conduct

The following day, Koch wrote statements about the incident which were false, professionally damaging to the plaintiff as a jurist, and calculated to subject him to personal ridicule and shame.

Specifically, on December 29, 2021, defendant wrote the following false and libelous statements on a complaint form provided by the New York State Office of Judicial Conduct:

a) "Mr. Mora *created a huge scene* in our waiting room…"

(b) "He *taunted me in front of a waiting room of @20 people…*"

(c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice.*"

(d) "He *then had a letter created* from Chiropractor G[redacted] M[redacted] [sic] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask."

(e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice."*

According to the Verified Complaint, each of these statements is materially false in that: [a] plaintiff did not cause a scene, let alone a "huge scene," in the waiting room; instead, defendant Koch lost her temper and began screaming and yelling as plaintiff sought to explain the situation; [b] plaintiff did not taunt Koch at any time; [c] plaintiff has abiding respect for the police and would never intimate or state the belief that, if called, police would not attend to a situation, and plaintiff had no information as to what the police conveyed to defendant about their intent to come, or not to come, to the medical office; [d] plaintiff would never "have a letter created" by a physician, a claim which intimates to a reasonable reader the exercise of some authority Judge Mora did not wield over a medical provider to make misrepresentations concerning his medical condition; and [e] at all times, plaintiff acted in a professional manner and the contrary claim is without any factual basis and diminishes plaintiff's reputation and his capacity to properly discharge his duties and responsibilities as a City Judge, his profession.

The account provided by Koch is further refuted by one eyewitness, an employee of Seeta, who, at great personal risk, attested to plaintiff's professional behavior during the December 28, 2021 incident with Koch.

Defendant's conduct has caused plaintiff emotional distress, humiliation, shame, and embarrassment and required him to answer her false claims before a state Commission designed and empowered to investigate judicial misconduct. By libeling plaintiff and avowedly and intentionally seeking to interfere with his capacity to perform the duties of his profession, defendant engaged in defamation *per se*.

Plaintiff seeks a jury trial on his defamation claim and compensatory damages of $250,000 and punitive damages of $175,000 against defendant.

LEGAL ARGUMENT

Defendant and the intervening Commission erroneously assert that, regardless of her intent or motive, Koch is entitled to absolute immunity because she provided her defamatory account of events to an investigative authority which New York State has empowered to investigate and discipline judges.

In fact, on its face, Koch's statement is an unsworn averment made out-of-court. It is not analogous to sworn testimony received in a court or to a sworn charge or testimony received by an administrative or investigative body. And, the Commission's web site, which invites complaints from members of the public about the judiciary and has a form for the completion of such complaints, does not suggest or require that such statements be sworn to or notarized. Nor does it promise or represent that a person filing such a complaint, let alone a sham or false complaint, will receive confidentiality or any form of immunity from suit filed by an offended party.

A. THE VERIFIED COMPLAINT MUST BE CONSTRUED IN THE LIGHT MOST FAVORABLE TO PLAINTIFF

On a motion to dismiss based upon absolute privilege, the facts must be taken most favorably to the plaintiff and "where there is a question as to the applicability of the privilege, the issue should be decided at trial." *Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986] ("In an analogous case involving a commercial relationship, where the offending statement included in the counterclaim charged the commission of fraud on numerous others (*Wiser v Koval*, 50 AD2d 523, 524 [1st Dept 1975], *appeal dismissed* 38 N.Y.2d 873 [1975], *lv*

dismissed 39 N.Y.2d 922 [1976]), this court held that the existence of a privilege at common law for the alleged defamation should be decided upon a trial. Applying the guidelines delineated in *Youmans* to the instant case, we find that triable issues of fact are raised as to the existence of the common-law privilege."). *Also see*, *Flomenhaft v. Finkelstein*, 127 A.D.3d 634, 637-38 (1st Dept 2015) (noting that Halperin remains good law, refusing to grant absolute immunity in favor of a person sued for making allegedly false out of court statements which allegedly predicated defamatory claims in lawsuit brought by a third party against plaintiff and referring the matter to fact-finder for resolution). The same principles and result obtain here.

B. DEFENDANT FILED A SHAM COMPLAINT AND IS NOT ENTITLED TO ABSOLUTE PRIVILEGE

When a person files a sham complaint and defames another intentionally in state court, s/he is not entitled to absolute immunity. *Halperin v Salvan*, *supra.* at 548. In *Halperin*, a lawyer filed suit against parties who had allegedly defamed him in the Complaint they filed to initiate a prior court case. The Court rejected any absolute immunity defense, holding, "[W]e cannot agree with our dissenting colleague's conclusion that the defamatory statements at issue are protected by the common-law privilege afforded to words spoken and written in the course of judicial proceedings. This privilege is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, *made in good faith and without malice*. (*Moore v Manufacturers Natl. Bank*, 123 N.Y. 420, 426 [1890].) In *Youmans v Smith, 153 N.Y. 214, 220 [1897]),* the court explained the relevant guidelines in determining whether the privilege has been lost: "If counsel through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and *so needlessly defamatory as to warrant the inference of express malice, they lose their privilege and must take the*

consequences. In other words, if the privilege is abused, protection is withdrawn." (Emphases added.)

Here, plaintiff alleges that defendant Koch intentionally made false and defamatory statements about him to induce the Commission to investigate and ultimately sanction him. The situation is directly analogous to that presented in *Flomenhaft, supra.*, where plaintiff alleged that Finkelstein "made false representations to Harrison about plaintiff and that the statements were made specifically to induce Harrison to start an action against the plaintiff." Likewise, here, plaintiff submits that Koch knowingly made false and defamatory out-of-court statements to the Commission which caused it to initiate proceedings against Judge Mora. In such a situation, no absolute privilege applies as a matter of law though a jury could conclude after hearing the evidence that Koch did NOT make her complaints with the required "sham" intent, making apposite the absolute privilege.

In short: in light of the allegations of plaintiff's Verified Complaint, no absolute immunity applies to Koch's defamatory statements, which were made out of court, never verified and, according to the Verified Complaint, offered in bad, not good, faith.

Defendant's motion is improperly premised on this court determining that defendant made her complaint in good faith and without malice, but this is inappropriate where, as here, the Verified Complaint avers the opposite – defendant intentionally made false statements about Judge Mora to embarrass and humiliate him and to have sanctions imposed upon him, and, as such, must be denied.

C. THE NATURE OF THE FORUM DOES NOT CONTROL

Defendant and the intervening Commission claim that because Koch's statements were made to a quasi-judicial forum, they automatically and categorically gain the benefit of an absolute privilege. This is plainly erroneous; the above-cited precedent establishes that even statements made in court pleadings and proceedings may be pierced and serve as a predicate for a defamation action where the trier of fact concludes that the false statements were a "sham," that is, made in bad faith and with the intent, as pled here, to subject a plaintiff to humiliation and embarrassment.

As this is such a case and as defendant Koch's complaint to the Commission constitutes libel *per se* and, if taken as true, presents plaintiff Mora as a person who should not be a jurist, defendant's motion should be denied.

Likewise, any claim that Mora instituted this proceeding in bad faith to retaliate against the defendant is categorically denied as plaintiff has no such intent and proceeds to vindicate his own professional reputation which defendant besmirched by her false and defamatory statements.

CONCLUSION

The instant motion should be denied, an answer filed within ten days, and a discovery schedule established.

Dated: March 6, 2023

Yours, etc.

MICHAEL H. SUSSMAN

STATE OF NEW YORK (COUNTY OF DUTCHESS) SS. Supreme
BRADFORD KENDALL, COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS,
DUTCHESS COUNTY DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL
THEREOF FILED OR RECORDED IN MY OFFICE ON 3-6-2023 #2022-54141
AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Memorandum of Law
IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL
AUG 31 2023
COUNTY CLERK & CLERK OF THE SUPREME & COUNTY COURTS, DUTCHESS COUNTY

SUSSMAN & ASSOCIATES
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To: All counsel through NYSCEF

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Legal Assistant

3/7/23

Honorable Maria Rosa
Justice, Supreme Court
County of Dutchess
10 Market Street
Poughkeepsie, NY

Counselors:
MARCH 8, 2023 (tomorrow) @ 9:30 a.m. was the original return date with appearances. That date was not the result of any rescheduling. Per the Court's part rules, please advise whether this adjournment request is on behalf of all counsel, or at least with their consent.

Re: **Mora v. Koch, Index No. 2022-54141**

Dear Justcie Rosa,

I represent plaintiff in this defamation case. Defendant has moved to dismiss and the motion is pending. The court has re-scheduled oral argument for the end of the month while also re-scheduling a settlement conference for tomorrow. Before receiving the latter date, I had scheduled four depositions in a pending federal case for tomorrow. Accordingly, I need to request an adjournment of this settlement conference.

In addition, I have already proposed to adversary counsel resolution of this case but his response suggests that we cannot resolve the case at this time. My suggestion is that we have a settlement conference the same day as the court has scheduled argument on the pending motion, that is in several weeks. Perhaps, by then, the parties will have had time to re-assess their current positions, making resolution more possible.

3/7/23

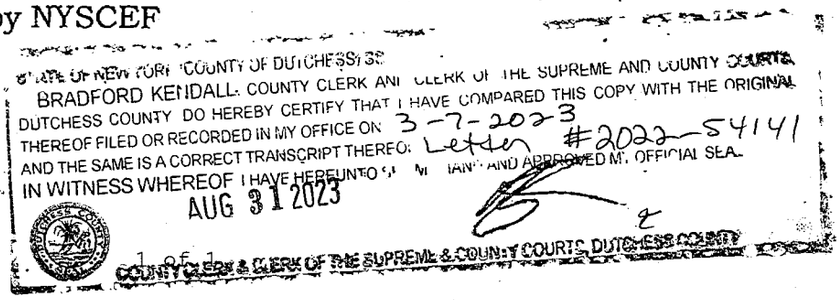
Thanks for your consideration.

on consent?

Yours respectfully,

Michael Sussman

cc: All counsel by NYSCEF



SUSSMAN & GOLDMAN
~Attorneys at Law~
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Rasheed Hosein
Paralegal

Monica Ponce-Agredano
Legal Assistant

3/7/23

Honorable Maria Rosa
Justice, Supreme Court
County of Dutchess
10 Market Street
Poughkeepsie, NY

Maria G. Rosa, J.S.C.
Adjournment Request: Granted on consent
New Date: 3/27/23 9:30 *
Failure To NOTIFY OPPOSING SIDE OR COUNSEL May Result In SANCTIONS

Re: **Mora v. Koch, Index No. 2022-54141**

Dear Justcie Rosa,

* oral argument + settlement conference - No further Adjournment

I represent plaintiff in this defamation case. In response to Your Honor's note, I had attempted to resolve this matter before tomorrow's scheduled conference and learned that that effort failed late last week. In that light, I believe there is no good purpose for meeting tomorrow. That being expressed, Judge Mora and I certainly are prepared to try to resolve the matter at the next scheduled court appearance or before then.

As to Your Honor's inquiry, defendant's counsel do consent to the adjournment of tomorrow's settlement conference and, in that light, I would renew that request.

Thanks for your consideration.

Yours respectfully,

Michael Sussman

cc: All counsel by NYSCEF

STATE OF NEW YORK (COUNTY OF DUTCHESS) SS
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COUNTY CLERK & CLERK OF THE SUPREME & COUNTY COURTS, DUTCHESS COUNTY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 Assigned: Hon. Maria G. Rosa, J.S.C.

REPLY MEMORANDUM OF LAW IN SUPPORT OF KOCH'S MOTION TO DISMISS COMPLAINT

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 3-20-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Reply Memorandum #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/31/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

DAVIS WRIGHT TREMAINE LLP

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Attorneys for Defendant Stacey Koch

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Defendant Stacey Koch respectfully submits this reply memorandum of law in further support of her motion to dismiss the Verified Complaint of Plaintiff Frank Mora with prejudice and for attorneys' fees and costs.

I. PRELIMINARY STATEMENT

In her opening brief, Koch demonstrated that her complaint to the Commission commenced a judicial proceeding, the alleged defamatory statements in her complaint are therefore absolutely privileged, and she is entitled to attorneys' fees under the anti-SLAPP statute governing this action. In his opposition, Mora does not seriously dispute most of these points. Instead, his argument focuses on a narrow exception to the absolute privilege for "sham" proceedings and contends that Koch's complaint was a sham.

Mora's contention is belied by his own pleading and the record in this case. Not once does his Complaint allege that Koch perpetuated a sham proceeding. Moreover, the Commission's ongoing investigation, the affirmation of the Commission's Counsel, and Koch's complaint itself demonstrate that it is not even remotely a sham. The Court should reject Mora's belated and baseless "sham" argument.

As Koch noted in her opening brief, Mora's frivolous Complaint raises serious questions as to his motive for filing it. Mora's opposition makes a futile attempt to impugn Koch's motives, but the record makes clear that the only sham before this Court is Mora's Complaint. The Court should dismiss his Complaint with prejudice and award Koch her costs and attorneys' fees.

II. ARGUMENT

A. Mora Does Not Dispute that the Anti-SLAPP Statute Governs This Action

Mora does not dispute, and therefore concedes, that this action comes within the definition of a SLAPP suit and triggers the anti-SLAPP statute, as Koch argued in her opening

brief. *See* Koch's Mem. at 6–7, NYSCEF Doc. No. 6. Consequently, the anti-SLAPP statute sets the standard of review and displaces the traditional motion-to-dismiss standard on which Mora relies, *see* Pl.'s Mem. at 6–7, NYSCEF Doc. No. 26. *See also Griffith v. Daily Beast*, No. 100114/2020, 2022 WL 3339887, at *1 (Sup. Ct. N.Y. Cnty. Aug. 9, 2022) ("[Anti-SLAPP law] changed . . . the standard by which a court is to review a defendant's motion to dismiss.").

Under the anti-SLAPP standard, "the burden is upon the plaintiff to establish that its claim has the requisite substantial basis" in law. *Sackler v. Am. Broad. Cos.*, 71 Misc. 3d 693, 700 (Sup. Ct. N.Y. Cnty. 2021) (quoting *Duane Reade, Inc. v. Clark*, 2 Misc. 3d 1007(A), at *5 (Sup. Ct. N.Y. Cnty. 2004)). A "substantial basis in law" requires "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." *Smartmatic USA Corp. v. Fox Corp.*, 2023 N.Y. Slip Op. 00832, at **1 (1st Dep't Feb. 14, 2023) (quoting *Golby v. N & P Eng'rs & Land Surveyor, PLLC*, 185 A.D.3d 792, 793–94 (2d Dep't 2020)). As explained here and in Koch's opening brief, Mora cannot satisfy this "stringent standard." *Sackler*, 71 Misc. 3d at 700 (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5).

In a footnote, Mora objects to Koch's factual recitation and certain background information that undermines his preferred "narrative" alleged in his Complaint. Pl.'s Mem. at 1 n.1. But the Court may consider Koch's complaint to the Commission because it was attached as an exhibit to Mora's pleading and is thereby "incorporated by reference." *Shuman v. N.Y. Mag.*, 72 Misc. 3d 1211(A), at *2 (Sup. Ct. N.Y. Cnty. 2021), *aff'd*, 211 A.D.3d 558 (1st Dep't 2022). Moreover, the anti-SLAPP law allows the Court "to consider affidavits and other evidence not typically permitted under a CPLR 3211(a) motion to dismiss." *Project Veritas v. N.Y. Times Co.*, 2021 N.Y. Slip Op. 32892(U), at **8 (Sup. Ct. Westchester Cnty. Aug. 12, 2021). Thus, the Court may consider Koch's complaint to the Commission and other cited materials in her factual

recitation. In any event, Mora's preferred factual narrative is irrelevant, because Koch's complaint to the Commission is absolutely privileged "regardless of its truth or falsity." *Mayer v. Riordan*, 55 Misc. 3d 1203(A), at *7 (Sup. Ct. N.Y. Cnty. 2017) (citation omitted); *see also Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011) (holding that whether or not defendant's statements are valid is "irrelevant"), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).[1]

B. The Absolute Privilege for Statements in a Judicial Proceeding Protects Koch's Statements

Plaintiff cannot establish that his claim has a substantial basis because Koch's complaint to the Commission is absolutely privileged from defamation claims. Mora's contrary arguments are unavailing.

1. *Wiener v. Weintraub* Controls This Case

Mora cannot seriously dispute that under *Wiener v. Weintraub*, 22 N.Y.2d 330 (1968), a confidential complaint to bar or judicial authorities is absolutely privileged as a statement in a judicial proceeding. In his opposition, Mora notes that Koch's complaint was "an unsworn averment made out-of-court." Pl.'s Mem. at 6. He cites no authority for why this makes any difference. In fact, the "letter" to the grievance committee in *Wiener* was *also* an unsworn

[1] Because they are irrelevant, Koch will not belabor the many inaccuracies in Mora's "statement of facts." However, one false accusation merits rebuttal here. Mora contends that Koch was required to accept Mora's *ipse dixit* that he cannot "tolerate" a mask. Pl.'s Mem. at 3. In fact, unsupported assertions and even a physician's note do not automatically entitle an individual to a medical exemption from New York's mask mandate and must yield to public health concerns in certain circumstances. *See Doe v. Franklin Square Union Free Sch. Dist.*, 568 F. Supp. 3d 270, 289–90 (E.D.N.Y. 2021) (construing 10 N.Y. C.R.R. 2.60). That is particularly true here, where a chiropractor's note merely stated that Mora had an unspecified "medical condition," and the chiropractor refused to provide an actual diagnosis when Koch asked for one. Compl. Ex. 1; *see Strong v. Zucker*, 582 F. Supp. 3d 65, 71 (W.D.N.Y. 2022) (rejecting claim of plaintiff who purportedly could not "tolerate" a mask "due to some unspecified 'medical condition'"); *Adams v. City of New York*, 2022 N.Y. Slip Op. 30082(U), at **4–5 (Sup. Ct. N.Y. Cnty. Jan. 5, 2022) (rejecting claim of plaintiff who requested mask exemption but failed to provide "requisite medical documentation").

averment made out-of-court. *Wiener*, 22 N.Y.2d at 332; *see also Arts4All, Ltd. v. Hancock*, 5 A.D.3d 106, 108 (1st Dep't 2004) ("We reject plaintiffs' argument that the privilege applies only to statements made under oath and not to out-of-court statements . . . ."). Mora faults the Commission's complaint form because it "does not suggest or require that such statements be sworn to or notarized." Pl.'s Mem. at 6. But neither does *Wiener* contain such a suggestion or requirement. Finally, Mora faults the complaint form because it does not "promise or represent that a person filing such a complaint . . . will receive confidentiality or any form of immunity from suit." *Id.* Again, *Wiener* contains no such requirement. But just like *Wiener*, Koch's complaint is protected by statutory confidentiality, under N.Y. Judiciary Law § 45(1). *See Wiener*, 22 N.Y.2d at 332 (citing N.Y. Judiciary Law § 90(10)).

Mora makes no attempt to distinguish *Wiener* because it is indistinguishable. Koch's complaint to the Commission is absolutely privileged just like the letter to the grievance committee in *Wiener*. *See* Koch's Mem. at 9–11. Mora also does not dispute that Koch's statements were pertinent to the proceeding. *See id.* at 12. Accordingly, just as was the case in *Wiener*, the motion to dismiss should be granted. *See Wiener*, 22 N.Y.2d at 332–33.

2. Koch's Complaint to the Commission Is Not a "Sham"

The absolute privilege applies to all statements in a judicial proceeding "regardless of the motive for which they were made." *Gottlieb v. Colonel*, 180 A.D.3d 877, 879 (2d Dep't 2020) (quoting *Brady v. Gaudelli*, 137 A.D.3d 951, 952 (2d Dep't 2016)); *see also Fay v. Fay*, 2020 N.Y. Slip Op. 34930(U), at **2 (Sup. Ct. Dutchess Cnty. Nov. 5, 2020) (Rosa, J.); *Wiener*, 22 N.Y.2d at 331. "Absolute privilege confers immunity from liability without regard to motivation, irrespective of the speaker's motive, *even if uttered with malice*." *Matchett v. Stark*, 2016 N.Y. Slip Op. 31302(U), at **11 (Sup. Ct. N.Y. Cnty. July 6, 2016) (emphasis added); *see also Mayer*, 55 Misc. 3d 1203(A), at *7 (absolute privilege applies "regardless of 'any malice,

bad faith, recklessness or lack of due care with which it was spoken or written, and regardless of its truth or falsity'"). A plaintiff's "allegations of malice and falsity, even if they are true, are insufficient to strip [defendant's] complaint of the protection of the absolute privilege accorded to judicial proceedings." *Tradition (N. Am.) Inc. v. Bernhardt*, 2009 N.Y. Slip Op. 30493(U), at **5 (Sup. Ct. N.Y. Cnty. Feb. 27, 2009).

Accordingly, Mora's claims of malice and bad faith are "irrelevant." *TRB Acquisitions LLC v. Yedid*, No. 651160/2021, 2021 WL 4350241, at *1 (Sup. Ct. N.Y. Cnty. Sep. 20, 2021). Nonetheless, Mora relies on *Halperin v. Salvan*, 117 A.D.2d 544 (1st Dep't 1986), to invoke a "narrow exception" to absolute privilege for "sham" proceedings.[2] *Azzopardi v. Giorio Armani Corp.*, 2014 N.Y. Slip Op. 30284(U), at **7 (Sup. Ct. N.Y. Cnty. Jan. 27, 2014). But as an initial matter, Mora, relying on 19th-century cases, sets forth an outdated and incorrect standard for the sham exception. *See* Pl.'s Mem. at 7–8 (citing *Moore v. Mfrs.' Nat. Bank*, 123 N.Y. 420, 426 (1890); *Youmans v. Smith*, 153 N.Y. 214, 220 (1897)).[3]

Under current law, the absolute privilege may be lost only where the sham proceeding is "brought *solely* to defame." *Manhattan Sports Rests. of Am., LLC v. Lieu*, 146 A.D.3d 727, 727 (1st Dep't 2017) (emphasis added) (quoting *Flomenhaft v. Finkelstein*, 127 A.D.3d 634, 638 (1st Dep't 2015)). This strict standard may be met where the complainant "failed to move forward" with the proceeding or where the adjudicating body suggested that the underlying complaint "is a

[2] The sham exception is available only in narrow circumstances because otherwise the exception would swallow the rule and "substantially contravene the policy that underlies the privilege." *Lacher v. Engel*, 33 A.D.3d 10, 14 (1st Dep't 2006); *see also* Koch's Mem. at 10–11 (explaining policy rationale for absolute privilege for statements in judicial proceedings).

[3] Moreover, even Mora's cited cases recognize that "the question of malice has no place" in cases of absolute privilege, *Moore*, 123 N.Y. at 426, which protects the statements "irrespective of the motive with which they are used," *Youmans*, 153 N.Y. at 219 (quoting *Marsh v. Ellsworth*, 50 N.Y. 309, 311 (1872)).

sham or was brought solely for defendant's malicious motive." *Lacher v. Engel*, 33 A.D.3d 10, 14 (1st Dep't 2006). Plainly, Mora cannot meet this standard for numerous reasons.

First, Mora's Complaint never alleges that Koch's complaint to the Commission was a sham or filed solely to defame Mora. In his brief, Mora cites no paragraph in his Complaint where he makes such an allegation, because he never did. His "sham" theory was concocted after the fact in a futile attempt to save his pleading. That is reason enough to dismiss his Complaint. *See Rosenberg v. Home Box Off., Inc.*, 2006 N.Y. Slip Op. 30358(U), at **20 (Sup. Ct. N.Y. Cnty. Jan. 30, 2006) ("[P]laintiff may not amend his complaint to add a new legal theory via statements in a memorandum of law in opposition to a pending dispositive motion."), *aff'd*, 33 A.D.3d 550 (1st Dep't 2006); *In re 9F Inc. Sec. Litig.*, 2023 N.Y. Slip Op. 30699(U), at **2 (Sup. Ct. N.Y. Cnty. Mar. 6, 2023) (dismissing complaint where plaintiffs' opposition papers asserted "new theories not reflected in the complaint").

Second, even if Mora had alleged a sham, such an allegation would be "conclusory and contradicted by the facts" in the record. *Lacher*, 33 A.D.3d at 13. On the face of Koch's complaint to the Commission, it is apparent that there were legitimate, non-malicious reasons for her complaint. Koch openly stated the reasons for making her complaint: "This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County." Compl. Ex. 1. This express explanation of her good faith undermines any claim that Koch filed her complaint for the sole reason to defame Mora. *See Peck v. Peck*, 2018 N.Y. Slip Op. 30990(U), at **22 (Sup. Ct. N.Y. Cnty. May 25, 2018) (rejecting sham exception where defendant had "motives other than to defame"), *aff'd*, 180 A.D.3d 558 (1st Dep't 2020).

Moreover, neither Koch nor the Commission failed to move forward with Koch's complaint. To the contrary, the Commission authorized an investigation into Koch's complaint, conducted witness interviews, propounded written questions to Mora, and received answers to those questions. Tembeckjian Aff. ¶¶ 14–16, NYSCEF Doc. No. 16;[4] Compl. ¶ 27. The Commission's investigation remains ongoing, and the Commission is scheduling additional witness interviews and intends to call Mora to testify. Tembeckjian Aff. ¶¶ 18–19; *see Peck*, 2018 N.Y. Slip Op. 30990(U), at **22 (rejecting sham exception where underlying "actions were and continue to be actively litigated").

The Commission has never remotely suggested that Koch's complaint was a sham. If her complaint lacked merit, the Commission could—but did not—summarily dismiss it. *See* N.Y. Judiciary Law § 44(1). The fact that the Commission instead chose to open an investigation—and continues to actively pursue that investigation—confirms that her complaint is not a sham. *See Chutko v. Ben-Ami*, 150 A.D.3d 582, 583 (1st Dep't 2017) (rejecting allegation of bad faith where adjudicating body "found that there were reasonable grounds to inquire into" litigant's claim); *Manhattan Sports*, 146 A.D.3d at 727 ("The fact that several of [litigant's] claims were sustained . . . further undercuts [the] contention that this litigation is a sham.").[5]

[4] Under the anti-SLAPP statute, the Court may consider the Affirmation of Robert H. Tembeckjian on this motion to dismiss. *See* N.Y. C.P.L.R. 3211(g)(2).

[5] The Commission's continuing and diligent investigation of Koch's complaint easily distinguishes this case from Mora's cited cases. In *Halperin*, the defendants filed but never prosecuted the underlying action containing the allegedly defamatory statements. *Halperin*, 117 A.D.2d at 545. In *Flomenhaft*, there was "little in the record" concerning the extent to which the underlying action was litigated, other than the fact that it was discontinued (and the underlying litigant then sued the alleged defamer upon realizing it was a sham). *Flomenhaft*, 127 A.D.3d at 636, 638. Here, in sharp contrast, the Commission's Counsel has affirmed that its investigation is ongoing and listed the various investigative steps it has taken and continues to take. Tembeckjian Aff. ¶¶ 14–19.

Finally, if Koch had intended solely to defame Mora, it would be an odd scheme to defame him by filing a complaint that must be kept, by statute, *confidential*. *See* N.Y. Judiciary Law § 45(1). If her complaint were a sham, it would inevitably be dismissed and never see the light of day or in any way harm Mora's reputation, which would defeat the point of the supposed sham. In sum, all the facts and circumstances indicate that Koch's complaint is not a sham, and certainly Mora has not established a substantial basis that it is, as is his burden in this SLAPP suit.

The only sham before this Court is Mora's Complaint in this case. Mora's baseless attempt to impugn Koch's motives cannot distract from the serious questions about his own motive in filing this case. The fundamental defects in his pleading, and his hollow claim to reputational damage by a confidential complaint that he himself publicly disclosed, reasonably lead to the conclusion that he filed this action to retaliate against and intimidate Koch or other witnesses in his pending misconduct inquiry. The Commission's Counsel shares this conclusion, and warns that Mora's retaliatory lawsuit, if allowed to proceed, will have a chilling effect on witnesses—the very harms that the absolute privilege is meant to prevent. *See* Tembeckjian Aff. ¶ 4. Notably, Mora's only response to these serious questions about his motive is a single sentence containing a conclusory denial.[6] *See* Pl.'s Mem. at 9.

[6] In fact, Mora's brief only compounds the questions about his motive. He decries as "fiction" the "sensational" allegations in a Law360 article that he violated court rules and criminal procedure. Pl.'s Mem. at 1 n.1. Curiously, Mora did not sue Law360 for defaming him with supposedly sensational allegations distributed to innumerable industry professionals, but he did file this defamation lawsuit against a private citizen who filed a confidential complaint alleging unprofessional behavior. Mora's selective prosecution of his supposed reputational damage suggests that he had an ulterior motive in singling out Koch with this lawsuit.

C. Koch Is Entitled to Attorneys' Fees and Costs

Mora does not dispute that, under the anti-SLAPP statute, if his case is dismissed, Koch is entitled to a mandatory award of attorneys' fees and costs. *See* Koch's Mem. at 13. Accordingly, Koch's request for attorneys' fees should be granted.

As this Court has previously noted, it is "deeply troubl[ing]" that a plaintiff—let alone a sitting judge—would file a defamation action based on a private citizen's reporting to government authorities her observations of conduct that she believed was improper. *Gottlieb v. Colonel*, 2016 N.Y. Slip Op. 33085(U), at **3–4 (Sup. Ct. Dutchess Cnty. Dec. 14, 2016) (Rosa, J.) (awarding attorney's fees and imposing sanctions), *judgment entered*, 2017 WL 11546097 (Sup. Ct. Dutchess Cnty. Mar. 6, 2017), *aff'd*, 180 A.D.3d 877 (2d Dep't 2020). Given that Koch's complaint was clearly privileged, Mora's action was "baseless" and "completely without merit in law." *Id.* at **3. Mora should bear the costs that he has imposed on Koch with this baseless lawsuit.

III. CONCLUSION

For all the foregoing reasons and those set forth in her opening brief, the Court should dismiss the Complaint with prejudice and award Koch her attorneys' fees and costs.

Dated: March 20, 2023

Respectfully submitted,

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Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Victor A. Kovner, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Reply Memorandum of Law in Support of Koch's Motion to Dismiss Complaint contains 2,984 words.

/s/ Victor A. Kovner
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SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

MEMORANDUM OF LAW IN REPLY

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STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 3-20-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Memorandum #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY SEAL

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

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PRELIMINARY STATEMENT

This Memorandum of Law is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in reply to plaintiff's opposition (Dkt. 26, Plf Opp) to defendant's motion to dismiss the complaint (Dkt. 15-18) and in further support of the Commission's motions to intervene and dismiss the complaint.[1]

POINT I

PLAINTIFF'S SILENCE REGARDING THE COMMISSION'S MOTION TO INTERVENE IS A CONCESSION THAT INTERVENTION IS APPROPRIATE.

Plaintiff's opposition is completely silent as to the Commission's motion to intervene in this matter. *See, generally,* Dkt. 26, Plf Opp. As a result, he has conceded that the Commission's intervention in this action is appropriate. *See People v. Gruden*, 42 NY2d 214, 216 (1977) ("Normally what is not disputed is deemed to be conceded."). For all the reasons set forth in the Commission's motion papers, the Commission respectfully requests that the Court grant its motion to intervene. *See* Dkt. 18, Com MOL, pp. 5-9.

[1] Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss is referred to herein as "Dkt. 26, Plf Opp", the Affirmation of Robert H. Tembeckjian in support of the Commission's motions to intervene and dismiss the complaint is referred to herein as "Dkt. 16, Tembeckjian Aff", and the Commission's Memorandum of Law in support of its motions to intervene and dismiss the complaint is referred to herein as "Dkt. 18, Com MOL".

POINT II

PLAINTIFF'S COMPLAINT IS BARRED BY THE DOCTRINE OF ABSOLUTE PRIVILEGE AND MUST BE DISMISSED PRE-ANSWER.

For more than one hundred years, Court of Appeals precedent has held that allegedly defamatory statements made in a judicial proceeding are protected by absolute privilege, so long as they are material and pertinent to the proceeding.

More than fifty years ago, in *Wiener v. Weintraub,* 22 NY2d 330 (1968), the Court of Appeals explicitly extended that same protection to statements made to a quasi-judicial disciplinary agency, such as the Commission. In doing so, the Court recognized that it is in the "public interest to encourage those who have knowledge of dishonest or unethical conduct impart that knowledge to a . . . designated body for investigation" and that fear of being sued for defamation might deter complainants from coming forward. *Id.* at 332.

To allow this action to proceed and require defendant to bear the cost of extended litigation would create the very chilling effect that the absolute privilege recognized by *Wiener* was designed to prevent. Indeed, an "absolute" privilege that is recognized only after responsive pleadings, discovery, and trial is no different from the qualified privilege afforded defendants in other contexts. Subjecting defendants who file misconduct complaints against judges to the cost and anxiety of protracted litigation will discourage the filing of complaints just as

if no privilege existed. Consistent with Court of Appeals' precedent and the State's important interest in maintaining public confidence in the integrity of the judiciary, this Court should grant the Commission's motion to dismiss the complaint.

A. The Court of Appeals' Holding in *Wiener v. Weintraub* Affords Absolute Privilege to All Complaints Made to the Commission, Even Complaints That are False and Maliciously Made.

The Court of Appeals' holding in *Wiener* affords absolute immunity to any complaint made to the Commission, even if false and maliciously made, so long as the statements made are material and pertinent to an alleged violation of the Rules Governing Judicial Conduct.

In *Wiener,* the Court reiterated the long-established principle that "statements . . . made in the course of judicial proceedings are privileged as long as such statements are material and pertinent to the questions involved . . . irrespective of the motive with which they are made." *Wiener*, 22 NY2d at 331 (emphasis added; internal quotations omitted). After observing that a proceeding before a body such as the Attorney Grievance Committee constitutes a "judicial proceeding" (*id.,* quoting *Doe v. Rosenberry*, 255 F.2d 118, 120 [1958]), the Court went on to find that "since the statement to the Grievance Committee was material and pertinent to the matter in issue, the defendants were protected by an absolute

privilege and the courts below had no alternative but to grant the motion dismissing the complaint." *Wiener*, 22 NY2d at 332-33.

Like the defendants in *Wiener*, defendant's complaint to the Commission is material and pertinent to the question of whether plaintiff has engaged in judicial misconduct. Here, defendant's allegedly defamatory statements consist of a series of allegations about plaintiff's conduct on December 28, 2021, during a visit to the ophthalmology office where defendant worked, including that plaintiff refused to comply with the office's masking policy, created a scene in the waiting room that resulted in a call to the police, and engaged in additional behavior unbecoming of a New York State judge. *See* Dkt. 2, Exhibit 1 to plaintiff's Complaint. These allegations, if substantiated, could result in a Commission determination that plaintiff has committed judicial misconduct.[2] The fact that the allegations are material and pertinent to the issue of judicial misconduct triggers the privilege and leaves this court with "no alternative but to grant the motion dismissing the complaint." *Wiener*, 22 NY2d at 332-33.

Plaintiff does not and cannot dispute the materiality and pertinence of defendant's complaint to the Commission. Instead, he attempts to evade dismissal

[2] This is so even though the alleged conduct did not take place inside a courthouse. Indeed, as the Court of Appeals has observed, "[t]here is no question that judges are accountable for their conduct at all times," and "misconduct, no matter where it occurs, subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge" *Matter of Senzer,* 35 NY3d 216, 220 (2020) (quoting *Matter of Backal*, 87 NY2d 1, 8 [1995] and *Matter of Kuehnel v State Commn. on Jud. Conduct*, 49 NY2d 465, 469 [1980], internal citations omitted).

of his complaint by alleging that defendant's communication to the Commission was a "'sham' . . . made in bad faith and with the intent . . . to subject plaintiff to humiliation and embarrassment." (Dkt. 26, Plf Opp, pp. 7-8; 9).

Plaintiff's argument misconstrues the case law. As a plain reading of *Wiener* makes clear, the extremely narrow exception denying absolute privilege for statements made in "sham" judicial proceedings brought solely for the purpose of defamation is simply inapplicable to cases like the one at bar. Thus, plaintiff's reliance on *Halperin v. Salvan*, 117 AD2d 544 (1st Dept 1986) (Dkt. 26, Plf Opp, pp. 7-8) is misplaced. Indeed, it rests on a failure to apprehend the vast public policy difference between protecting judicial proceedings in general and protecting proceedings that specifically address the honesty and integrity of judges and judicial officers.[3]

Petitioner is correct that *Halperin* holds that in some limited circumstances, the absolute privilege afforded statements made in ordinary civil suits can be "lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, made in good faith and without malice." *Id.* at 548. (Dkt. 26, Plf Opp,

[3] In fact, *Halperin* has been recognized to misstate well-established New York law on absolute privilege. Observing that the Court of Appeals had long ago concluded that "'[m]alice and bad faith simply do not destroy the privilege if the statements meet the minimal standard for pertinence,'" the court in *Pandozy v. Tobey*, 2007 U.S. Dist. LEXIS 76400, *3, 2007 WL 3010333, *1 (SDNY 2007), concluded that *Halperin* "is an aberration and that it misstates long-settled New York law on the subject." *Id.*

p. 7). But no such language appears in *Wiener*. To the contrary, the Court of Appeals explicitly extended absolute privilege to shield even malicious and bad-faith complaints of attorney misconduct from liability for defamation. *Wiener* recognized that:

> on occasion false and malicious complaints will be made. But, . . . the necessity of maintaining the high standards of our bar – indeed, the proper administration of justice – requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

22 NY3d at 332 (emphasis added).

Subsequent to *Wiener,* the Court of Appeals has repeatedly referenced the magnitude of affected public policy concerns when determining whether alleged defamatory statements are protected by absolute privilege. *See Liberman v Gelstein,* 89 NY2d 429, 437 (1992) ("When compelling public policy requires that the speaker be immune from suit, the law affords an absolute privilege"); *Rosenberg v MetLife, Inc*, 8 NY3d 359, 365 (2007) ("absolute privilege can extend to preliminary or investigative stages of the process, particularly where compelling public interests are at stake") (citing *Wiener*, *supra*).

The public policy considerations that led the Court to confer absolute immunity on allegations of attorney misconduct – even false allegations maliciously made – apply with even greater force to allegations of judicial misconduct. Indeed "[t]here is hardly . . . a higher governmental interest than a

State's interest in the quality of its judiciary." *Nicholson v State Com. on Judicial Conduct*, 50 NY2d 597, 607 (1980). In furtherance of that vital governmental interest, the Commission was created to "protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984). "Experience teaches that the effective performance of that function necessarily requires the free flow of information to the Commission." *Id.*

Requiring the defendant to bear the cost and suffer the anxiety of extended litigation threatens that "free flow of information" not just in this case, but in every potential investigation where complainants or witnesses fears that statements to the Commission adverse to the subject judge may expose them to suit. The doctrine of absolute privilege is designed to protect against that "chilling effect" by ensuring that the personal interests of "individuals participating in a public function, such as . . . quasi-judicial proceedings" do not suffer "an adverse impact," "especially fear of a civil action, whether successful or otherwise." *Rosenberg v. Metlife, Inc.*, 8 NY3d 359, 365 (2007).

Here, plaintiff's frivolous defamation suit has clearly imperiled that "free flow of information" to the Commission. This Court should dismiss his complaint, which never should have been brought in the first place.

B. Plaintiff Has Not Alleged Any Facts Sufficient to Invoke the "Sham" Exception to Absolute Immunity.

Even assuming, *arguendo*, that the "sham" exception to absolute immunity was available in this case, plaintiff has not alleged facts even remotely sufficient to warrant its application. Indeed, his complaint provides no facts in support of that theory at all. Nowhere in plaintiff's verified complaint does he allege that the defendant's complaint to the Commission was a "sham" or that she acted with malice. (Dkt. 1, Plf Complaint).

Instead, plaintiff asks this Court to deny the defendant absolute immunity for her complaint to the Commission solely on his own conclusory "alleg[ation] that defendant Koch intentionally made false and defamatory statements about him." (Dkt. 26, Plf Opp, p. 8). As *Halperin* and its progeny make clear, that bare allegation falls far short of what is required.

Halperin cites the Court of Appeals' decision in *Youmans v. Smith*, 153 NY 214, 220 (1897) for the "relevant guidelines in determining whether the privilege has been lost." *Youmans* held:

> If counsel through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege and must take the consequences.

Halperin at 548 (quoting *Youmans*, emphasis added). Nothing in plaintiff's complaint comes close to alleging that the defendant's statements to the Commission could meet that exacting standard.

As the First Department explained in *Lacher v Engel,* 33 AD3d 10 (1st Dept 2006), something more than a mere allegation of malice is required find that the privilege has been lost. *Lachler* noted that:

> In Halperin, this Court found that the allegation of malicious intent was "arguably substantiated" by the fact that the plaintiffs had not moved forward with the lawsuit, and because of the inflammatory language describing the purported class in the caption.

Id. at 14. In contrast, the *Lachler* Court found no factual basis in the record to support the plaintiff's contention that the defendant's "statements were made maliciously, and that the action was a mere sham for the purposes of cloaking defamatory statements" finding instead that the "allegations [were] conclusory and contradicted by the facts." *Id.* at 13. That same analysis applies in this case – plaintiff's "conclusory" allegation that defendant acted in bad faith cannot defeat the absolute privilege.

Contrary to the plaintiff's claim, *Flomenhaft v. Finkelstein*, 127 AD3d 634 (1st Dept 2015) (*see* Dkt. 26, Plf Opp, p. 8), does not support his argument. *Flomenhaft* acknowledged that ". . . a statement that is pertinent to litigation is absolutely privileged and cannot form the basis of a defamation action." *Id.* at 637.

The Court also reiterated the well-settled rule that "where the privilege is invoked, any doubts are to be resolved in favor of pertinence" and "the test to determine whether a statement is pertinent to litigation is extremely liberal, such that the offending statement, to be actionable, must have been outrageously out of context." *Id.* (internal quotations and citations omitted). As in *Halperin,* however, the *Flomenhaft* court found documentary facts in the record "supported plaintiff's claim that the lawsuit . . . against plaintiff was a sham." *Id.* at 638. Because plaintiff can point to no facts in this record supporting his claim that defendant's complaint to the Commission was made in bad faith, *Flomenhaft* is inapposite.[4]

There is no evidence that defendant Koch made her complaint to the Commission in bad faith, with malice, or that her complaint is a "sham" brought solely to embarrass the plaintiff. The fact that the Commission is investigating defendant's complaint (Dkt. 16, Tembeckjian Aff. ¶¶3-4) is conclusive evidence that defendant's statements are material and pertinent to the issue of judicial misconduct. Defendant has done all that she could do to press forward with her complaint. Plaintiff has not and cannot allege that defendant has taken any steps to

[4] There is also no basis for plaintiff's assertion that a complainant's use of the Commission's online complaint form, as opposed to making allegations in a sworn statement, nullifies the protection of absolute privilege (Dkt. 26, Plf Opp, p. 6). The Appellate Division, First Department has expressly rejected the assertion "that the privilege applies only to statements made under oath and not to out-of-court statements." *Arts4All, Ltd. v. Hancock*, 5 AD3d 106, 108 (1st Dept 2004).

withdraw or abandon her complaint. As a result, even if the "sham" exception set out in *Halperin* were applicable in this case, there is simply no factual basis to support its application here.

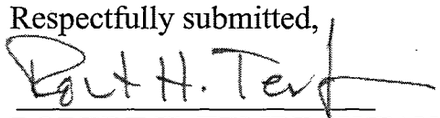
In sum, plaintiff does not dispute that the allegations made by defendant in her complaint to the Commission are material and pertinent to the issue of whether plaintiff engaged in judicial misconduct. There is not a single fact in the record to support plaintiff's conclusory allegation that her complaint was made in bad faith. As in *Wiener,* this court has "no alternative but to grant the motion dismissing the complaint." *Wiener*, 22 NY2d at 332-33.

CONCLUSION

For the foregoing reasons, Commission Counsel respectfully requests that the Commission's motion for intervention be granted and plaintiff's action be dismissed based on the absolute privilege attached to the defendant's complaint.

Dated: March 20, 2023
Albany, New York

Respectfully submitted,



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Commission on Judicial Conduct
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

FRANK MORA,

Plaintiff,

-against-

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

DECISION AND ORDER

Index No. 2022-54141

Motion Sequences: 1, 2

The following papers were read and considered on the motion of Defendant seeking dismissal of the complaint and for an award of attorney's fees and costs (Seq. #1); and the motion of Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") seeking dismissal of the complaint. (Seq. #2):

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NOTICE OF MOTION – Seq. #2	15

[1] Plaintiff filed a single memorandum of law in opposition, addressing arguments made in both pending motions.

AFFIRMATION IN SUPPORT 16
PROPOSED ANSWER 17
MEMORANDUM OF LAW IN SUPPORT 18

MEMORANDUM OF LAW IN OPPOSITION 26

REPLY MEMORANDUM OF LAW 32

BACKGROUND

This is an action for defamation. The following facts are taken from the complaint and presumed to be true for purposes of deciding both motions.

The events giving rise to this action commenced on December 28, 2021. That day, Plaintiff, a Judge of the Poughkeepsie City Court, brought his son to an ophthalmology office where a dispute arose between Plaintiff and the office manager, Defendant, regarding Plaintiff's unwillingness to wear a face mask while in the office. The following day, December 29, 2021, Defendant wrote certain "statements concerning [Plaintiff] . . . to the New York State Commission on Judicial Conduct" (Complaint at "Preliminary Statement"). The written statements were submitted via a complaint form provided by the New York State Office [sic] of Judicial Conduct" (*id.* at ¶24).[2]

Plaintiff alleges that Defendant's statements were false, libelous, professionally damaging to him as a jurist and calculated to subject him to personal ridicule and shame (*id.* at ¶¶ 23–24). Plaintiff further alleges that Defendant's statements caused him "emotional distress, humiliation, shame and embarrassment and required him to answer [Defendant's] false claims before a state commission designed and empowered to investigate judicial misconduct" (*id.* at ¶27). As a result of these events, Plaintiff seeks compensatory and punitive damages of $425,000.00 on a single cause of action for defamation *per se*.

Oral argument on these motions was held March 27, 2023, at which time all parties were heard. The first branch of the Commission's motion seeking leave to intervene in this matter was granted on the record as unopposed, and the caption has been amended accordingly. Defendant moves to dismiss the complaint pursuant to the defense of absolute privilege and pursuant to New York's "anti-SLAPP" statutes. The Commission moves for dismissal based on absolute privilege.

DISCUSSION

In order to decide the pending motions, the Court must make an initial determination of whether this is "an action involving public petition and participation." As recently discussed by the Second Department:

> In 1992, legislation was enacted to address "a rising concern about the use of civil litigation, primarily defamation suits,

[2] For reasons discussed below, the substance of Defendant's statements is not relevant to the determination of the issues raised herein, and the Court will not republish them as part of this opinion.

> to intimidate or silence those who speak out at public meetings against proposed land use development and other activities requiring approval of public boards. Termed SLAPP suits—strategic lawsuits against public participation—such actions are characterized as having little legal merit but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." The legislation was specifically aimed at broadening the protection of citizens facing litigation arising from their public petition and participation.
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> [In 2020,] the Legislature amended the relevant statutes to broaden the scope of the law and afford greater protections to citizens facing litigation arising from their public petition and participation (see L 2020, ch 250).

(*Mable Assets, LLC v Rachmanov*, 192 AD3d 998, 998 [2d Dept 2021] (quoting *600 W. 115th St. Corp. v Von Gutfeld*, 80 NY2d 130 [1992]).

New York's "anti-SLAPP" statutes are codified at Civil Rights Law §§ 70-a and 76-a. As part of the 2020 amendments to these statutes, the Legislature enacted heightened pleading standards when a defendant moves to dismiss for failure to state a cause of action (CPLR 3211[a][7]), where the "[defendant] has demonstrated that the action . . . subject to the motion is an action involving public petition and participation as defined in [Civil Rights Law §76-a(1)(a)]" (CPLR 3211[g][1]).

An "action involving public petition and participation" is defined as lawsuit based upon: (1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition". (Civil Rights Law §76-a[1][a]). The court is to construe the term "public interest" broadly to include any subject other than a purely private matter (Civil Rights Law §76-a[1][d]).

A court is required to grant a preference to hearing a motion to dismiss a SLAPP action, and the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law" (CPLR §3211[g][1]). In adjudicating a motion to dismiss a SLAPP action, the court must consider the pleadings and supporting and opposing affidavits (CPLR §3211[g][2]).

Here, the Court readily finds that Defendant's conduct, as alleged in the complaint and discussed in Defendant's motion papers, falls within the broad definition of "public petition and participation." Her statements about Plaintiff concerned his status as a public official and his fitness for that role and were made to a governmental body charged with overseeing his conduct,

i.e., the Commission. Moreover, the statements were admittedly furnished through an online form provided by the Commission, the purpose of which is to invite members of the public to submit complaints about specific judges. Defendant's complaint about Plaintiff to the Commission may therefore be viewed as a public petition[3] and participation in furtherance of the right of free speech in connection with an issue of public interest, particularly in the broad sense the Court is required to apply.

As a result, the stricter pleading standards of CPLR 3211(g) apply, and to avoid dismissal Plaintiff is required to show that the single cause of action for defamation *per se* in the complaint "has a substantial basis in law or is supported by a substantial argument for an extension, modification or a reversal of existing law." That is not the case here.

A cause of action for defamation *per se* is based upon a false statement, published *without privilege* or authorization to a third party, and so offensive that malice is presumed, *i.e.* claiming that a person committed a crime of moral turpitude or suffers from a loathsome disease; To recover damages for defamation, a plaintiff must prove the defendant's publication to a third party of a false statement about the plaintiff, without privilege or authorization (*Knutt v. Metro Intern S.A.*, 91 A.D. 3d 915 [2nd Dept. 2012] citing *Epifani v. Johnson,* 65 A.D.3d 224, 233). A defamatory statement is one which " 'tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him *in the minds of a substantial number of the community*'" (*Golub v. Enquirer/Star Group,* 89 N.Y.2d 1074, 1076, quoting *Mencher v. Chesley,* 297 N.Y. 94, 100, emphasis added). Imputing a serious crime to the plaintiff constitutes defamation *per se* (*see Geraci v. Probst,* 15 N.Y.3d 336, 344; *Liberman v. Gelstein,* 80 N.Y.2d 429, 435). In the context of a defamation action, "[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable." *Park Knoll Assoc. v Schmidt*, 59 NY2d 205, 208 [1983].

The only defamatory conduct alleged in the complaint is Defendant's submission of her statements concerning Plaintiff to the Commission. It was further admitted during oral argument on this matter, and as supported by the affirmation of counsel for the Commission, that Defendant did not publish the statements to anyone else; and until Plaintiff filed this lawsuit, Defendant's statements and the Commission's proceedings with respect thereto were confidential and non-public.

Accordingly, this matter is subject to the controlling precedent of *Wiener v Weintraub* (22 NY2d 330 [1968]), wherein the Court of Appeals held that a written complaint about an attorney submitted to the local Grievance Committee and pertaining to potential misconduct by the attorney is "absolutely privileged," based upon overriding public interests:

> If a complainant were to be subject to a libel action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the hardship on a particular attorney, the

[3] See Merriam-Webster.com Dictionary (https://www.merriam-webster.com/), *Petition:* "a formal written request made to an authority or organized body (such as a court)."

> necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

(*Wiener v Weintraub*, 22 NY2d 330, 331–332 [1968]; *see also Bisogno v Borsa*, 31 Misc 3d 1203(A) [Sup Ct, Richmond County 2011], *affd*, 101 AD3d 780 [2d Dept 2012]).

The process followed with respect to judicial conduct complaints is very similar to the process followed with respect to complaints against attorneys, including the quasi-judicial and confidential nature of the proceedings (*see* Affirmation of Robert H. Tembeckjian, Esq., dated February 6, 2023 (NYSCEF Doc. No. 16) at ¶¶ 14–19, 24–29; Judiciary Law §§ 44, 45). Moreover, the same public concerns regarding the "necessity of maintaining high standards [and] the proper administration of justice" obviously apply to sitting judges at least as forcefully as to practicing attorneys. Thus, the defense of absolute privilege applies in this matter; and if Defendant's complaint is deemed to be absolutely privileged, this Court is required to dismiss the complaint at the pre-answer stage (*Wiener*, 22 NY2d at 332–333; CPLR 3211[g][1]), and the substance of the complaint to the commission is not relevant to this determination.

Plaintiff opposes the absolute privilege argument, raised by both Defendant and the Commission, on the basis that it does not apply where the underlying complaint is a "sham." For this argument, Plaintiff relies on a line of cases in the First Department, which in turn rely upon the Court of Appeals case of *Youmans v. Smith*:

> . . . If counsel, through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason, and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege, and must take the consequences. In other words, if the privilege is abused, protection is withdrawn.

(*Youmans v Smith*, 153 NY 214, 219–220 [1897] [internal quotations omitted]). This "common law privilege afforded to words spoken and written in the course of judicial proceedings . . . is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, made in good faith and without malice" (*Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986]).

The theory underlying the "sham action" exception or "sham litigation", *Flomenhaft v. Finkelstein*, 127 AD3d 634, 638 [1st Dept 2015], is inapplicable here as it is inconsistent with the policy and breadth of the absolute privilege expressed by the Court of Appeals in *Weiner*, which specifically applies even to "false and malicious complaints" (*Wiener*, 22 NY2d at 332). The critical distinction in the cases relied upon by Plaintiff is that "sham actions" are filed publicly before the attorney or judge has an opportunity to respond, while complaints made to governing

bodies overseeing attorneys and judges, and the quasi-judicial proceedings that follow, are "private and confidential" (*id.*).

In other words, there can be no abuse of the absolute privilege in the submission of a confidential complaint to the Commission, because the only persons to whom the complaint is published are public officials (Judiciary Law §41) charged with "receiv[ing], initiat[ing], investigat[ing] and hear[ing] complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge" (Judiciary Law §44), and who are bound by law to keep such complaints and related proceedings confidential (Judiciary Law §§ 45–46; *Wiener*, 22 NY2d at 332). Such circumstances are among the few, but well-recognized, reasons for application of an absolute privilege:

> Because the perceived social benefit in...he discharge of governmental responsibility sometimes outweighs the individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements...If the privilege is absolute, it confers immunity from liability regardless of motive.
>
> *...The public interest requires that such statements be absolutely privileged so that those discharging a public function may speak freely in doing so, insulated from harassment and fear of financial hazard...*

Park Knoll Assoc. v Schmidt, 59 NY2d 205, 208–209 [1983] [emphasis added; internal quotations and citations omitted].

By contrast, each of the cases on which Plaintiff relies for his argument that the "sham action" exception precludes dismissal of this case involved written statements used in a *public, civil action*, where the allegedly defamatory statements appeared in a civil pleading filed by an attorney. In each such case, the plaintiff was an attorney; and the allegedly defamatory statements were made to the public generally, before the plaintiff attorney had any opportunity to respond to the allegations confidentially in the context of a Grievance Committee investigation. Those cases present the opposite factual scenario of what has occurred here. Until Plaintiff commenced this action via a publicly-viewable compliant, to which he attached a full copy of Defendant's non-public statements to the Commission, the statements and the Commission's proceedings were confidential. Pursuant to *Wiener v. Weintraub*, Defendant's statements could not be deemed abusive of any privilege. Accordingly, the "sham action" exception to the absolute privilege does not apply here as a matter of law.

In fact, as the Commission's counsel asserted, there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility. The purpose of keeping the Commission's proceedings confidential is to protect not only the Judge involved but to protect the public by providing a safe forum in which to have complaints addressed. As counsel for the Commission stated, the absolute

privilege and confidentiality of the proceedings before it are critical to the Commission's investigation and to maintaining public confidence in the integrity of the judiciary.

Given that the subject-matter of this lawsuit squarely falls within the precedent of *Wiener v. Weintraub* and its progeny, and that Plaintiff has not furnished any "*substantial* argument" or precedent which warrant consideration of "an extension, modification or reversal of existing law" (CPLR 3211[g][1]), Defendant's statements must be deemed absolutely privileged and the complaint must be dismissed. As a statutory consequence, Defendant is entitled to an award of "costs and attorney's fees" (Civil Rights Law §70-a(1)(a)), as such an award is mandatory.

Based on the foregoing, it is hereby

ORDERED that Defendant's motion to dismiss is GRANTED; and it is further

ORDERED that the motion to dismiss of Intervenor-Defendant Commission is GRANTED; and it is further

ORDERED that the complaint is DISMISSED with prejudice; and it is further

ORDERED that a hearing on the amount of attorney's fees and costs to be awarded to Defendant shall be held in person on April 27, 2023 at 10:00 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: April 4, 2023
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 8-5-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Decision+Order #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Scanned to the E-File System only

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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Davis Wright Tremaine LLP
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New York State Commission on Judicial Conduct
Corning Tower, Suite 230, Empire State Plaza
Albany, NY 12223

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Plaintiff,

-against-

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A court is required to grant a preference to hearing a motion to dismiss a SLAPP action, and the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law" (CPLR §3211[g][1]). In adjudicating a motion to dismiss a SLAPP action, the court must consider the pleadings and supporting and opposing affidavits (CPLR §3211[g][2]).

Here, the Court readily finds that Defendant's conduct, as alleged in the complaint and discussed in Defendant's motion papers, falls within the broad definition of "public petition and participation." Her statements about Plaintiff concerned his status as a public official and his fitness for that role and were made to a governmental body charged with overseeing his conduct,

i.e., the Commission. Moreover, the statements were admittedly furnished through an online form provided by the Commission, the purpose of which is to invite members of the public to submit complaints about specific judges. Defendant's complaint about Plaintiff to the Commission may therefore be viewed as a public petition[3] and participation in furtherance of the right of free speech in connection with an issue of public interest, particularly in the broad sense the Court is required to apply.

As a result, the stricter pleading standards of CPLR 3211(g) apply, and to avoid dismissal Plaintiff is required to show that the single cause of action for defamation *per se* in the complaint "has a substantial basis in law or is supported by a substantial argument for an extension, modification or a reversal of existing law." That is not the case here.

A cause of action for defamation *per se* is based upon a false statement, published *without privilege* or authorization to a third party, and so offensive that malice is presumed, *i.e.* claiming that a person committed a crime of moral turpitude or suffers from a loathsome disease; To recover damages for defamation, a plaintiff must prove the defendant's publication to a third party of a false statement about the plaintiff, without privilege or authorization (*Knutt v. Metro Intern S.A.*, 91 A.D. 3d 915 [2nd Dept. 2012] citing *Epifani v. Johnson,* 65 A.D.3d 224, 233). A defamatory statement is one which " 'tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him *in the minds of a substantial number of the community*'" (*Golub v. Enquirer/Star Group,* 89 N.Y.2d 1074, 1076, quoting *Mencher v. Chesley,* 297 N.Y. 94, 100, emphasis added). Imputing a serious crime to the plaintiff constitutes defamation *per se* (*see Geraci v. Probst,* 15 N.Y.3d 336, 344; *Liberman v. Gelstein,* 80 N.Y.2d 429, 435). In the context of a defamation action, "[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable." *Park Knoll Assoc. v Schmidt*, 59 NY2d 205, 208 [1983].

The only defamatory conduct alleged in the complaint is Defendant's submission of her statements concerning Plaintiff to the Commission. It was further admitted during oral argument on this matter, and as supported by the affirmation of counsel for the Commission, that Defendant did not publish the statements to anyone else; and until Plaintiff filed this lawsuit, Defendant's statements and the Commission's proceedings with respect thereto were confidential and non-public.

Accordingly, this matter is subject to the controlling precedent of *Wiener v Weintraub* (22 NY2d 330 [1968]), wherein the Court of Appeals held that a written complaint about an attorney submitted to the local Grievance Committee and pertaining to potential misconduct by the attorney is "absolutely privileged," based upon overriding public interests:

> If a complainant were to be subject to a libel action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the hardship on a particular attorney, the

[3] See Merriam-Webster.com Dictionary (https://www.merriam-webster.com/), *Petition:* "a formal written request made to an authority or organized body (such as a court)."

> necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

(*Wiener v Weintraub*, 22 NY2d 330, 331–332 [1968]; *see also Bisogno v Borsa*, 31 Misc 3d 1203(A) [Sup Ct, Richmond County 2011], *affd*, 101 AD3d 780 [2d Dept 2012]).

The process followed with respect to judicial conduct complaints is very similar to the process followed with respect to complaints against attorneys, including the quasi-judicial and confidential nature of the proceedings (*see* Affirmation of Robert H. Tembeckjian, Esq., dated February 6, 2023 (NYSCEF Doc. No. 16) at ¶¶ 14–19, 24–29; Judiciary Law §§ 44, 45). Moreover, the same public concerns regarding the "necessity of maintaining high standards [and] the proper administration of justice" obviously apply to sitting judges at least as forcefully as to practicing attorneys. Thus, the defense of absolute privilege applies in this matter; and if Defendant's complaint is deemed to be absolutely privileged, this Court is required to dismiss the complaint at the pre-answer stage (*Wiener*, 22 NY2d at 332–333; CPLR 3211[g][1]), and the substance of the complaint to the commission is not relevant to this determination.

Plaintiff opposes the absolute privilege argument, raised by both Defendant and the Commission, on the basis that it does not apply where the underlying complaint is a "sham." For this argument, Plaintiff relies on a line of cases in the First Department, which in turn rely upon the Court of Appeals case of *Youmans v. Smith*:

> . . . If counsel, through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason, and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege, and must take the consequences. In other words, if the privilege is abused, protection is withdrawn.

(*Youmans v Smith*, 153 NY 214, 219–220 [1897] [internal quotations omitted]). This "common law privilege afforded to words spoken and written in the course of judicial proceedings . . . is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, made in good faith and without malice" (*Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986]).

The theory underlying the "sham action" exception or "sham litigation", *Flomenhaft v. Finkelstein*, 127 AD3d 634, 638 [1st Dept 2015], is inapplicable here as it is inconsistent with the policy and breadth of the absolute privilege expressed by the Court of Appeals in *Weiner*, which specifically applies even to "false and malicious complaints" (*Wiener*, 22 NY2d at 332). The critical distinction in the cases relied upon by Plaintiff is that "sham actions" are filed publicly before the attorney or judge has an opportunity to respond, while complaints made to governing

bodies overseeing attorneys and judges, and the quasi-judicial proceedings that follow, are "private and confidential" (*id.*).

In other words, there can be no abuse of the absolute privilege in the submission of a confidential complaint to the Commission, because the only persons to whom the complaint is published are public officials (Judiciary Law §41) charged with "receiv[ing], initiat[ing], investigat[ing] and hear[ing] complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge" (Judiciary Law §44), and who are bound by law to keep such complaints and related proceedings confidential (Judiciary Law §§ 45–46; *Wiener*, 22 NY2d at 332). Such circumstances are among the few, but well-recognized, reasons for application of an absolute privilege:

> Because the perceived social benefit in...he discharge of governmental responsibility sometimes outweighs the individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements...If the privilege is absolute, it confers immunity from liability regardless of motive.
>
> *...The public interest requires that such statements be absolutely privileged so that those discharging a public function may speak freely in doing so, insulated from harassment and fear of financial hazard...*

Park Knoll Assoc. v Schmidt, 59 NY2d 205, 208–209 [1983] [emphasis added; internal quotations and citations omitted].

By contrast, each of the cases on which Plaintiff relies for his argument that the "sham action" exception precludes dismissal of this case involved written statements used in a *public, civil action*, where the allegedly defamatory statements appeared in a civil pleading filed by an attorney. In each such case, the plaintiff was an attorney; and the allegedly defamatory statements were made to the public generally, before the plaintiff attorney had any opportunity to respond to the allegations confidentially in the context of a Grievance Committee investigation. Those cases present the opposite factual scenario of what has occurred here. Until Plaintiff commenced this action via a publicly-viewable compliant, to which he attached a full copy of Defendant's non-public statements to the Commission, the statements and the Commission's proceedings were confidential. Pursuant to *Wiener v. Weintraub*, Defendant's statements could not be deemed abusive of any privilege. Accordingly, the "sham action" exception to the absolute privilege does not apply here as a matter of law.

In fact, as the Commission's counsel asserted, there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility. The purpose of keeping the Commission's proceedings confidential is to protect not only the Judge involved but to protect the public by providing a safe forum in which to have complaints addressed. As counsel for the Commission stated, the absolute

privilege and confidentiality of the proceedings before it are critical to the Commission's investigation and to maintaining public confidence in the integrity of the judiciary.

Given that the subject-matter of this lawsuit squarely falls within the precedent of *Wiener v. Weintraub* and its progeny, and that Plaintiff has not furnished any "*substantial* argument" or precedent which warrant consideration of "an extension, modification or reversal of existing law" (CPLR 3211[g][1]), Defendant's statements must be deemed absolutely privileged and the complaint must be dismissed. As a statutory consequence, Defendant is entitled to an award of "costs and attorney's fees" (Civil Rights Law §70-a(1)(a)), as such an award is mandatory.

Based on the foregoing, it is hereby

ORDERED that Defendant's motion to dismiss is GRANTED; and it is further

ORDERED that the motion to dismiss of Intervenor-Defendant Commission is GRANTED; and it is further

ORDERED that the complaint is DISMISSED with prejudice; and it is further

ORDERED that a hearing on the amount of attorney's fees and costs to be awarded to Defendant shall be held in person on April 27, 2023 at 10:00 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: April 4, 2023
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme

I, **BRADFORD KENDALL**, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-5-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Decision + Order #2022-54141

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Scanned to the E-File System only

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

Michael H. Sussman, Esq.
1 Railroad Avenue, Suite 3
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New York State Commission on Judicial Conduct
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Albany, NY 12223

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant, NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, Intervenor-Defendant.	Index No. 2022-54141 Hon. Maria G. Rosa **NOTICE OF ENTRY OF DECISION AND ORDER**

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of a Decision and Order dated April 4, 2023, that was entered in the office of the Clerk of the County of Dutchess on April 5, 2023.

Dated: April 6, 2023

Respectfully submitted,

By: */s/ Victor A. Kovner*
Victor A. Kovner
Raphael Holoszyc-Pimentel
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Attorneys for Defendant Stacey Koch

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-6-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Notice of Entry #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
DUTCHESS COUNTY SEAL
4/31/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

To: Michael H. Sussman, Esq.
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Attorneys for Intervenor-Defendant New York State Commission on Judicial Conduct

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

FRANK MORA,

Plaintiff,

-against-

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

DECISION AND ORDER

Index No. 2022-54141

Motion Sequences: 1, 2

The following papers were read and considered on the motion of Defendant seeking dismissal of the complaint and for an award of attorney's fees and costs (Seq. #1); and the motion of Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") seeking dismissal of the complaint. (Seq. #2):

Document:	NYSCEF Doc. No(s).:
SUMMONS & VERIFIED COMPLAINT and EXHIBIT 1	1
NOTICE OF MOTION – Seq. #1	5
MEMORANDUM OF LAW	6
AFFIRMATION IN SUPPORT and EXHIBITS A–B	7–9
MEMORANDUM OF LAW IN OPPOSITION	26[1]
REPLY MEMORANDUM OF LAW	31
NOTICE OF MOTION – Seq. #2	15

[1] Plaintiff filed a single memorandum of law in opposition, addressing arguments made in both pending motions.

AFFIRMATION IN SUPPORT 16
PROPOSED ANSWER.....17
MEMORANDUM OF LAW IN SUPPORT 18

MEMORANDUM OF LAW IN OPPOSITION 26

REPLY MEMORANDUM OF LAW 32

BACKGROUND

This is an action for defamation. The following facts are taken from the complaint and presumed to be true for purposes of deciding both motions.

The events giving rise to this action commenced on December 28, 2021. That day, Plaintiff, a Judge of the Poughkeepsie City Court, brought his son to an ophthalmology office where a dispute arose between Plaintiff and the office manager, Defendant, regarding Plaintiff's unwillingness to wear a face mask while in the office. The following day, December 29, 2021, Defendant wrote certain "statements concerning [Plaintiff] . . . to the New York State Commission on Judicial Conduct" (Complaint at "Preliminary Statement"). The written statements were submitted via a complaint form provided by the New York State Office [sic] of Judicial Conduct" (*id.* at ¶24).[2]

Plaintiff alleges that Defendant's statements were false, libelous, professionally damaging to him as a jurist and calculated to subject him to personal ridicule and shame (*id.* at ¶¶ 23–24). Plaintiff further alleges that Defendant's statements caused him "emotional distress, humiliation, shame and embarrassment and required him to answer [Defendant's] false claims before a state commission designed and empowered to investigate judicial misconduct" (*id.* at ¶27). As a result of these events, Plaintiff seeks compensatory and punitive damages of $425,000.00 on a single cause of action for defamation *per se*.

Oral argument on these motions was held March 27, 2023, at which time all parties were heard. The first branch of the Commission's motion seeking leave to intervene in this matter was granted on the record as unopposed, and the caption has been amended accordingly. Defendant moves to dismiss the complaint pursuant to the defense of absolute privilege and pursuant to New York's "anti-SLAPP" statutes. The Commission moves for dismissal based on absolute privilege.

DISCUSSION

In order to decide the pending motions, the Court must make an initial determination of whether this is "an action involving public petition and participation." As recently discussed by the Second Department:

> In 1992, legislation was enacted to address "a rising concern about the use of civil litigation, primarily defamation suits,

[2] For reasons discussed below, the substance of Defendant's statements is not relevant to the determination of the issues raised herein, and the Court will not republish them as part of this opinion.

> to intimidate or silence those who speak out at public meetings against proposed land use development and other activities requiring approval of public boards. Termed SLAPP suits—strategic lawsuits against public participation—such actions are characterized as having little legal merit but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." The legislation was specifically aimed at broadening the protection of citizens facing litigation arising from their public petition and participation.
>
> [In 2020,] the Legislature amended the relevant statutes to broaden the scope of the law and afford greater protections to citizens facing litigation arising from their public petition and participation (see L 2020, ch 250).

(*Mable Assets, LLC v Rachmanov*, 192 AD3d 998, 998 [2d Dept 2021] (quoting *600 W. 115th St. Corp. v Von Gutfeld*, 80 NY2d 130 [1992]).

New York's "anti-SLAPP" statutes are codified at Civil Rights Law §§ 70-a and 76-a. As part of the 2020 amendments to these statutes, the Legislature enacted heightened pleading standards when a defendant moves to dismiss for failure to state a cause of action (CPLR 3211[a][7]), where the "[defendant] has demonstrated that the action . . . subject to the motion is an action involving public petition and participation as defined in [Civil Rights Law §76-a(1)(a)]" (CPLR 3211[g][1]).

An "action involving public petition and participation" is defined as lawsuit based upon: (1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition" (Civil Rights Law §76-a[1][a]). The court is to construe the term "public interest" broadly to include any subject other than a purely private matter (Civil Rights Law §76-a[1][d]).

A court is required to grant a preference to hearing a motion to dismiss a SLAPP action, and the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law" (CPLR §3211[g][1]). In adjudicating a motion to dismiss a SLAPP action, the court must consider the pleadings and supporting and opposing affidavits (CPLR §3211[g][2]).

Here, the Court readily finds that Defendant's conduct, as alleged in the complaint and discussed in Defendant's motion papers, falls within the broad definition of "public petition and participation." Her statements about Plaintiff concerned his status as a public official and his fitness for that role and were made to a governmental body charged with overseeing his conduct,

i.e., the Commission. Moreover, the statements were admittedly furnished through an online form provided by the Commission, the purpose of which is to invite members of the public to submit complaints about specific judges. Defendant's complaint about Plaintiff to the Commission may therefore be viewed as a public petition[3] and participation in furtherance of the right of free speech in connection with an issue of public interest, particularly in the broad sense the Court is required to apply.

As a result, the stricter pleading standards of CPLR 3211(g) apply, and to avoid dismissal Plaintiff is required to show that the single cause of action for defamation *per se* in the complaint "has a substantial basis in law or is supported by a substantial argument for an extension, modification or a reversal of existing law." That is not the case here.

A cause of action for defamation *per se* is based upon a false statement, published *without privilege* or authorization to a third party, and so offensive that malice is presumed, *i.e.* claiming that a person committed a crime of moral turpitude or suffers from a loathsome disease; To recover damages for defamation, a plaintiff must prove the defendant's publication to a third party of a false statement about the plaintiff, without privilege or authorization (*Knutt v. Metro Intern S.A.,* 91 A.D. 3d 915 [2nd Dept. 2012] citing *Epifani v. Johnson,* 65 A.D.3d 224, 233). A defamatory statement is one which " 'tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him *in the minds of a substantial number of the community*'" (*Golub v. Enquirer/Star Group,* 89 N.Y.2d 1074, 1076, quoting *Mencher v. Chesley,* 297 N.Y. 94, 100, emphasis added). Imputing a serious crime to the plaintiff constitutes defamation *per se* (*see Geraci v. Probst,* 15 N.Y.3d 336, 344; *Liberman v. Gelstein,* 80 N.Y.2d 429, 435). In the context of a defamation action, "[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable." *Park Knoll Assoc. v Schmidt*, 59 NY2d 205, 208 [1983].

The only defamatory conduct alleged in the complaint is Defendant's submission of her statements concerning Plaintiff to the Commission. It was further admitted during oral argument on this matter, and as supported by the affirmation of counsel for the Commission, that Defendant did not publish the statements to anyone else; and until Plaintiff filed this lawsuit, Defendant's statements and the Commission's proceedings with respect thereto were confidential and non-public.

Accordingly, this matter is subject to the controlling precedent of *Wiener v Weintraub* (22 NY2d 330 [1968]), wherein the Court of Appeals held that a written complaint about an attorney submitted to the local Grievance Committee and pertaining to potential misconduct by the attorney is "absolutely privileged," based upon overriding public interests:

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The process followed with respect to judicial conduct complaints is very similar to the process followed with respect to complaints against attorneys, including the quasi-judicial and confidential nature of the proceedings (*see* Affirmation of Robert H. Tembeckjian, Esq., dated February 6, 2023 (NYSCEF Doc. No. 16) at ¶¶ 14–19, 24–29; Judiciary Law §§ 44, 45). Moreover, the same public concerns regarding the "necessity of maintaining high standards [and] the proper administration of justice" obviously apply to sitting judges at least as forcefully as to practicing attorneys. Thus, the defense of absolute privilege applies in this matter; and if Defendant's complaint is deemed to be absolutely privileged, this Court is required to dismiss the complaint at the pre-answer stage (*Wiener*, 22 NY2d at 332–333; CPLR 3211[g][1]), and the substance of the complaint to the commission is not relevant to this determination.

Plaintiff opposes the absolute privilege argument, raised by both Defendant and the Commission, on the basis that it does not apply where the underlying complaint is a "sham." For this argument, Plaintiff relies on a line of cases in the First Department, which in turn rely upon the Court of Appeals case of *Youmans v. Smith*:

> . . . If counsel, through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason, and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege, and must take the consequences. In other words, if the privilege is abused, protection is withdrawn.

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The theory underlying the "sham action" exception or "sham litigation", *Flomenhaft v. Finkelstein*, 127 AD3d 634, 638 [1st Dept 2015], is inapplicable here as it is inconsistent with the policy and breadth of the absolute privilege expressed by the Court of Appeals in *Weiner*, which specifically applies even to "false and malicious complaints" (*Wiener*, 22 NY2d at 332). The critical distinction in the cases relied upon by Plaintiff is that "sham actions" are filed publicly before the attorney or judge has an opportunity to respond, while complaints made to governing

bodies overseeing attorneys and judges, and the quasi-judicial proceedings that follow, are "private and confidential" (*id.*).

In other words, there can be no abuse of the absolute privilege in the submission of a confidential complaint to the Commission, because the only persons to whom the complaint is published are public officials (Judiciary Law §41) charged with "receiv[ing], initiat[ing], investigat[ing] and hear[ing] complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge" (Judiciary Law §44), and who are bound by law to keep such complaints and related proceedings confidential (Judiciary Law §§ 45–46; *Wiener*, 22 NY2d at 332). Such circumstances are among the few, but well-recognized, reasons for application of an absolute privilege:

> Because the perceived social benefit in...he discharge of governmental responsibility sometimes outweighs the individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements...If the privilege is absolute, it confers immunity from liability regardless of motive.
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Park Knoll Assoc. v Schmidt, 59 NY2d 205, 208–209 [1983] [emphasis added; internal quotations and citations omitted].

By contrast, each of the cases on which Plaintiff relies for his argument that the "sham action" exception precludes dismissal of this case involved written statements used in a *public, civil action*, where the allegedly defamatory statements appeared in a civil pleading filed by an attorney. In each such case, the plaintiff was an attorney; and the allegedly defamatory statements were made to the public generally, before the plaintiff attorney had any opportunity to respond to the allegations confidentially in the context of a Grievance Committee investigation. Those cases present the opposite factual scenario of what has occurred here. Until Plaintiff commenced this action via a publicly-viewable compliant, to which he attached a full copy of Defendant's non-public statements to the Commission, the statements and the Commission's proceedings were confidential. Pursuant to *Wiener v. Weintraub*, Defendant's statements could not be deemed abusive of any privilege. Accordingly, the "sham action" exception to the absolute privilege does not apply here as a matter of law.

In fact, as the Commission's counsel asserted, there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility. The purpose of keeping the Commission's proceedings confidential is to protect not only the Judge involved but to protect the public by providing a safe forum in which to have complaints addressed. As counsel for the Commission stated, the absolute

privilege and confidentiality of the proceedings before it are critical to the Commission's investigation and to maintaining public confidence in the integrity of the judiciary.

Given that the subject-matter of this lawsuit squarely falls within the precedent of *Wiener v. Weintraub* and its progeny, and that Plaintiff has not furnished any "*substantial* argument" or precedent which warrant consideration of "an extension, modification or reversal of existing law" (CPLR 3211[g][1]), Defendant's statements must be deemed absolutely privileged and the complaint must be dismissed. As a statutory consequence, Defendant is entitled to an award of "costs and attorney's fees" (Civil Rights Law §70-a(1)(a)), as such an award is mandatory.

Based on the foregoing, it is hereby

ORDERED that Defendant's motion to dismiss is GRANTED; and it is further

ORDERED that the motion to dismiss of Intervenor-Defendant Commission is GRANTED; and it is further

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The foregoing constitutes the decision and order of the Court.

Dated: April 4, 2023
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

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SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

NOTICE OF ENTRY

-against-

STACEY KOCH,

Defendant.

NEW YORK STATE COMMISSION ON
JUDICIAL CONDUCT,

Intervenor/Defendant.

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order entered in this proceeding in the Office of the County Clerk of Dutchess County on April 5, 2023.

Dated: April 6, 2023
Albany, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
New York State Commission on Judicial Conduct
Empire State Plaza
Corning Tower, Suite 2301
Albany, New York 12223
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TO: Michael H. Sussman, Esq.
Sussman & Associates
Counsel for plaintiff

STATE OF NEW YORK (COUNTY OF DUTCHESS) SS. Supreme
I, BRADFORD KENDALL, COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS, DUTCHESS COUNTY DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-6-2023 # 2022-54141 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Notice of Entry
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COUNTY CLERK & CLERK OF THE SUPREME & COUNTY COURTS, DUTCHESS COUNTY

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

FRANK MORA,

Plaintiff,

-against-

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

DECISION AND ORDER

Index No. 2022-54141

Motion Sequences: 1, 2

The following papers were read and considered on the motion of Defendant seeking dismissal of the complaint and for an award of attorney's fees and costs (Seq. #1); and the motion of Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") seeking dismissal of the complaint. (Seq. #2):

Document:	NYSCEF Doc. No(s).:
SUMMONS & VERIFIED COMPLAINT and EXHIBIT 1	1
NOTICE OF MOTION – Seq. #1	5
MEMORANDUM OF LAW	6
AFFIRMATION IN SUPPORT and EXHIBITS A–B	7–9
MEMORANDUM OF LAW IN OPPOSITION	26[1]
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[1] Plaintiff filed a single memorandum of law in opposition, addressing arguments made in both pending motions.

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BACKGROUND

This is an action for defamation. The following facts are taken from the complaint and presumed to be true for purposes of deciding both motions.

The events giving rise to this action commenced on December 28, 2021. That day, Plaintiff, a Judge of the Poughkeepsie City Court, brought his son to an ophthalmology office where a dispute arose between Plaintiff and the office manager, Defendant, regarding Plaintiff's unwillingness to wear a face mask while in the office. The following day, December 29, 2021, Defendant wrote certain "statements concerning [Plaintiff] . . . to the New York State Commission on Judicial Conduct" (Complaint at "Preliminary Statement"). The written statements were submitted via a complaint form provided by the New York State Office [sic] of Judicial Conduct" (*id.* at ¶24).[2]

Plaintiff alleges that Defendant's statements were false, libelous, professionally damaging to him as a jurist and calculated to subject him to personal ridicule and shame (*id.* at ¶¶ 23–24). Plaintiff further alleges that Defendant's statements caused him "emotional distress, humiliation, shame and embarrassment and required him to answer [Defendant's] false claims before a state commission designed and empowered to investigate judicial misconduct" (*id.* at ¶27). As a result of these events, Plaintiff seeks compensatory and punitive damages of $425,000.00 on a single cause of action for defamation *per se*.

Oral argument on these motions was held March 27, 2023, at which time all parties were heard. The first branch of the Commission's motion seeking leave to intervene in this matter was granted on the record as unopposed, and the caption has been amended accordingly. Defendant moves to dismiss the complaint pursuant to the defense of absolute privilege and pursuant to New York's "anti-SLAPP" statutes. The Commission moves for dismissal based on absolute privilege.

DISCUSSION

In order to decide the pending motions, the Court must make an initial determination of whether this is "an action involving public petition and participation." As recently discussed by the Second Department:

> In 1992, legislation was enacted to address "a rising concern about the use of civil litigation, primarily defamation suits,

[2] For reasons discussed below, the substance of Defendant's statements is not relevant to the determination of the issues raised herein, and the Court will not republish them as part of this opinion.

> to intimidate or silence those who speak out at public meetings against proposed land use development and other activities requiring approval of public boards. Termed SLAPP suits—strategic lawsuits against public participation—such actions are characterized as having little legal merit but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." The legislation was specifically aimed at broadening the protection of citizens facing litigation arising from their public petition and participation.
>
> [In 2020,] the Legislature amended the relevant statutes to broaden the scope of the law and afford greater protections to citizens facing litigation arising from their public petition and participation (see L 2020, ch 250).

(*Mable Assets, LLC v Rachmanov*, 192 AD3d 998, 998 [2d Dept 2021] (quoting *600 W. 115th St. Corp. v Von Gutfeld*, 80 NY2d 130 [1992]).

New York's "anti-SLAPP" statutes are codified at Civil Rights Law §§ 70-a and 76-a. As part of the 2020 amendments to these statutes, the Legislature enacted heightened pleading standards when a defendant moves to dismiss for failure to state a cause of action (CPLR 3211[a][7]), where the "[defendant] has demonstrated that the action . . . subject to the motion is an action involving public petition and participation as defined in [Civil Rights Law §76-a(1)(a)]" (CPLR 3211[g][1]).

An "action involving public petition and participation" is defined as lawsuit based upon: (1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition" (Civil Rights Law §76-a[1][a]). The court is to construe the term "public interest" broadly to include any subject other than a purely private matter (Civil Rights Law §76-a[1][d]).

A court is required to grant a preference to hearing a motion to dismiss a SLAPP action, and the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law" (CPLR §3211[g][1]). In adjudicating a motion to dismiss a SLAPP action, the court must consider the pleadings and supporting and opposing affidavits (CPLR §3211[g][2]).

Here, the Court readily finds that Defendant's conduct, as alleged in the complaint and discussed in Defendant's motion papers, falls within the broad definition of "public petition and participation." Her statements about Plaintiff concerned his status as a public official and his fitness for that role and were made to a governmental body charged with overseeing his conduct,

i.e., the Commission. Moreover, the statements were admittedly furnished through an online form provided by the Commission, the purpose of which is to invite members of the public to submit complaints about specific judges. Defendant's complaint about Plaintiff to the Commission may therefore be viewed as a public petition[3] and participation in furtherance of the right of free speech in connection with an issue of public interest, particularly in the broad sense the Court is required to apply.

As a result, the stricter pleading standards of CPLR 3211(g) apply, and to avoid dismissal Plaintiff is required to show that the single cause of action for defamation *per se* in the complaint "has a substantial basis in law or is supported by a substantial argument for an extension, modification or a reversal of existing law." That is not the case here.

A cause of action for defamation *per se* is based upon a false statement, published *without privilege* or authorization to a third party, and so offensive that malice is presumed, *i.e.* claiming that a person committed a crime of moral turpitude or suffers from a loathsome disease; To recover damages for defamation, a plaintiff must prove the defendant's publication to a third party of a false statement about the plaintiff, without privilege or authorization (*Knutt v. Metro Intern S.A.*, 91 A.D. 3d 915 [2nd Dept. 2012] citing *Epifani v. Johnson,* 65 A.D.3d 224, 233). A defamatory statement is one which " 'tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him *in the minds of a substantial number of the community*'" (*Golub v. Enquirer/Star Group,* 89 N.Y.2d 1074, 1076, quoting *Mencher v. Chesley,* 297 N.Y. 94, 100, emphasis added). Imputing a serious crime to the plaintiff constitutes defamation *per se* (*see Geraci v. Probst,* 15 N.Y.3d 336, 344; *Liberman v. Gelstein,* 80 N.Y.2d 429, 435). In the context of a defamation action, "[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable." *Park Knoll Assoc. v Schmidt*, 59 NY2d 205, 208 [1983].

The only defamatory conduct alleged in the complaint is Defendant's submission of her statements concerning Plaintiff to the Commission. It was further admitted during oral argument on this matter, and as supported by the affirmation of counsel for the Commission, that Defendant did not publish the statements to anyone else; and until Plaintiff filed this lawsuit, Defendant's statements and the Commission's proceedings with respect thereto were confidential and non-public.

Accordingly, this matter is subject to the controlling precedent of *Wiener v Weintraub* (22 NY2d 330 [1968]), wherein the Court of Appeals held that a written complaint about an attorney submitted to the local Grievance Committee and pertaining to potential misconduct by the attorney is "absolutely privileged," based upon overriding public interests:

> If a complainant were to be subject to a libel action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the hardship on a particular attorney, the

[3] See Merriam-Webster.com Dictionary (https://www.merriam-webster.com/), *Petition:* "a formal written request made to an authority or organized body (such as a court)."

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> necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

(*Wiener v Weintraub*, 22 NY2d 330, 331–332 [1968]; *see also Bisogno v Borsa*, 31 Misc 3d 1203(A) [Sup Ct, Richmond County 2011], *affd*, 101 AD3d 780 [2d Dept 2012]).

The process followed with respect to judicial conduct complaints is very similar to the process followed with respect to complaints against attorneys, including the quasi-judicial and confidential nature of the proceedings (*see* Affirmation of Robert H. Tembeckjian, Esq., dated February 6, 2023 (NYSCEF Doc. No. 16) at ¶¶ 14–19, 24–29; Judiciary Law §§ 44, 45). Moreover, the same public concerns regarding the "necessity of maintaining high standards [and] the proper administration of justice" obviously apply to sitting judges at least as forcefully as to practicing attorneys. Thus, the defense of absolute privilege applies in this matter; and if Defendant's complaint is deemed to be absolutely privileged, this Court is required to dismiss the complaint at the pre-answer stage (*Wiener*, 22 NY2d at 332–333; CPLR 3211[g][1]), and the substance of the complaint to the commission is not relevant to this determination.

Plaintiff opposes the absolute privilege argument, raised by both Defendant and the Commission, on the basis that it does not apply where the underlying complaint is a "sham." For this argument, Plaintiff relies on a line of cases in the First Department, which in turn rely upon the Court of Appeals case of *Youmans v. Smith*:

> . . . If counsel, through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason, and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege, and must take the consequences. In other words, if the privilege is abused, protection is withdrawn.

(*Youmans v Smith*, 153 NY 214, 219–220 [1897] [internal quotations omitted]). This "common law privilege afforded to words spoken and written in the course of judicial proceedings . . . is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, made in good faith and without malice" (*Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986]).

The theory underlying the "sham action" exception or "sham litigation", *Flomenhaft v. Finkelstein*, 127 AD3d 634, 638 [1st Dept 2015], is inapplicable here as it is inconsistent with the policy and breadth of the absolute privilege expressed by the Court of Appeals in *Weiner*, which specifically applies even to "false and malicious complaints" (*Wiener*, 22 NY2d at 332). The critical distinction in the cases relied upon by Plaintiff is that "sham actions" are filed publicly before the attorney or judge has an opportunity to respond, while complaints made to governing

bodies overseeing attorneys and judges, and the quasi-judicial proceedings that follow, are "private and confidential" (*id.*).

In other words, there can be no abuse of the absolute privilege in the submission of a confidential complaint to the Commission, because the only persons to whom the complaint is published are public officials (Judiciary Law §41) charged with "receiv[ing], initiat[ing], investigat[ing] and hear[ing] complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge" (Judiciary Law §44), and who are bound by law to keep such complaints and related proceedings confidential (Judiciary Law §§ 45–46; *Wiener*, 22 NY2d at 332). Such circumstances are among the few, but well-recognized, reasons for application of an absolute privilege:

> Because the perceived social benefit in...he discharge of governmental responsibility sometimes outweighs the individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements...If the privilege is absolute, it confers immunity from liability regardless of motive.
>
> *...The public interest requires that such statements be absolutely privileged so that those discharging a public function may speak freely in doing so, insulated from harassment and fear of financial hazard...*

Park Knoll Assoc. v Schmidt, 59 NY2d 205, 208–209 [1983] [emphasis added; internal quotations and citations omitted].

By contrast, each of the cases on which Plaintiff relies for his argument that the "sham action" exception precludes dismissal of this case involved written statements used in a *public, civil action*, where the allegedly defamatory statements appeared in a civil pleading filed by an attorney. In each such case, the plaintiff was an attorney; and the allegedly defamatory statements were made to the public generally, before the plaintiff attorney had any opportunity to respond to the allegations confidentially in the context of a Grievance Committee investigation. Those cases present the opposite factual scenario of what has occurred here. Until Plaintiff commenced this action via a publicly-viewable compliant, to which he attached a full copy of Defendant's non-public statements to the Commission, the statements and the Commission's proceedings were confidential. Pursuant to *Wiener v. Weintraub*, Defendant's statements could not be deemed abusive of any privilege. Accordingly, the "sham action" exception to the absolute privilege does not apply here as a matter of law.

In fact, as the Commission's counsel asserted, there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility. The purpose of keeping the Commission's proceedings confidential is to protect not only the Judge involved but to protect the public by providing a safe forum in which to have complaints addressed. As counsel for the Commission stated, the absolute

privilege and confidentiality of the proceedings before it are critical to the Commission's investigation and to maintaining public confidence in the integrity of the judiciary.

Given that the subject-matter of this lawsuit squarely falls within the precedent of *Wiener v. Weintraub* and its progeny, and that Plaintiff has not furnished any "*substantial* argument" or precedent which warrant consideration of "an extension, modification or reversal of existing law" (CPLR 3211[g][1]), Defendant's statements must be deemed absolutely privileged and the complaint must be dismissed. As a statutory consequence, Defendant is entitled to an award of "costs and attorney's fees" (Civil Rights Law §70-a(1)(a)), as such an award is mandatory.

Based on the foregoing, it is hereby

ORDERED that Defendant's motion to dismiss is GRANTED; and it is further

ORDERED that the motion to dismiss of Intervenor-Defendant Commission is GRANTED; and it is further

ORDERED that the complaint is DISMISSED with prejudice; and it is further

ORDERED that a hearing on the amount of attorney's fees and costs to be awarded to Defendant shall be held in person on April 27, 2023 at 10:00 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: April 4, 2023
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

Scanned to the E-File System only

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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Legal Assistant

April 12, 2023

Hon. Maria Rosa
Justice, Supreme Court
County of Dutchess
10 Market Street
Poughkeepsie, New York 12601

Re: **Mora v. Koch, Index No. 2022-54141**

Dear Justice Rosa,

I represent plaintiff Mora in this matter. The court recently set the matter down for a hearing on April 27, 2023 on defendant Koch's application for attorneys' fees. I will be in Atlanta that week working on other matters. Defendant's counsel has graciously agreed to adjourn the proceeding and proposed the following schedule which is agreeable to me:

Defendant's counsel will file their Affirmation in support of attorneys' fees on April 27, I will file my opposition by May 11 and defendant shall file her reply on May 18. We would respectfully request that the matter be made returnable on either May 22, 23 or 25.

Thank you for your consideration in these regards.

Yours respectfully,

Michael H. Sussman

cc: Counsel for defendant via NYSCEF

STATE OF NEW YORK)
COUNTY OF DUTCHESS) SS:
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-17-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Counsel,
Please advise if the parties have agreed to submit this issue on papers only.
If there is to be an in-person hearing, the Court is not available on the dates provided.

Michael R. Frascarelli, Esq.
Principal Court Attorney to
Hon. Maria G. Rosa, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS
JUDGE ROSA, MARIA G

Frank Mora

- v. -

Stacey Koch

Index No. 2022-54141

COURT NOTICE

Counselors:

In response to Mr. Sussman's letter of April 12, 2023 seeking to adjourn the April 27, 2023 hearing on counsel fees, Court Attorney Michael Frascarelli e-filed a note asking for clarification as it is unclear whether counsel is also asking the Court to proceed on papers only, without a hearing, and whether that request is on consent of all counsel. No one has responded to the Court Attorney's note of April 17, 2023. Therefore, please be advised that this matter remains scheduled for an in-person hearing on April 27, 2023 at 10:00 a.m. Submission of papers is not required.

If all counsel agree to proceed on papers only, then on or before April 21, 2023, please advise, or provide a stipulation to such including the dates for submission of papers. Otherwise, any counsel seeking an adjournment of the hearing must provide an affirmation or affidavit of actual engagement per the Rules of Court not later than April 21, 2023.

Thank you.

Judge Rosa
DATED 04/19/2023

FILED By Maria G Rosa

STATE OF NEW YORK (COUNTY OF DUTCHESS) SS Supreme
BRADFORD KENDALL, COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS,
DUTCHESS COUNTY DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL
THEREOF FILED OR RECORDED IN MY OFFICE ON 4-19-2023. Court Notice #2022-54141
AND THE SAME IS A CORRECT TRANSCRIPT THEREOF
IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL
8/31/2023
COUNTY CLERK & CLERK OF THE SUPREME & COUNTY COURTS, DUTCHESS COUNTY

Counselors:
We are not doing both a paper submission and an evidentiary hearing. Again, absent complete agreement on paper submissions only, this matter remains scheduled for a hearing April 27, 2023 at 10^00 a.m.*

April 21, 2023 VIA NYSCEF

Honorable Maria G. Rosa
New York State Supreme Court
Dutchess County Courthouse
10 Market Street
Poughkeepsie, New York 12601

Re: ***Frank Mora v. Stacey Koch, Index No. 2022-54141 (N.Y. Sup. Ct. Dutchess Cnty.)***

Dear Justice Rosa:

We represent plaintiff Mora in the above-referenced matter. I have been on trial all week in a manslaughter case in Orange County Court [*People v. Duke*, Brown, J.] and write in response to defendant counsel's letter of even date.

We agree to the proposal and schedule made by defendant's counsel with one caveat: we do not want to foreclose the possibility for an evidentiary hearing and believe that will depend on the sufficiency of the submissions the court receives from the movant.

Should we believe such a hearing is necessary, we will of course advise the court and set forth the issues we believe require any such hearing.

Yours respectfully,

Michael H. Sussman

cc: Counsel of record by NYSCEF

* Per the court notice of 4/19/23, any counsel seeking to postpone the hearing must have provided an affirmation of actual engagement by 4/21/23.

4/24/23

STATE OF NEW YORK } COUNTY OF DUTCHESS } SS
I, BRADFORD KENDALL, COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS, DUTCHESS COUNTY DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-24-2023 Letter # 2022-54141
AND THE SAME IS A CORRECT TRANSCRIPT THEREOF.
IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL
8/31/2023
COUNTY CLERK & CLERK OF THE SUPREME & COUNTY COURTS, DUTCHESS COUNTY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS
JUDGE ROSA, MARIA G

Frank Mora

- v. -

Stacey Koch

Index No. 2022-54141

COURT NOTICE

Dear Counselors:

This is written in response to Mr. Sussman's letter e-filed earlier this morning. This confirms that both paries and the intervenor have agreed to submission of the issue of counsel fees, costs and expenses on papers only, without a hearing. In the event the Court finds it has insufficient information to make (or deny) any award, the Court will schedule a hearing when both sides are available.

Thank you.

Judge Rosa
DATED 04/25/2023

FILED By Maria G Rosa

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, **BRADFORD KENDALL**, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-25-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Court Notice # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/31/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Re: April 25, 2023

Mora v. Koch, Index No. 54141/2022

Counselors: Per the Court Notice e-filed earlier today, and Counsel's consent, the April 27, 2023 hearing is canceled. The matter is on submission of papers only per the following agreed-upon schedule:

Defendant's counsel's affirmation in support is due April 27, 2023.

Plaintiff's counsel's affirmation and/or Plaintiff's affidavit in opposition is due May 11, 2023.

Defendant's reply papers are due May 18, 2023.

Thank you.

STATE OF NEW YORK SS:
COUNTY OF DUTCHESS
I, **BRADFORD KENDALL**, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-25-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter # 2022-5414
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant, NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, Intervenor-Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 Assigned: Hon. Maria G. Rosa, J.S.C.

AFFIRMATION OF RAPHAEL HOLOSZYC-PIMENTEL IN SUPPORT OF KOCH'S MOTION FOR ATTORNEY'S FEES AND COSTS

Raphael Holoszyc-Pimentel, an attorney duly admitted to practice before this Court, hereby affirms under penalty of perjury pursuant to N.Y. C.P.L.R. 2106(a) as follows:

1. I am an associate in the New York office of Davis Wright Tremaine LLP ("DWT"), attorneys for Defendant Stacey Koch ("Koch"). I have personal knowledge of the facts stated in this affirmation and could competently testify to them if called as a witness. I submit this affirmation in support of Koch's motion to award attorney's fees and costs.

A. Background and Procedural History

2. This action arises from a dispute at a medical practice where Koch is employed regarding the refusal of Plaintiff Frank Mora ("Mora") to wear a face mask pursuant to CDC guidelines while in the office on December 28, 2021. Mora is a Poughkeepsie City Court Judge

and, according to public records, earns a salary of $189,900.[1] The day after the dispute, Koch submitted a confidential complaint to the New York State Commission on Judicial Conduct (the "Commission") concerning the incident. NYSCEF Doc. No. 2.

3. On December 29, 2022, Mora filed this action against Koch, claiming that certain statements in Koch's complaint to the Commission were defamatory. Mora demanded compensatory and punitive damages of $425,000. NYSCEF Doc. No. 1, at 5.

4. On February 2, 2023, Koch moved to dismiss the Complaint and for attorney's fees and costs under the anti-SLAPP statute and on the ground that her statements were absolutely privileged. NYSCEF Doc. No. 6. Mora opposed Koch's motion, principally contending that Koch's complaint to the Commission was a "sham" and excepted from the absolute privilege. NYSCEF Doc. No. 26. The Court held oral argument on Koch's motion, as well as the Commission's motion in intervention, and a settlement conference on March 27, 2023.

5. On April 4, 2023, the Court granted Koch's motion to dismiss with prejudice. NYSCEF Doc. No. 34. The Court held that Koch's statements were absolutely privileged, noting that the absolute privilege is "critical to the Commission's investigation and to maintaining public confidence in the integrity of the judiciary." *Id.* at 6–7. Further, the Court held that the "sham" exception, which may apply in certain publicly filed civil actions, does not apply to the Commission's confidential proceedings as a matter of law. *Id.* at 5–6.

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[1] *See* Lawrence K. Marks, Chief Admin. Judge of the State of N.Y., *Submission to the 2019 Commission on Legislative, Judicial and Executive Compensation* at 7, http://www.nyscommissiononcompensation.org/pdfs/Nov4Testimony-Hon.LarryMarks.pdf (listing the salary of full-time City Court Judges as $189,900); Chief Admin. Judge of the Cts., *2015 Second Judicial Department Judicial Assignments* at 13, https://www.nycourts.gov/LegacyPDFS/courts/9jd/AssignTerms/2015_Signed_Annual_Order.pdf (listing Mora as a full-time Poughkeepsie City Court Judge).

6. In addition, the Court found that this lawsuit constituted an "action involving public petition and participation" under the anti-SLAPP law. *Id.* at 3–4 (citing N.Y. Civ. Rights Law § 76-a(1)(a)). The Court held that Koch's complaint to the Commission may be considered "a public petition and participation in furtherance of the right of free speech in connection with an issue of public interest." *Id.* at 4 (footnote omitted). Consequently, the Court held that Koch is entitled to a "mandatory" award of costs and attorney's fees, the amount of which would be determined at a later date. *Id.* at 7 (citing N.Y. Civ. Rights Law § 70-a(1)(a)).

7. On April 25, 2023, the Court granted the parties' request to file written submissions in lieu of a hearing on the amount of attorney's fees and costs to be awarded. NYSCEF Doc. Nos. 46, 47.

8. Koch has negotiated in good faith with opposing counsel regarding a potential settlement of this matter, including before, during, and after the settlement conference on March 27, 2023. However, to date, the parties have been unable to reach agreement on a potential resolution.

B. DWT's Experience in Defamation Matters

9. DWT is an AmLaw 100 law firm, with approximately 600 lawyers in the United States. DWT is widely known, and enjoys a significant reputation, for its work in the fields of First Amendment, media, and defamation law. DWT represents numerous prominent media companies, publishers, and individuals in libel disputes, among other matters.

10. I graduated *magna cum laude* from New York University School of Law in 2015, where I served as an executive editor of the *New York University Law Review*. Prior to joining DWT, I was an associate at Jenner & Block LLP, and clerked for the Honorable Edgardo Ramos in U.S. District Court for the Southern District of New York. As a member of DWT's media group, I focus my practice on litigation and counseling, including intellectual property,

defamation, and First Amendment matters. I have achieved significant victories for clients in defamation cases, including recently winning summary judgment for CNN in a defamation action filed by Harvard Law School professor emeritus Alan Dershowitz. *See Dershowitz v. Cable News Network, Inc.*, No. 0:20-cv-61872-AHS, 2023 U.S. Dist. LEXIS 59150 (S.D. Fla. Apr. 4, 2023). Attached hereto as **Exhibit A** is a true and correct copy of my professional bio on DWT's website.

11. My standard hourly rate set by DWT is $700 per hour.

12. Victor A. Kovner is senior counsel at DWT. Mr. Kovner has been practicing law for over 50 years, with extensive experience in defending and strengthening First Amendment rights. Mr. Kovner also has spent many years in government service, including previously serving as the Corporation Counsel of the City of New York and Chair of the New York State Commission on Judicial Conduct. Attached hereto as **Exhibit B** is a true and correct copy of Mr. Kovner's professional bio on DWT's website.

13. Mr. Kovner's standard hourly rate set by DWT is $1,155.

C. DWT's Work on This Matter

14. DWT represents Koch in this matter on a *pro bono* basis. Courts award attorney's fees to prevailing defendants in SLAPP suits, even where counsel is *pro bono*. Attorney's fees are awarded in SLAPP suits, "notwithstanding the *pro bono* nature of the representation," to avoid the "windfall benefit [that] would ensue from relieving an offending party of the obligation for legal fees, which would undercut the deterrent function of the mandatory [fee] provision," and to incentivize lawyers to take on such representations. *Ent. Partners Grp., Inc. v. Davis*, 155 Misc. 2d 894, 904–07 (Sup. Ct. N.Y. Cnty. 1992), *aff'd*, 198 A.D.2d 63 (1st Dep't 1993). An award of fees is especially necessary here, because mandatory fees further the purpose of the anti-SLAPP law to provide "the utmost protection for the free exercise or speech, petition, and

association rights." *Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 29 (1st Dep't 2022). "The overarching legislative intent for these significantly strengthened amended expansions of these anti-SLAPP laws is a shifting of the costly consequences from defendant to plaintiff with the intent to dissuade and deter meritless SLAPPs from being brought in the first instance." *Balliet v. Kottamasu*, 76 Misc. 3d 906, 916–17 (Civ. Ct. Kings Cnty. 2022).[2]

15. DWT invested substantial time and resources in this matter to bring it to a successful conclusion. DWT investigated the claims and defenses, counseled Koch on navigating a stressful litigation, prepared a motion to dismiss with thorough supporting and reply papers, traveled from New York City to Poughkeepsie to argue the motion, interfaced with the Commission as Intervenor-Defendant, and worked with opposing counsel on settlement negotiations and scheduling matters. DWT's efforts paid off, resulting in a complete success: the dismissal of the Complaint with prejudice and an award of costs and attorney's fees.

16. DWT achieved these successful results with a leanly staffed team of just two attorneys and one staff member:

a. To date, I have spent over 206 hours on this matter, which, at my standard hourly rate of $700, would yield a fee of over $144,200.

b. Mr. Kovner spent over 34 hours on this matter, at an hourly rate of $1,155, for a fee of over $39,270.

[2] In emails between counsel, Mora requested a copy of the engagement agreement between Koch and DWT. "That does not appear to be necessary here," because the Court must "determine reasonable legal compensation and is not bound by [the] retainer agreement." *Parklex Assocs. v. Parklex Assocs., Inc.*, 33 Misc. 3d 1216(A), at *11 (Sup. Ct. Kings Cnty. 2011) (citing *In re Est. of Rose BB.*, 35 A.D.3d 1044, 1046 (3d Dep't 2006)). In any event, the pertinent terms of the engagement agreement are fully disclosed here.

c. A docketing staff member, Jerome McCain, spent 0.9 hours on this matter, at an hourly rate of $235, for a fee of $211.50.

17. Additionally, DWT expended $507.68 in actual costs, including filing and docketing fees, delivery services, and transportation, which were reasonable and necessary for this matter. *See Reus v. ETC Hous. Corp.*, 72 Misc. 3d 479, 488 (Sup. Ct. Clinton Cnty. 2021) (awarding "actual costs" under anti-SLAPP law), *aff'd*, 203 A.D.3d 1281 (3d Dep't 2022); *Zeitlin v. Cohan*, 2022 N.Y. Slip Op. 32878(U), at **8 (Sup. Ct. N.Y. Cnty. Aug. 24, 2022) (same).

18. In total, at DWT's standard hourly rates, this matter incurred over $183,681 in fees and $507.68 in costs.

D. DWT's Discounts for This Fee Application

19. Although the value of DWT's time on this matter is substantial, DWT does not seek to recover all of its standard fees in this application.

20. First, DWT does not seek to recover any of Mr. Kovner's fees, which exceed $39,000. In addition, DWT does not seek to recover the fees of its docketing staff member, Mr. McCain, of $211.50.

21. Second, as an attorney based in Manhattan, I recognize that my hourly rate may be higher than the prevailing rate in Poughkeepsie. Accordingly, for this fee application, I have lowered my hourly rate to $350—a 50% discount—which is a reasonable rate for an attorney of my experience in the relevant geographic area. *See Bd. of Educ. of Yorktown Cent. Sch. Dist. v. C.S.*, No. 17 CV 6542 (VB), 2022 WL 831831, at *3 (S.D.N.Y. Mar. 21, 2022) (awarding $350 per hour for associate with eight years of experience).

22. Third, I have written off over 45 hours of my time spent on this matter. Specifically, DWT does not seek to recover any fees for my time on certain administrative or peripheral tasks, nor for my time spent preparing this fee application and the forthcoming reply.[3]

23. After these discounts, DWT seeks recovery for 161.2 hours of my time at the discounted hourly rate of $350. This yields a total fee of $56,420.

24. To aid the Court, I have broken down my time and fees on this matter, after discounts, into the following general categories:

Task	**Hourly Rate**	**Hours Spent**	**Fee**
Investigation of claims and defenses, and client counseling	$350	7.1	$2,485
Motion to dismiss and opening papers	$350	72.5	$25,375
Reply papers in support of motion	$350	36.1	$12,635
Oral argument preparation and attendance	$350	34.8	$12,180
Interfacing with Commission's counsel and opposing counsel	$350	10.7	$3,745
Total	**$350**	**161.2**	**$56,420**

25. Attached hereto as **Exhibit C** is a true and correct copy of DWT's invoice for this matter reflecting its fees as discounted, including detailed descriptions of the work performed, as well as its expended costs.

[3] "[P]ersuasive if not binding authority strongly suggests that statutes creating a right to attorneys' fees are served by [the] allowance" of "time spent in proving the value of their services, a so-called 'fee on a fee.'" *Kumble v. Windsor Plaza Co.*, 161 A.D.2d 259, 260–61 (1st Dep't 1990). Despite the availability of "fees on fees" under the anti-SLAPP statute, DWT declines to recover them at this time.

E. DWT's Requested Fee Is Reasonable

26. As described above, DWT requests that the Court award $56,420 in attorney's fees and $507.68 in costs.

27. In assessing whether a fee application is reasonable, the Court may consider "[a] the time and labor required; [b] the difficulty of the legal and factual questions involved; [c] the skills required to handle the case; [d] the attorneys' experience, ability and reputation; [e] the amount involved and benefit resulting to the client; [f] the customary fee charged by local attorneys for similar services; [g] the results ultimately obtained; and [h] the responsibility involved." *D. Owens Elec., Inc. v. J.W. Mays, Inc.*, 61 Misc. 3d 1225(A), at *12 (Sup. Ct. Dutchess Cnty. 2018).

28. An assessment of these factors confirms that DWT's requested fee is reasonable:

a. DWT's time and labor is detailed in this affirmation and the invoice attached as Exhibit C;

b. the matter involved a significant issue of public importance and policy, and required defeating a novel application of the "sham" exception to absolute privilege;

c. defamation and anti-SLAPP are specialized areas of law;

d. DWT and I have extensive experience in these specialized areas;

e. Mora sought $425,000 in damages in this litigation, which was very stressful for Koch, and its dismissal is a great benefit to her, as well as to the public, whose right to file complaints with the Commission was vindicated and protected;

f. my hourly rate, as discounted, is in line with local attorneys, *see supra* ¶ 21;

g. DWT obtained a completely successful result; and

h. I took primary responsibility for this matter, with oversight by Mr. Kovner.

29. Furthermore, DWT's requested fees "have already been significantly reduced," which confirms that they are "appropriate." *Rembert v. Cheverko*, No. 12-CV-9196 (KBF), 2015 WL 6971363, at *2 (S.D.N.Y. Nov. 9, 2015). As described above, all of DWT's time on this matter at its standard hourly rates would yield fees of over $183,681, but DWT only seeks to recover $56,420 in fees. *Compare supra* ¶ 18, *with* ¶ 23.

30. In light of the factors enumerated above, $56,420 is a reasonable fee for Koch's successful motion to dismiss—and, in fact, is substantially less than other similar fees approved by courts. *See Klein v. Aicher*, No. 19-CV-9172 (RA), 2021 WL 1948010, at *1 (S.D.N.Y. May 14, 2021) (awarding $74,160 to defendant after successful motion to dismiss).

31. Accordingly, the Court should award Koch $56,420 in attorney's fees and $507.68 in costs. Attached hereto as **Exhibit D** is a proposed order granting such award.

Dated: April 27, 2023
New York, New York

/s/ Raphael Holoszyc-Pimentel
Raphael Holoszyc-Pimentel

DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax:
Email: [redacted]@dwt.com

Attorneys for Defendant Stacey Koch

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 4-27-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Affirmation # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/31/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Raphael Holoszyc-Pimentel, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Affirmation of Raphael Holoszyc-Pimentel in Support of Koch's Motion for Attorney's Fees and Costs contains 2,358 words.

/s/ Raphael Holoszyc-Pimentel
Raphael Holoszyc-Pimentel

SUSSMAN & GOLDMAN

~Attorneys at Law~

1 Railroad Avenue, Suite 3, P.O. Box 1005, Goshen, New York 10924

Michael H. Sussman
Jonathan R. Goldman
Eli D. Siems

[redacted] [Tel]
[redacted] [Fax]
info@sussman.law

Christopher D. Watkins
Mary Jo Whateley
Of Counsel

Rasheed Hosein
Paralegal

Monica Ponce-Agredano
Legal Assistant

5/11/23 – Via NYSCEF

Hon. Maria G. Rosa
Justice, NY State Supreme Court
County of Dutchess
10 Market Street
Poughkeepsie, NY 10601

Maria G. Rosa, J.S.C.
Adjournment Request: Granted/~~Denied~~
New Date: Control Purposes Only*
Failure To NOTIFY OPPOSING SIDE OR COUNSEL May Result In **SANCTIONS**

Re: *Mora v. Koch, Index No. 2022-54141*

* for either the Stipulation of Discontinuance or Plaintiff's opposition papers to be filed by 5/26/23.

Dear Justice Rosa,

I represent plaintiff in this matter.

I am writing to advise the court that the parties have reached a resolution of this matter, inclusive of the pending fee application by defendant. Counsel are finalizing a settlement agreement which I expect we will file early next week at the latest. Accordingly, I am not today filing my opposition to defendant's pending attorney fee application and respectfully request that Your Honor hold that in abeyance as it shall be resolved by the referenced settlement we have reached.

Thank you for your consideration in this matter.

Respectfully,

Michael H. Sussman

cc: All counsel of record via NYSCEF

STATE OF NEW YORK) SS:
COUNTY OF DUTCHESS)
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 5-12-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY SEAL

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Davis Wright Tremaine LLP

21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

Raphael Holoszyc-Pimentel
[redacted] tel
[redacted] fax

[redacted]@dwt.com

May 23, 2023

VIA NYSCEF

The Honorable Maria G. Rosa
New York State Supreme Court
Dutchess County Chambers
10 Market Street
Poughkeepsie, New York 12601

Maria G. Rosa, J.S.C.
Adjournment Request: Granted/~~Denied~~
New Date: 6/2/23*
Failure To NOTIFY OPPOSING SIDE OR COUNSEL May Result In **SANCTIONS**

* for withdrawal of the fee motion or a status update. NO Appearances

Re: *Frank Mora v. Stacey Koch*, Index No. 2022-54141 (N.Y. Sup. Ct. Dutchess Cnty.)

Dear Justice Rosa:

We represent Defendant Stacey Koch in the above-referenced matter.

On May 12, 2023, the Court directed that either a discontinuance pursuant to a settlement or Plaintiff's opposition to Defendant's fee motion be filed by May 26, 2023. NYSCEF Doc. No. 54. The parties have executed a settlement agreement, pursuant to which Plaintiff will make a payment of attorney's fees and then Defendant will withdraw her fee motion. We expect that the payment will be made on May 26 and clear within a few days thereafter.

Accordingly, we respectfully request that the Court grant a brief one-week extension, to June 2, 2023, for Defendant to withdraw her fee motion or provide a status update. Plaintiff consents to this request.

We thank the Court for its attention to this matter.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

/s/ Raphael Holoszyc-Pimentel

Raphael Holoszyc-Pimentel

STATE OF NEW YORK
COUNTY OF DUTCHESS SS:
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 5-24-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY CLERK SEAL .COM 8/30/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

Davis Wright Tremaine LLP

21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

Raphael Holoszyc-Pimentel
[redacted] tel
fax

[redacted]@dwt.com

June 1, 2023

Maria G. Rosa, J.S.C.
Request: Granted/~~Denied~~
New Date: Submit the proposed Judgment 6/3 7/11/23
Failure To NOTIFY OPPOSING SIDE OR COUNSEL May Result In **SANCTIONS**

Thank you.
6/2/23

VIA NYSCEF

The Honorable Maria G. Rosa
New York State Supreme Court
Dutchess County Chambers
10 Market Street
Poughkeepsie, New York 12601

Re: ***Frank Mora v. Stacey Koch*, Index No. 2022-54141 (N.Y. Sup. Ct. Dutchess Cnty.)**

Dear Justice Rosa:

We represent Defendant Stacey Koch in the above-referenced matter.

As the Court is aware, on April 4, 2023, the Court granted Defendant's motion to dismiss and dismissed Plaintiff's complaint with prejudice. NYSCEF Doc. No. 34, at 7. The Court also had granted the New York State Commission on Judicial Conduct's motion to intervene and likewise granted its motion to dismiss. *Id.* at 2, 7. Finally, the Court held that Defendant is entitled to a mandatory award of costs and attorney's fees pursuant to New York Civil Rights Law § 70-a(1)(a), the amount of which would be determined at a later date. *Id.* at 7.

Plaintiff and Defendant have entered into a settlement agreement resolving Defendant's motion for attorney's fees and costs. Pursuant to the settlement agreement, Defendant hereby withdraws her motion for attorney's fees and costs under New York Civil Rights Law § 70-a(1)(a).

We respectfully request that the Court enter judgment accordingly and close the case. We stand ready to submit a proposed judgment should the Court so desire.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

/s/ Raphael Holoszyc-Pimentel

Raphael Holoszyc-Pimentel

STATE OF NEW YORK
COUNTY OF DUTCHESS SS:
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 6-2-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter #2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
DWT.COM
8/31/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA,

Plaintiff,

- against -

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

Index No. 2022-54141

Assigned: Hon. Maria G. Rosa, J.S.C.

JUDGMENT

WHEREAS, on December 29, 2022, Plaintiff Frank Mora ("Plaintiff") commenced this action and filed a complaint against Defendant Stacey Koch ("Defendant") (NYSCEF Doc. No. 1);

WHEREAS, on February 2, 2023, Defendant filed a motion to dismiss pursuant to CPLR 3211(a)(7) and (g) and Civil Rights Law § 76-a, and for attorney's fees and costs pursuant to Civil Rights Law § 70-a(1)(a) (Mot. Seq. 001);

WHEREAS, on February 6, 2023, Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") filed a motion to intervene pursuant to CPLR 1012(a)(2) or 1013, and to dismiss pursuant to CPLR 3211(a)(7) (Mot. Seq. 002);

WHEREAS, on March 27, 2023, the Court held oral argument on Defendant's and the Commission's motions, and granted the Commission's motion to intervene on the record;

WHEREAS, on April 4, 2023, the Court issued a decision and order granting Defendant's and the Commission's motions to dismiss, and dismissing the complaint with prejudice (NYSCEF Doc. Nos. 34–35);

WHEREAS, on June 1, 2023, pursuant to a settlement agreement, Defendant withdrew her motion for attorney's fees and costs under Civil Rights Law § 70-a(1)(a) (NYSCEF Doc. No. 57);

NOW, it is hereby:

ADJUDGED that the complaint is DISMISSED WITH PREJUDICE.

Dated: June 20, 2023
Poughkeepsie, New York

ENTER:

HON. MARIA G. ROSA, J.S.C.

Judgment Signed and Entered 6/23/2023

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 6-23-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Judgment # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

DUTCHESS COUNTY SEAL

8/31/2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant,	Index No. 2022-54141 Hon. Maria G. Rosa **NOTICE OF ENTRY OF JUDGMENT**
NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, Intervenor-Defendant.	

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Judgment dated June 20, 2023, that was entered in the office of the Clerk of the County of Dutchess on June 23, 2023.

Dated: June 27, 2023

Respectfully submitted,

By: */s/ Victor A. Kovner*
Victor A. Kovner
Raphael Holoszyc-Pimentel
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax: [redacted]
Email: [redacted]@dwt.com
[redacted]@dwt.com

Attorneys for Defendant Stacey Koch

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, **BRADFORD KENDALL**, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 6-27-2023 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Notice of Entry # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
8/31/2023
COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

To: Michael H. Sussman, Esq.
SUSSMAN & ASSOCIATES
1 Railroad Avenue - Suite 3
PO Box 1005
Goshen, NY 10924
Phone: [redacted]
Email: [redacted]@sussman.law

Attorneys for Plaintiff Frank Mora

ROBERT H. TEMBECKJIAN, ADMINISTRATOR AND COUNSEL
New York State Commission on Judicial Conduct
c/o Denise Buckley, Esq.
Corning Tower, Suite 2301
Empire State Plaza
Albany, NY 12223
Phone: (518) 453-4600
Email: [redacted]@cjc.ny.gov

Attorneys for Intervenor-Defendant New York State Commission on Judicial Conduct

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA,

Plaintiff,

- against -

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

Index No. 2022-54141

Assigned: Hon. Maria G. Rosa, J.S.C.

] JUDGMENT

WHEREAS, on December 29, 2022, Plaintiff Frank Mora ("Plaintiff") commenced this action and filed a complaint against Defendant Stacey Koch ("Defendant") (NYSCEF Doc. No. 1);

WHEREAS, on February 2, 2023, Defendant filed a motion to dismiss pursuant to CPLR 3211(a)(7) and (g) and Civil Rights Law § 76-a, and for attorney's fees and costs pursuant to Civil Rights Law § 70-a(1)(a) (Mot. Seq. 001);

WHEREAS, on February 6, 2023, Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") filed a motion to intervene pursuant to CPLR 1012(a)(2) or 1013, and to dismiss pursuant to CPLR 3211(a)(7) (Mot. Seq. 002);

WHEREAS, on March 27, 2023, the Court held oral argument on Defendant's and the Commission's motions, and granted the Commission's motion to intervene on the record;

WHEREAS, on April 4, 2023, the Court issued a decision and order granting Defendant's and the Commission's motions to dismiss, and dismissing the complaint with prejudice (NYSCEF Doc. Nos. 34–35);

WHEREAS, on June 1, 2023, pursuant to a settlement agreement, Defendant withdrew her motion for attorney's fees and costs under Civil Rights Law § 70-a(1)(a) (NYSCEF Doc. No. 57);

NOW, it is hereby:

ADJUDGED that the complaint is DISMISSED WITH PREJUDICE.

Dated: June 20, 2023
Poughkeepsie, New York

ENTER:

HON. MARIA G. ROSA, J.S.C.

Judgment Signed and Entered 6/23/2023

FILED: DUTCHESS COUNTY CLERK 06/27/2023 03:19 PM INDEX NO. 2022-54141
NYSCEF DOC. NO. 63 RECEIVED NYSCEF: 06/27/2023

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

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ALBANY, NEW YORK 12223

518-453-4600 518-299-1757
TELEPHONE FACSIMILE
www.cjc.ny.gov

EDWARD LINDNER
DEPUTY ADMINISTRATOR
FOR LITIGATION

DENISE BUCKLEY
SENIOR LITIGATION COUNSEL

DAVID P. STROMES
LITIGATION COUNSEL

June 27, 2023

Via NYS-CEF
Michael H. Sussman, Esq., Sussman & Associates
1 Railroad Avenue, Ste 3
PO Box 1005, Goshen, NY 10924

Victor A. Kovner, Esq.
Raphael Holoszyc-Pimentel, Esq.
Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020

Re: *Mora v. Koch*, Index No. 2022-54141

Dear Counselors,

Enclosed herewith by way of service on you please find the Judgment with Notice of Entry in the above-referenced matter, dated June 20, 2023, and entered on June 23, 2023.

Respectfully,

Denise Buckley

Denise Buckley
Senior Litigation Counsel

Enclosure

STATE OF NEW YORK
COUNTY OF DUTCHESS SS: Supreme
I, BRADFORD KENDALL, DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON
AND THE SAME IS A CORRECT TRANSCRIPT THEREOF Letter with NOE # 2022-54141
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

AUG 31 2023

COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

NOTICE OF ENTRY

-against-

STACEY KOCH,

Defendant.

NEW YORK STATE COMMISSION ON
JUDICIAL CONDUCT,

Intervenor/Defendant.

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Judgment dated June 20, 2023, that was entered in this proceeding in the Office of the County Clerk of the County of Dutchess on June 23, 2023.

Dated: June 27, 2023
Albany, New York

DENISE BUCKLEY
Senior Litigation Counsel
New York State Commission on Judicial Conduct
Empire State Plaza
Corning Tower, Suite 2301
Albany, New York 12223
Tel. (518) 453-4600

TO: Michael H. Sussman, Esq.
Sussman & Associates
Counsel for plaintiff Frank Mora

1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, NY 10924
Tel. [redacted]

Victor A. Kovner, Esq.
Raphael Holoszyc-Pimentel, Esq.
Davis Wright Tremaine LLP
Counsel for defendant Stacey Koch
1251 Avenue of the Americas, 21st Floor
New York, NY 10020
Tel: [redacted]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA,

Plaintiff,

- against -

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

Index No. 2022-54141

Assigned: Hon. Maria G. Rosa, J.S.C.

] **JUDGMENT**

WHEREAS, on December 29, 2022, Plaintiff Frank Mora ("Plaintiff") commenced this action and filed a complaint against Defendant Stacey Koch ("Defendant") (NYSCEF Doc. No. 1);

WHEREAS, on February 2, 2023, Defendant filed a motion to dismiss pursuant to CPLR 3211(a)(7) and (g) and Civil Rights Law § 76-a, and for attorney's fees and costs pursuant to Civil Rights Law § 70-a(1)(a) (Mot. Seq. 001);

WHEREAS, on February 6, 2023, Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") filed a motion to intervene pursuant to CPLR 1012(a)(2) or 1013, and to dismiss pursuant to CPLR 3211(a)(7) (Mot. Seq. 002);

WHEREAS, on March 27, 2023, the Court held oral argument on Defendant's and the Commission's motions, and granted the Commission's motion to intervene on the record;

WHEREAS, on April 4, 2023, the Court issued a decision and order granting Defendant's and the Commission's motions to dismiss, and dismissing the complaint with prejudice (NYSCEF Doc. Nos. 34–35);

WHEREAS, on June 1, 2023, pursuant to a settlement agreement, Defendant withdrew her motion for attorney's fees and costs under Civil Rights Law § 70-a(1)(a) (NYSCEF Doc. No. 57);

NOW, it is hereby:

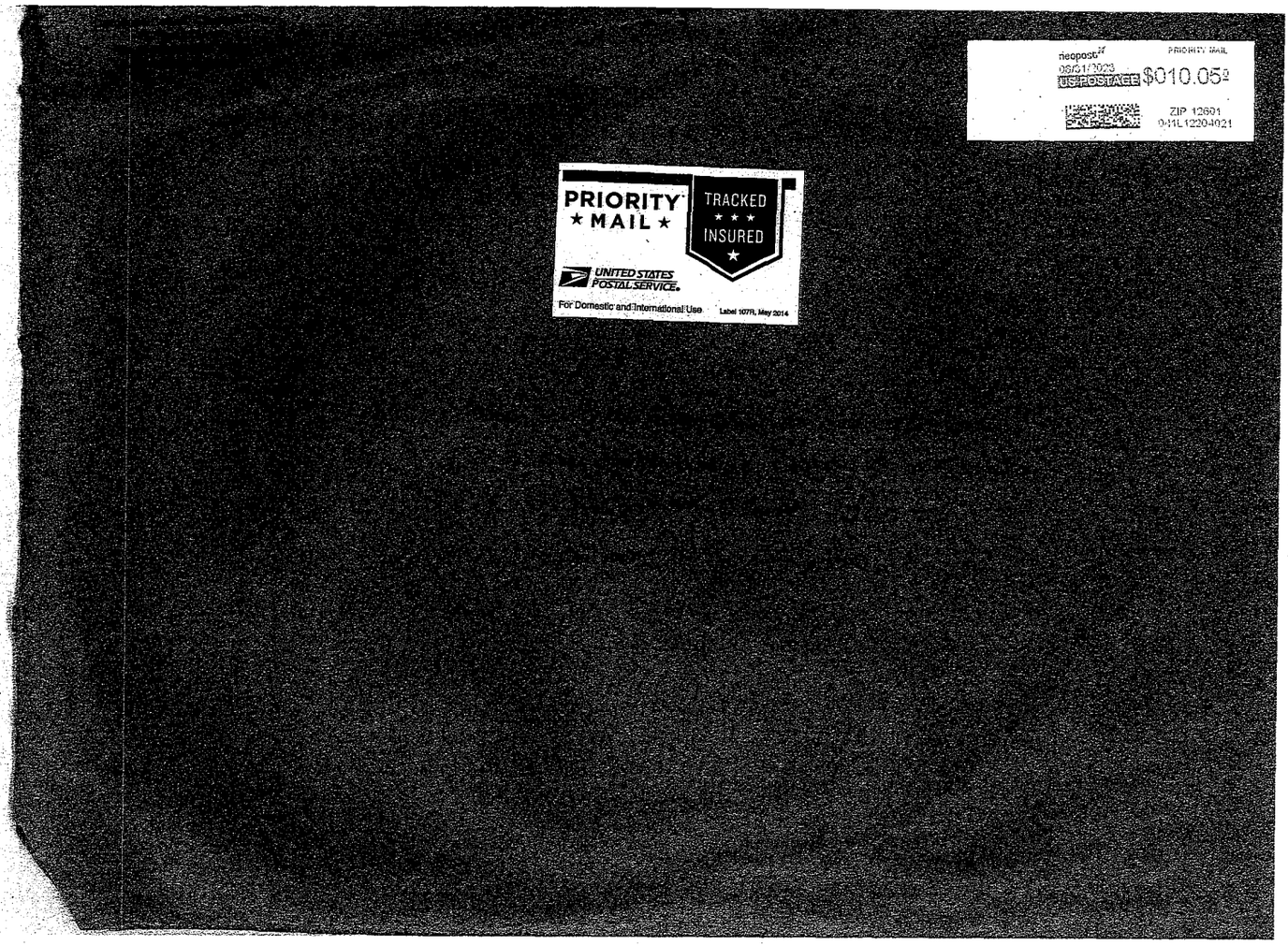
ADJUDGED that the complaint is DISMISSED WITH PREJUDICE.

Dated: June 20, 2023
Poughkeepsie, New York

ENTER:

HON. MARIA G. ROSA, J.S.C.

Judgment Signed and Entered 6/23/2023


PRIORITY MAIL
TRACKED
INSURED
UNITED STATES POSTAL SERVICE
For Domestic and International Use
Label 107R, May 2014
PRIORITY MAIL
08/01/2023
USPS POSTAGE
$010.05
ZIP 12601
041L1220402

Settlement Agreement in *Mora v. Koch*

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**"), made effective as of the date defined below, is entered into by and between Frank Mora ("**Mora**") and Stacey Koch ("**Koch**"). Mora and Koch may be referred to herein collectively as the "**Parties**" and individually as a "**Party**."

WHEREAS, Mora is a Poughkeepsie City Court Judge, and Koch is an office manager at Seeta Eye, an ophthalmology practice with a location at 27 Davis Avenue, Poughkeepsie, New York;

WHEREAS, on December 28, 2021, during the COVID-19 pandemic, Mora entered Seeta Eye, and Mora and Koch had a dispute regarding Mora's alleged inability to wear a face mask while in Seeta Eye;

WHEREAS, on December 29, 2021, Koch submitted a complaint to the New York State Commission on Judicial Conduct concerning Mora's behavior in Seeta Eye the day before;

WHEREAS, on December 29, 2022, Mora filed a lawsuit styled *Frank Mora v. Stacey Koch*, Index No. 2022-54141, in New York Supreme Court, Dutchess County (the "**Lawsuit**"), alleging that Koch's complaint was defamatory and seeking compensatory and punitive damages;

WHEREAS, on February 2, 2023, Koch filed a motion (i) to dismiss the Lawsuit (the "**Dismissal Motion**") and (ii) for attorney's fees and costs under New York Civil Rights Law § 70-a(1)(a) (the "**Fee Motion**");

WHEREAS, on April 4, 2023, the Court granted Koch's Dismissal Motion, dismissed the Lawsuit with prejudice, and held that Koch is entitled to a mandatory award of costs and attorney's fees, the amount of which would be determined at a later date;

WHEREAS, on April 27, 2023, Koch's counsel filed an affirmation in support of her Fee Motion, and Mora has prepared but not filed an opposition to the same in light of this Settlement Agreement;

WHEREAS, the Parties now desire to resolve the Fee Motion without further litigation;

NOW, THEREFORE, in consideration of the following promises, and for good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

1. **Effective Date.** The effective date of this Agreement (the "**Effective Date**") shall be the date that the last of the Parties signs this Agreement.

2. **Settlement Consideration.** In consideration of mutual agreements, representations, warranties, covenants, and releases set forth in this Agreement, the Parties agree to the following:

   a. **Payment.** Within twenty (20) days of the Effective Date, Mora shall make one payment of Twenty Thousand Dollars ($20,000.00) (the "**Payment**") to Koch. The Payment shall be made via check, cashier's check, or electronic wire transfer from Mora's counsel, Sussman & Goldman, to Koch's counsel, Davis Wright Tremaine LLP.

   b. **Apology.** Within twenty (20) days of the Effective Date, Mora shall send to Koch a signed apology letter that is attached as **Exhibit A** (the "**Apology**"). The Apology shall be sent from Mora's counsel, Sussman & Goldman, to Koch's counsel, Davis Wright Tremaine LLP. The content of the Apology shall be confidential as between Mora, Koch, and their counsel, but the fact that Mora delivered the Apology to Koch may be public.

c. **No Contact.** Beginning on the Effective Date and continuing in perpetuity, Mora shall have no contact with Koch nor any Seeta Eye location (the "**Contact Ban**"). The Contact Ban includes a prohibition on (i) any communication (whether oral, written, or electronic) with Koch or any Seeta Eye location, or (ii) intentional presence in the vicinity of Koch or at any Seeta Eye location. Mora agrees that a violation of the Contact Ban shall constitute irreparable injury warranting injunctive relief for specific performance.

d. **Waiver of Claims Related to Contact Ban and Appeal.** Mora agrees to waive and not assert any claim, including any claim based on a disability, against Koch, Seeta Eye, or its employees, arising from the Contact Ban. Mora further agrees to waive his right to appeal, or to move to reargue, renew, or otherwise reconsider, in connection with the Court's April 4, 2023 order or any judgment predicated on such order.

e. **Withdrawal of Fee Motion.** Within fourteen (14) days of Koch's receipt of the Payment and the Apology, Koch, through her counsel, shall inform the Court that she is withdrawing her Fee Motion pursuant to a settlement agreement. Neither this Agreement, nor any exhibits, shall be filed with the Court.

f. **Release of Claims in Fee Motion.** Upon the withdrawal of the Fee Motion, Koch shall thereby forever and unconditionally release, remit, acquit, and discharge Mora, and his present, former, and future (as applicable) spouses, heirs, representatives, predecessors, successors, insurers, agents, partners, principals, employees, contractors, and attorneys, from any claim for costs and attorney's

fees under New York Civil Rights Law § 70-a(1)(a), that Koch may have or ever had, from the beginning of time to the Effective Date, arising from the Lawsuit.

3. **No Release of Obligations in This Agreement.** Notwithstanding any provision in this Agreement, nothing in this Agreement is intended to or shall release any of the Parties from the obligations, duties, and covenants that are set forth in this Agreement.

4. **Miscellaneous.**

a. **Representations.** The Parties represent and warrant by their execution of this Agreement that they have approved and accepted this Agreement, and that they have the capacity to enter into this Agreement.

b. **Incorporation of Recitals.** The statements contained in the "**WHEREAS**" recitals of this Agreement are true, material, and necessary for a full comprehension and understanding of this Agreement and are accordingly incorporated herein as contractual terms of this Agreement.

c. **Choice of Law, Jurisdiction, and Venue.** This Agreement shall be deemed to have been made in the State of New York. This Agreement shall be governed by, and construed in accordance with, the internal laws of New York, without regard to conflict-of-law principles. The New York Supreme Court, New York County, shall have exclusive jurisdiction and venue over any claims or disputes arising under this Agreement.

d. **Severability.** The terms of this Agreement are severable, and if for any reason any part hereof shall be found to be unenforceable, the remaining terms and conditions shall remain in full force and effect.

e. **Acknowledgment of Advice of Counsel.** The Parties acknowledge that they have read this Agreement carefully, that they have been afforded a sufficient amount of time to consider and accept the terms and effects of this Agreement, that they have been advised by legal counsel of their choosing on all of the terms and effects of this Agreement prior to executing this Agreement, and that in all aspects and respects they are voluntarily entering into and executing this Agreement.

f. **Entire Agreement; Modifications.** No amendment, modification, or termination of this Agreement shall be deemed valid unless reduced to writing signed by all of the Parties. This Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements and understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. No Party is relying on any representations or promises other than those set forth expressly in this Agreement.

g. **Participation in Drafting.** Each of the Parties cooperated in the drafting and preparation of this Agreement and, if there is any deficiency in the construction of this Agreement, it shall not be construed against either Party.

h. **Successors and Assigns.** This Agreement shall inure to the benefit of the Parties' successors and assigns.

i. **Execution in Counterparts.** This Agreement may be executed in counterparts and transmitted by email, facsimile, or other electronic transmission, each of which when executed shall be deemed to be an original and all of which together shall constitute a single instrument binding upon the Parties. Signatures may be

electronic or handwritten, both of which being of equal effect whether kept in electronic or paper form. All fully executed copies shall be considered duplicate originals, equally admissible in evidence.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed as of the Effective Date.

By: _____ Date: May 16, 2023
FRANK MORA

By: _____ Date: May 22, 2023
STACEY KOCH

LAW OFFICE OF CHAD J. LAVEGLIA PLLC

COMMISSION EXHIBIT 2

SENT VIA EMAIL
[redacted]@cjc.ny.gov, [redacted]@cjc.ny.gov

PERSONAL & CONFIDENTIAL
Mark Levine, Esq.
Deputy Administrator
Melissa DiPalo
Senior Attorney
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, NY 10006

June 17, 2022

Re: File Nos. 2021/N-1176, 2021/N-0723, and 2021/N-1120
Hon. Frank M. Mora

Dear Deputy Administrator Levine and Ms. DiPalo:

As I advised, I represent the Honorable Frank M. Mora in the above-captioned matters. Thank you for your professional courtesy by extending the time in which to submit this response to the Commission's March 30, 2022, and April 12, 2022, letters regarding the above-captioned matters. Judge Mora has signed below, acknowledging that he has read this letter and adopts its contents.

Judge Mora understands the seriousness of the allegations against him and is eager to cooperate with all requests by the Commission. Judge Mora is a humble, public servant who presides over cases in the small city of Poughkeepsie. As discussed further *inter alia,* Judge Mora never intended to defy Chief Administrative Judge Lawrence K. Marks' or any of the administrative mandates issued by UCS. The following information is provided to the best of Judge Mora's recollection. Judge Mora respectfully reserves the right to file supplemental information if necessary.

Prior to addressing the specific allegations, we respectfully ask the Commission to review the information provided below regarding Judge Mora's background. To the greatest extent possible, it will give the Commission greater insight into who Judge Mora is; in both his professional and personal lives. This information is relevant to assist the Commission in the proper disposition of this matter.

Judge Mora's Background

Judge Mora is a devoted family man. He has been married for over 20 years to his wife, Sheri. They have three children together: [redacted] (just turned [redacted] on [redacted]), [redacted] ([redacted]), and [redacted]). His fondest memories are of the precious times he has spent with his family. Judge Mora feels blessed. He is proud of his children's accomplishments and always tries to be there to pick them back up when they falter. While balancing work and life is a difficult endeavor in our profession, Judge Mora has done an excellent job at striking that balance.

Judge Mora is a devout Catholic. His moral compass is guided by his faith. Values such as forgiveness, civility, respect for others regardless of their plot in life, empathy, patience, understanding, and doing good deeds, are but a few tenants that encompass his system of beliefs. Judge Mora strives to improve his community and improve the lives of the people he encounters. His faith guides him to make the right decisions. It is deeply embedded into every fiber of his being. So much so, that he would be lost without it.

The Hon. Frank M. Mora is a Judge of the Poughkeepsie City Court and has been a member of the bar for approximately twenty-five (25) years. Mayor John Tkazyik appointed him to the bench for a ten-year term in 2011. Mayor Robert Rolison then re-appointed Judge Mora in 2021. His term will expire in 2030. Prior to re-appointing Judge Mora, Mayor Rolison noted that in checking with the community, he had not heard of one negative comment

regarding Judge Mora's tenure on the bench. Mayor Rolison found Judge Mora to be well respected by both the criminal prosecution and defense bars, as well as the bar in general.

Judge Mora is one of two full-time Judges who currently preside in the Poughkeepsie City Court. Judge Mora is responsible for providing justice to the City's residents involving disputes covering a wide array of different areas of the law. Along with his co-judge, and prior to being ordered to preside over his calendars virtually commencing January 4, 2022, he presided over matters as follows:

* Criminal Calendars: there is a criminal part every day, where they handle arraignments, felony hearings, jury, and bench trials. Depending on the rotation, Judge Mora presided over the criminal calendar either two or three times per week;

* Small Claims and Commercial Claims Court, twice or three times per week depending on the rotation;

* Landlord-Tenant Court, once per week;

* Jury Pre-trial for civil matters with jurisdiction over claims up to $15,000, twice per week; and

* Traffic Court - twice per week

Judge Mora is dedicated to being proficient in these different areas of the law to afford litigants fair and just outcomes. He takes great pride in his work and the enormous responsibilities that come with it. He treats all parties with the respect and courtesy that is expected of a jurist. Ultimately, Judge Mora helps provide the people of Poughkeepsie with a forum they trust for the fair administration of justice.

Prior to taking the bench, Judge Mora was a lawyer for thirteen (13) years from 1997 through 2010. Judge Mora owned a small, general, local practice in Poughkeepsie. In 1997, he was admitted to the New York State Bar by the Appellate Division for the Second Judicial Department as well as the United States District Court for the Southern District of New York.

Prior to his admission, Judge Mora earned his Juris Doctor from the University of Memphis, Cecil C. Humphreys Law School, in 1996. There, he received the Dean's Award for Academic Excellence for the highest grade in Business Organizations I (1994), the Humphreys Law Fellowship (1995-1996), and was a pupil in the Leo Bearman, Sr. American Inns of Court (1995-1996). Judge Mora earned his Bachelor of Science/Bachelor of Arts from Marist College in 1992, where he was on the Dean's List of Honor Students (1990-1992).

Judge Mora is well-known in the legal community, as well as the community at large. In the spirit of a true public servant, Judge Mora happily dedicates his time to endeavors that further the legal and general community. He is, or has been, a member of the following organizations:

* Member, New York State Association of City Court Judges

* Member, Dutchess County Bar Association

* Member, Dutchess County Magistrates Association

* Councilmember, 1st Ward City of Poughkeepsie, January 2000 to December 2005 (Chairman January 2004 to December 2005)

* Member, Poughkeepsie's Joint Water Board, January 2000 to December 2010 (Chairman 2005, 2007, and 2009)

* Trustee, Our Lady of Mount Carmel Church, April 2008 to March 2012

* Lector, Our Lady of Mount Carmel Church

* Trustee, Church of the Holy Trinity

* Lector, Church of the Holy Trinity

* Secretary, Dutchess County Bar Association, May 2011 to May 2012

* Vice-President, Dutchess County Bar Association May 2012 to May 2013

* President-Elect, Dutchess County Bar Association May 2013 to May 2014

* President, Dutchess County Bar Association May 2014 to May 2015

* Immediate Past-President, DC Bar Association May 2015 to May 2016

Judge Mora has an unblemished reputation. Other than receiving a letter of dismissal and caution by this Commission dated January 31, 2019 (for attending a political event outside of his "Window Period"), Judge Mora has never been disciplined as a judge or a lawyer. Nor has he ever been sanctioned by any Court.

Judge Mora takes his ethical responsibilities extremely seriously. He does not leave anything to chance when placed in a situation where it is not clear what is ethically proper. Notably, over the past twelve (12) years, both prior to and since becoming a Judge, Judge Mora has sought advice formally and informally from the Judicial Advisory Committee (JAC), and its long-time former Co-chair, the Honorable George Marlow. Judge Mora also speaks regularly with Laura Smith, Esq., the JAC's Chief Counsel, whenever an issue arises that he has questions about. Thus, Judge Mora is mindful of and careful to adhere to the Rules of Judicial Conduct. Copies of his approximately twenty (20) letters as well as the JAC Opinions will be provided upon request.

Although it is not possible to give this Committee a full idea of who Judge Mora is, in a few pages, the information will hopefully inform this Committee about who Judge Mora is not.

He is not an activist, disrupter, or rogue jurist. Indeed, Judge Mora has demonstrated his commitment to adhering to the highest ethical standards in practicing law, and as a jurist. Disobedience and insubordination are not among his many characteristics. Judge Mora acknowledges the extremely difficult circumstances thrust upon the UCS because of the pandemic. He very much respects the herculean challenges Chief Judge DiFiore and UCS staff faced to keep the courts open. Judge Mora complied with the mandates to the greatest extent he possibly could.

As explained below, Judge Mora's conduct resulted from a conflict with his core religious beliefs as well as a recently diagnosed anxiety disorder. Religious beliefs are very personal to the individual holding them. Members of the same religion have their own unique connection to God. As lawyers, we operate in a world of logic and facts. Spirituality evades logic. It is intangible to everyone but the person holding it. To them, it is as tangible and real as the law itself. Judge Mora's religious beliefs are more than just beliefs; they are fused into his soul.

Please find answers to Inquiries as set forth below based on each letter and file number, in the same chronology as the Commissions' questions.

File No. 2021/N-1176

1. Judge Mora is familiar with Judge Marks' Administrative Order 275/2021, which required that by September 27, 2021, all judges, and employees of the Unified Court System (UCS) either be fully vaccinated against COVID-19, or submit a request for an exemption on medical or religious grounds.

2. Judge Mora submitted a request for a religious exemption from the COVID-19 vaccination to the UCS. Please find copies of (i) his request, and (ii) all written or electronic communications between himself and UCS regarding his exemption request attached as Exhibit 1.

3. The UCS Vaccination Exemption Committee (Vaccination Committee) denied Judge Mora's request for an exemption on December 23, 2021, and directed him to submit proof of a first dose of the COVID-19 vaccination within 10 days from the date of notification. The email did not state it was 10 business days.

A. Judge Mora did not submit proof of a first vaccination dose on or before January 10, 2022. He did not submit such proof because doing so is repugnant to his religious beliefs. Just as killing another human being and stealing are against his religious beliefs. Respectfully, what was Judge Mora supposed to do? Imagine, being required to take something that violates every particle of your being. Judge Mora sincerely believes that God has guided his conscience to not get vaccinated. How can a devout man or woman disobey God? This is not hyperbole. Judge Mora would not be able to live, knowing he disobeyed God's directive. For many people this is hard to comprehend and easy to dismiss. But for Judge Mora, taking the Vaccine would permanently damage his soul and relationship with God. Indeed, Judge Mora would not be in this position had he just given in. In that sense, it would be easy to get vaccinated, but Judge Mora's religious beliefs are so sincere, that he is suffering the resulting consequences.

B. Judge Mora did not receive a vaccination dose at any time after December 23, 2021.

C. Judge Mora has not, and cannot, receive the COVID-19 vaccination, or any vaccinations. Respectfully, Judge Mora has done everything in his power to comply with AO 275/2021. While the Vaccination Committee's decision is not appealable, mistakes are made by humans in all affairs of life. The Vaccination Committee is no different. Judge Mora is restrained from pulling the proverbial trigger. It is no different than requiring him to break the law. He cannot do it. Under these circumstances, it is not possible for Judge Mora to completely abandon his religious beliefs. We implore you to read the UCS's response to Judge Mora's discrimination claim, Memorandum of Law, and Judge Mora's rebuttal, which we incorporate into this response, and request that you make a part hereof. These three (3) documents are separately attached to the email that this letter is being submitted with to keep the page numbers accurate that Judge Mora references in his rebuttal. Respectively, they are *UCS Response 10214957 to religious discrimination claim 3-2-22, Memorandum of Law Northern District of NY Ferrelli 22-CV-0068 dated 2-4-22, and NYS Division of Human Rights rebuttal to court response 3-21-22*. Judge Mora respectfully requests the Commission review these documents, since they demonstrate how deeply held his religious beliefs are. Indeed, it is quite difficult to draw a conclusion to the contrary.

4. A. No, Judge Mora has not physically appeared for work at the Poughkeepsie City Court from January 4, 2022, through the present. Although the question states January 10, 2022, Judge Mora was ordered by the 9th JD Administrative Judge, Hon. Anne Minihan, to work virtually commencing January 4, 2022, which he has done. A copy of Judge Minihan's email is attached as Exhibit 2.

B. Judge Mora is fully performing all his assigned judicial duties virtually, through Microsoft Teams. Judge Mora is fully complying with Judge Minihan's Administrative Order 9-ADMJ-1-31-22, a copy of which is attached as Exhibit 3. That order allows Judge Mora to preside over *Civil matters in which the litigants mutually consent to proceed with the Judge appearing remotely, and The issuance of Decisions related to criminal matters which arise from motions submitted on criminal matters where no appearances are required.* Judge Mora is handling the Civil Calendar for the entire Poughkeepsie City Court every day, which includes Small Claims, Commercial Claims, Civil Claims, and Summary Proceedings (Landlord-Tenant matters). Judge Mora also handles all of the trials of these matters, up to several times per week. In addition, Judge Mora handles Decisions and Orders related to Criminal Matters for the entire Poughkeepsie City Court.

5. Respectfully, Judge Mora does consider his conduct to be consistent with Section 100.1 of the Rules Governing Judicial Conduct (Rules). Judges are frequently exposed to outside pressure; whether it be public opinion, or political sentiments. The integrity of the judiciary requires judges to follow the law and remain impartial. There is an adage

which says, "let justice be done though the heavens may fall." It means that justice must be done regardless of the personal consequences a judge faces. Analogously, Judge Mora is not abandoning his religious beliefs despite the personal consequences he faces. Further, Judge Mora is not allowing external pressure or outside forces to influence him to change his religious convictions. Judge Mora's conduct is more than consistent with the Rule—it exemplifies it. Judge Mora's steadfast commitment to his religious beliefs demonstrate that he would never abandon the law in the face of external pressure. Surely, few things, if any, promote the public's confidence in the integrity of the judiciary than Judge Mora's conduct here.

6. Judge Mora's conduct is consistent with Section 100.2(A) of the Rules. Respectfully, this Rule is not applicable here. It is intended to ensure that judges respect and follow the law, just as they expect of the litigants before them. Moreover, while presiding over cases, it is essential for judges to respect the applicable law whether they agree with it or not. Otherwise, the forum in which our society resolves disputes would be subject to disparate outcomes, and the controlling law would be meaningless. Further, in a judge's personal life it is imperative to act in a lawful manner because it demonstrates that judges are not superior to the public. They must follow the same rules as everyone else. Here, the mandates are not laws. Even more, no one else but UCS staff are required to be vaccinated. In regard to the procedures required by AO 275/2021, Judge Mora followed them. He submitted all the documents requested and completed everything he was asked to. As far as the integrity of the judiciary, Judge Mora furthered it as set forth in the response to question 5 above.

7. Judge Mora's conduct was consistent with Section 100.3(C)(1) of the Rules because Judge Mora did everything in his power to be cooperative. Judge Mora made sure that he did not create a risk to others by using portable plexiglass around the bench and always remaining at least 15 feet away from other parties. Judge Mora did not hinder the administration of court business. Despite the difficulty of virtual court proceedings, Judge Mora continued to preside over cases virtually and fully performed his judicial responsibilities. Indeed, Judge Mora did not allow the circumstances to impede his judicial responsibilities, nor did he impose undue burdens on his co-judge. Judge Mora tried to accommodate staff and court officials whenever possible.

Accordingly, it is respectfully submitted that there is no evidence that Judge Mora did anything wrong. As he did not engage in any improper conduct, the instant complaint warrants dismissal.

Please do not hesitate to contact us if the Commission requires additional information.

File No. 2021/N-0723

BACKGROUND

Judge Mora has suffered significantly from anxiety over the past two years. It has been debilitating. Amazingly, Judge Mora has been able to prevent it from crippling him entirely. This background is relevant to the masking inquiries that follow. As Judge Mora's attorney, I can attest that Judge Mora was very reluctant to inform me of his battle with anxiety. Our profession is extremely stressful. While significant strides have been made to assist lawyers and

judges with mental health issues, the stigma around it still exists. Further, we are expected to push forward and work regardless of the toll its takes on our mental health.

Despite these serious allegations, Judge Mora still came very close to ignoring what he was experiencing. The unfortunate stigma surrounding mental health nearly caused Judge Mora to ignore his debilitating anxiety. But he thanks God that he has not ignored it. Now, he is getting the help he needs.

Judge Mora has been suffering silently these past two years with mental health issues regarding COVID-19, masks, and face shields. Judge Mora feels, and felt, embarrassed, ashamed, and broken, because of his condition. Judge Mora only decided to reach out for help after receiving an email, by chance. The email's subject line was: "I Felt Afraid to Ask: Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations." The email and article are attached as Exhibit 4. Judge Mora thought that if these law students had the courage to face their disabilities, and to get the help they needed, then he too, could find the courage needed to do so, for himself, and his family. Judge Mora received the above email on April 27, 2022. He reached out to his Pastor and received referrals for therapists. After reading the above article, Judge Mora called a therapist on April 27, 2022, and scheduled his first appointment for April 30, 2022. The first appointment, however, almost did not take place. Because of the stigma of mental health issues, Judge Mora came very close to canceling his first appointment.

Judge Mora intended to call his soon-to-be therapist on April 28th after lunch and cancel the appointment. Remarkably, at lunchtime on April 28th, the UCS had a live event titled, 2022 UCS Diversity & Inclusion Summit. A segment of that Summit addressed disabilities. One of

the presenters was Walei Sabry, the Disability Coordinator for the NYC Mayor's Office for People with Disabilities. Mr. Sabry identifies as blind. Judge Mora was so impressed with how Mr. Sabry has overcome his disability and has made real and positive differences, that Judge Mora finally had the courage to go through with his scheduled therapy appointment.

Upon meeting with his therapist—K[redacted] R[redacted] B[redacted], LCSW—Judge Mora learned that he suffers with severe anxiety; more specifically, object phobia. Please see the letter from Judge Mora's therapist, K[redacted] R[redacted] B[redacted], LCSW, which is attached as Exhibit 5.

SUFFERING IN SILENCE

In March 2020, well before the Governor first issued mask mandates commencing on April 17, 2020, Judge Mora was wearing a mask just about everywhere he went. As the Commission in now aware, Judge Mora is very religious. His wife even bought a black mask with a golden cross embroidered on it. Judge Mora proudly wore this mask which portrayed that he is a Christian.

However, in mid-April, something began to change. Judge Mora was having neck pain, and experiencing prolonged headaches, and anxiety, which he had not experienced prior. Judge Mora thought his headaches were caused by his neck issues. He had no idea where his anxiety was coming from. Judge Mora was treating with his Chiropractor, Dr. G[redacted] M[redacted]. During the time prior to July 20, 2020 (this is the date Judge Mora received approval to wear a face shield which is addressed below), when Dr. M[redacted] could find no structural issues that were causing the neck pain and headaches, he explored further. Dr. M[redacted] asked how often Judge Mora was wearing a mask. Judge Mora advised it was practically everywhere he went.

Dr. M[redacted] suggested not wearing a mask, and see if the headaches improve. Dr. M[redacted] advised that some patients cannot medically tolerate masks. Judge Mora reluctantly told Dr. M[redacted] about his anxiety, and Dr. M[redacted] advised Judge Mora that he is not able to treat mental health issues, as he is not qualified in that field. Dr. M[redacted] advised Judge Mora to seek a professional in that area. Please see Dr. M[redacted]'s letter which is attached as Exhibit 6.

The Court system implemented the *9th Judicial District Return to In-Person Operations Plan (RIOP) Phase IV To Commence July 9, 2020.* Until this time, matters were handled virtually - at first, matters were handled virtually from home, then from the judges' private chambers. Prior to July 21, 2020, Judge Mora wore a mask when in the court facilities. Although Judge Mora had anxiety, and object phobia, he managed to wear the mask until he entered his private chambers.

However, the first day he was going to be physically in-person on the bench for a full calendar was July 21, 2020. With his mental health issues, Judge Mora knew that he was not going to be able to handle it. On July 13, 2020, Judge Mora reached out to his then Administrative Judge, Hon. Kathie Davidson to ask permission to wear a face shield in lieu of a mask, as a face shield was provided to Judge Mora by court officers. On July 20, 2020, Judge Mora informed Judge Davidson that his request to use a face shield was due to health concerns. Judge Mora received approval as a medical accommodation to wear a face shield in lieu of a mask, from Judge Davidson, with permission from then Deputy Chief Administrative Judge for Courts Outside New York City, Hon. Vito C. Caruso. Judge Mora then wore a face shield in

lieu of a mask, and was mindful of the social distancing rules. A copy of the approval email is attached as Exhibit 7.

A few days after Judge Mora completely stopped wearing a mask, his headaches were gone. He felt relieved to be free of physical pain. Judge Mora was very thankful that Judges Davidson and Caruso granted a medical accommodation to wear a face shield, in lieu of a mask. He was also thankful that he did not have to disclose the anxiety he was experiencing. Judge Mora has seen over the last twenty years how those with mental health issues have been treated, not only by the court system, but society in general. Again, Judge Mora was ashamed and embarrassed that he was not able to wear a mask; handling and wearing a mask is so much easier than a cumbersome face shield. While some people may suffer from discomfort from wearing a mask, Judge Mora's symptoms far exceeded mere discomfort.

Judge Mora decided that he would just live with his anxiety, wear the shield, and struggle through life at work. Judge Mora mistakenly thought he could get by until the masking mandate was lifted. But that did not happen. After several months, even with the shield, Judge Mora's anxiety intensified. He silently struggled just to get through the morning calendar. As soon as Judge Mora would finish the morning calendar, he would quickly return to his chambers, and remove his shield. His chambers became his haven. There, his heart stopped pounding, his nerves slowly quieted, and he stopped sweating. This went on day, after day, after day. Notably, Judge Mora fulfilled his obligations despite experiencing severe anxiety. He still followed the mandates. He still presided over matters with integrity and impartiality.

The above information pertaining to Judge Mora's mental health challenges provide context. Judge Mora was not defying the mandates or protesting them. He was trying to

survive the best he could. Answers to the Inquiries are set forth below based on each letter and file number, in the same chronology as the questions.

THE ANONYMOUS LETTER

From the outset, the anonymous, unsigned letter dated August 20, 2021, is intrinsically flawed. Importantly, Judiciary Law §44 states that "a complaint shall be in writing and signed by the complainant." This is not discretionary. Ostensibly, it is mandated prior to the Commission's decision to conduct an investigation so the Commission can determine the veracity of the allegations. A corollary reason why the complainant must be named and sign the complaint, is so the accused has an adequate opportunity to present a defense. Here, neither Judge Mora, nor the Commission can ascertain the veracity of the anonymous allegation. Surely, fairness militates against this type of complaint.

The author of this two and a half paragraph letter appears to be a court employee, but anyone could have written it. Furthermore, the author is not concerned, the author is angry. A concerned person would ask this Commission to perhaps speak with Judge Mora about wearing a mask. Instead, this author wants punitive measures to be taken. Thus, this individual has an ulterior motive. A misguided desire for punitive measures plus the absence of accountability for making a false statement are the ingredients fabrications are made of.

The author does not even set forth facts showing Judge Mora placed anyone in danger or acted recklessly. For example, the author simply concludes that Judge Mora was endangering others. The author does not claim that Judge Mora was not respecting social distancing. This is important because the CDC determined that six feet of distance is safe. If the masking requirement is intended to protect others, then that end is accomplished by maintaining social

distancing. If Judge Mora's conduct was completely in line with the spirit of the mask requirement, then where does misconduct lie?

Furthermore, the letter is devoid of facts. It is all conclusory and speculative. How does this person claim to know what Judge Mora believes? Moreover, the person simply claims Judge Mora "refuses to wear any type of protective mask." The person does not specify the hallmarks of a truthful account, such as when and where the person observed Judge Mora. No one can discern what this person's alleged basis of knowledge is. Even worse, the person hides behind the generic "fear of repraisals [*sic*]" for remaining anonymous. These words ring hollow, as does the entire letter. Lastly, Judge Mora was neither taking a stand nor engaging in civil disobedience like Rosa Parks. As such, the allegations in the letter are invalid on its face. This Commission should not give it any credence. Nevertheless, Judge Mora will respond as the Commission requested.

While it appears that Judge Mora has been provided with the actual complaint, it is unclear as to whether any additional documents may have been provided in support of the allegations and we respectfully request any such information as it is necessary so that Judge Mora may fully respond to the allegations.

Prior to the date of the anonymous letter, August 20, 2021, Judge Mora had been wearing his approved face shield on the bench for over one year, without any incidents. However, at or about this time, Judge Mora's anxiety had intensified to a very troubling level. He was struggling to get through the morning calendars. Judge Mora remembered seeing a portable plexiglass shield in one of the back offices. Judge Mora inquired of his Chief Clerk about the purpose of this shield. Judge Mora was told that it was to be used as they saw fit.

Around this time, Judge Mora occasionally used the portable plexiglass shield in lieu of his face shield while on the bench. Judge Mora is at least 15 feet away from the nearest court user when he is on the bench. Judge Mora has a staunch work ethic. For his first ten (10) years on the bench, he did not take one sick day. By using the portable plexiglass shield, Judge Mora thought he came up with a solution to his issues. The plexiglass plus fifteen feet of separation ensured that everyone within the courtroom was safe. Arguably, these measures were superior to a mask or face shield. Further, Judge Mora could preside over cases without experiencing intense, harsh anxiety. Thus, Judge Mora's conduct struck a perfect balance.

He had no malice or mal-intent; just the opposite - Judge Mora intended to continue serving while obeying the purpose of the masking requirement. All seemed to be going well, until an attorney expressed concerns to Judge Mora on or about August 17, 2021, that he was not wearing his face shield on the bench. Judge Mora's morning calendar was almost complete when the attorney commented to Judge Mora. Just the thought of having to put on the face shield on that particular day, caused Judge Mora to suffer a panic attack. Judge Mora did not argue with the attorney, nor make any comments. Judge Mora stated the calendar was being adjourned, he walked off the bench, and went directly into his private chambers, where he remained the rest of the day to calm his anxiety down. Please see a letter from Jermaine Dublin, one of the court officers assigned to Judge Mora's courtroom, which is attached as Exhibit 8.

Also around this time, after Judge Mora's morning calendars, when the anxiety got to be too much, and he needed to get or drop off files, he would walk in the back offices without his shield, always mindful of the 6-foot social distancing rules. Judge Mora admits that this was not the ideal situation, but it allowed everyone to be safe, and Judge Mora to function.

Unlike the anonymous letter's purporting that Judge Mora was endangering everyone who works and appears in that court, the opposite is actually the case. Again, Judge Mora was at least 15 feet away from the nearest court user when he was on the bench. Further, Judge Mora did not conduct bench conferences or breach this distance. Because of his condition, Judge Mora was hyper-sensitive to the 6-foot social distancing rule when he was both on and off the bench.

Judge Mora adamantly denies "making any type of stand, a la Rosa Parks and/or Martin Luther King, Jr. To the contrary, as noted previously, at the start of the pandemic, Judge Mora wore a mask just about everywhere he went. Judge Mora is not an activist. Judge Mora was attempting to function in society and at work the best way he could, given the state of his mental health.

Judge Mora received an email from his Supervising Judge, Hon. Sam Walker, on August 19, 2021. Judge Mora then received a phone call from Judge Walker, on or about August 20, 2021. Judge Mora explained to Judge Walker how Judge Mora was using the portable plexiglass shield in lieu of his face shield. Judge Walker advised Judge Mora that he had to use the face shield. Judge Mora advised Judge Walker that he was not doing well using the shield. Judge Walker advised Judge Mora that is how it has to be, as it is OCA's policy. Judge Mora did not push the issue, as he was fearful that the face shield accommodation would be taken away (it actually was taken away in January 2022, as will be pointed out below).

Judge Mora then sent an email to Judge Walker on August 20, 2021, with the hope that the entire policy would be looked at, and changed. Judge Mora reasoned that if the policy was changed for everyone, he would no longer have to suffer with wearing a shield. Considering the

anxiety Judge Mora was dealing with, it was reasonable for him to advocate for himself. The positions taken in his email exchange with Judge Walker were intended to bring about change. Judge Mora simply wanted to be relieved of the pain and suffering. What Judge Mora experienced is akin to forcing someone with a phobia of heights to work from the top of the Empire State Building.

However, the reply Judge Mora received from Judge Walker on August 23, 2021, was not what he expected - Judge Mora was basically told to comply, or get another job, and that OCA says so, and that's it. Now, Judge Mora was even more afraid. He dared not bring up further that he was struggling with the face shield, or any of these issues again. After the response from Judge Walker on August 23, 2021, and although suffering tremendously, Judge Mora went back to using the face shield. This flies in the face of the anonymous letter's accusation that Judge Mora is some sort of activist and "taking a stand." It is in actuality, just the opposite. A copy of Judge Mora's email to Judge Walker is attached as Exhibit 9. Judge Walker's reply is attached as Exhibit 10.

1. Judge Mora is familiar with Exhibits C, D, E, F, and G, which require, *inter alia*, that all unvaccinated judges and non-judicial personnel who are permitted to enter a UCS courthouse wear face masks in most areas of the courthouse. Judge Mora does not recall when he first became aware of them.
2. Judge Mora considers that the UCS mask mandate applied to him until July 20, 2020, when he received approval to wear a face shield in lieu of a mask, from his then Administrative Judge, Hon. Kathie Davidson, with permission from then Deputy Chief Administrative Judge for Courts Outside New York City, Hon. Vito

C. Caruso. Judge Mora then wore a face shield in lieu of a mask, and was always mindful of the social distancing rules. See Exhibit 7.

3. Based upon the above email allowing Judge Mora to wear a face shield in lieu of a mask, Judge Mora was exempt from the mask requirement commencing July 20, 2020. Judge Mora then wore a face shield in lieu of a mask, except for the days mentioned above in August 2021, and was always mindful of the social distancing rules.

4. From May 29, 2020, to July 20, 2020, Judge Mora wore a mask when he was outside of his private office. Although Judge Mora does not recollect any specific dates, there have been times when he was outside of his chambers without a mask. Although Judge Mora spent most of his time in his chambers, some days, based on his headaches, and anxiety, he would try to avoid wearing a mask. He was very mindful of the social distancing rules. After July 20, 2020, Judge Mora wore a face shield when he was outside of his chambers, and he continued to be mindful of the social distancing rules. Again, on those days that it just became too intolerable, Judge Mora would keep 6-feet away from everyone. Judge Mora is remorseful if this caused anyone any angst, as he did not mean for that. As he was social distancing, he thought that just passing through an area would be acceptable. Like most people on the planet these past two years, Judge Mora did his best to cope with his issues, all the while being mindful of the 6-foot rule.

5. Judge Mora does not recollect expressing his disagreement with the UCS mask mandate to any specific UCS employee or in any written or oral statement to members of the general public. The only email Judge Mora recalls sending was the one mentioned above to Judge Walker, however, it was sent for the purpose of trying to get the UCS to modify its policies, which would have brought relief to Judge Mora's mental health condition.

Before moving on to the next question, Judge Mora would like to address material falsehoods in the Law360 article (Exhibit H)1 and the circumstances in which the information was obtained. Having this information is relevant to the Commission's investigation.

The article was posted online on January 20, 2022. On January 18th, Judge Mora's secretary, Lori Kiernan, advised Judge Mora that the reporter, Frank Runyeon, came to the court to speak with Judge Mora. Judge Mora asked Ms. Kiernan to send an email to Lucian Chalfen, the Public Relations Director, regarding how to handle the reporter. Ms. Kiernan was instructed to refer Mr. Runyeon to Mr. Chalfen. Please see the email exchange attached as Exhibit 11.

On January 19, 2022, the reporter left a voicemail message for Judge Mora on Judge Mora's private cell phone. Judge Mora does not know how the reporter obtained his private number. Judge Mora texted the reporter stating that the reporter should address his inquiries to Mr. Chalfen. The reporter texted Judge Mora the following, "Thank you Judge. I do believe you can better speak to why you were at the courthouse on an almost daily basis after being denied the vaccine exemption, why you don't wear a mask there, and why you conducted

1 The Commissions letter dated April 12, 2022, mistakenly identified the Law360 article as Exhibit G.

arraignments virtually. Chalfen says you were in violation of the administration's orders on all counts." Judge Mora tried calling Mr. Chalfen to find out what was said, but Judge Mora could not reach Mr. Chalfen. On January 20, 2022, after the article was published online, Judge Mora still could not reach Mr. Chalfen by phone, so Judge Mora emailed him. See Exhibit 12 attached.

Mr. Chalfen immediately called Judge Mora after receiving the email. Mr. Chalfen confirmed to Judge Mora that broad statements were made about policy, but Judge Mora was not addressed personally. Judge Mora told Mr. Chalfen that his comments created an appearance that Judge Mora was in violation. Just the opposite, Judge Mora was complying since he had approval from Judge Minihan. When Judge Mora asked Mr. Chalfen why he did not call Judge Mora to advise what the reporter was alleging, and to find out why Judge Mora was in the back offices, Mr. Chalfen had no answer. Judge Mora told Mr. Chalfen that by giving the reporter the information he did, while leaving out that Judge Mora had approval to be there, it appeared that Judge Mora was in violation, when in fact, he was not. Again, Mr. Chalfen had no answer. Thus, Mr. Chalfen inadvertently created the impression that Judge Mora was flouting the rules, even though the opposite is true. This was the first falsehood.

The article stated, "It's a violation of our policy. You're not supposed to be there, said state courts spokesman Lucian Chalfen, speaking broadly about the policy for unvaccinated judges denied an exemption. They are not allowed into the courthouse, into their chambers, or any other nonpublic area." As the article goes on to state, Mr. Chalfen declined to comment specifically on Judge Mora's behavior. As stated above, this created a false impression. All of

which could have been avoided had Mr. Chalfen reached out to Judge Mora first. Instead, Mr. Chalfen spoke prematurely and without all the facts.

The next statement in the article is, "On Tuesday morning in Judge Mora's courtroom, he appeared via video link to arraign a young woman dressed in pink scrubs and yellow croc sandals on a single count of criminal mischief." That statement is true. The next statements are the second and third falsehoods, "In fact, the judge was not working remotely but had been inside the courthouse, according to a source and a photograph of the judge taken after the hearing. The photograph shows the judge in the court's back offices not wearing a mask, holding a face shield in one hand and a stack of court files in the other." Those statements are false. Judge Mora was working remotely from his home, and then came into the office to get his personal files. The unauthorized photo was taken of Judge Mora when he was walking into what he thought was his secretary's unoccupied office. He was not holding court files, but was in fact gathering his personal files to take home. This is corroborated by his secretary, Lori Kiernan, who has provided a letter, which is attached as Exhibit 13.

The article goes on to say that there are repercussions for judges who flout the administration's orders, suggesting that Judge Mora was doing so. Judge Mora was doing no such thing. Judge Mora had full authorization to be there, as will be shown in the questions below. The final falsehood in the article is towards the end when Mr. Runyeon states that Judge Mora joked, "Isn't it nowadays that everyone has COVID." This was taken out of context. Judge Mora was not joking. He was stating a fact that approximately two thirds of the jail had COVID-19, as well as many people he personally knew. Judge Mora was thereby acknowledging the seriousness of the pandemic.

6. A. Judge Mora physically appeared in Poughkeepsie City Court's back offices in or around January 2022, after receiving specific permission on January 5, 2022, from his Administrative Judge, Hon. Anne Minihan. After receiving the approval, Judge Mora went to the back offices on a few occasions to retrieve items he was allowed to retrieve per the email. On January 18, 2022, the reporter, Frank Runyeon, FOILED Judge Mora's card access history which shows the dates Judge Mora was in the back offices. A copy is attached as Exhibit 14. This shows that Judge Mora was there on January 5, 6, 10, 11, 13, and 18. Judge Mora was retrieving his personal belongings and that is why he accessed the facility 2-3 times on some days, as he was bringing the items to his vehicle. Judge Mora was also picking up and dropping off copies of docket cards for the first few days, as he was not completely set up for entering data virtually for a couple of weeks. Judge Mora's secretary dropped off court documents to his home on a few occasions. On January 10, 2022, Judge Mora entered the access door at 8:27:29, picked up copies of docket cards, dropped off others that needed to be returned, then left the premises to handle his morning calendar virtually from his home at 9am (he lives 10 minutes from the court). Judge Mora has not physically worked in Poughkeepsie City Court since January 3, 2022. Please note the times that Judge Mora entered the access door, except for on January 10th mentioned above, are **ALL** after his morning calendar was completed virtually from his home. The reporter has this information, and has not corrected the falsehoods in the article, even after Judge Mora pointed it out to him. A copy of the email allowing Judge

Mora access is attached as Exhibit 15. Letters from Judge Mora's Chief Clerk Lori Conners, and his secretary Lori Kiernan, are attached as Exhibit 16. These letters confirm that Judge Mora has not physically worked there since January 3, 2022.

B. See 6 (A) above.

C. On each occasion, Judge Mora wore his face shield while inside the courthouse, per his approval to do so by Judge Davidson, as explained in No. 2 above. If you look closely at the picture in the article, you will note that as soon as Judge Mora saw others were in his secretary's office, he was raising his shield to put it on. Again, this is confirmed by Ms. Kiernan in her letter.

D. Judge Mora wore his face shield on each date that he appeared in the Courthouse, per his approval to do so by Judge Davidson, as explained in No. 2 above.

(i) Judge Mora believes that wearing a face shield complies with the UCS face mask requirement as he obtained specific approval from Judge Davidson, as explained in No. 2 above.

(ii) This is answered in No. 2 above.

(iii) On January 18, 2022, Judge Minihan, without stating any grounds or basis, revoked Judge Mora's medical accommodation to wear a face shield in lieu of a mask. Judge Mora has not been inside the courthouse since receiving this email. A copy of the email is attached as Exhibit 17.

Things are not always what they appear to be. The Law360 article made for a good headline, but it was based on inaccurate and incomplete information. Mr. Runyeon recklessly stretched the little information he had to the point of fabrication. Surely, the headline "Unvaxxed NY Judge Defies Courthouses Ban As Others Ousted" is a sensational one. If Mr. Runyeon had integrity, he would have published the truth. But the truth is not as interesting as the fiction he created. It cannot be iterated enough, Judge Mora did not purposefully defy the Administrative Orders, nor did he believe that he was immune from the rules because he is a judge. Moreover, the exhibits provided show that Judge Mora was in no way receiving preferential treatment, nor asking for preferential treatment. They also show that Judge Mora fully complied under the conditions. Judge Mora apologies to the Commission for any embarrassment the article created. He did his best to prevent such inaccuracies from being published.

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7. Judge Mora is aware that on December 13, 2021, New York State Governor Kathy Hochul issued a mandate requiring that masks be worn at all indoor public places, which includes private businesses, for those "medically able to tolerate a face covering." A copy of the mandate with the above section bracketed and underlined is attached as Exhibit 18.

8. Yes, Judge Mora Visited Seeta Eye Center (Seeta) on December 28, 2021.

A. The purpose of Judge Mora's visit was to bring his then [redacted] year-old son, [redacted] for a scheduled eye exam.

B. Judge Mora was only with his son.

C. Judge Mora did not see a sign posted at the entrance to Seeta stating that face

masks are required for entry, but his son walked in ahead of him and the sign may have been on the open door; he does not dispute that a sign was there.

SEETA BACKGROUND

Please find the following background as context for the questions that follow. The context is relevant for the Commission to better understand Judge Mora's answers. Dr. Modi, one of the founders of Seeta, performed [redacted] on Judge Mora over 20 years ago. Ms. Koch was with Dr. Modi at that time, and has known Judge Mora since then. Ms. Koch's claim that she did not know Judge Mora was a judge is untenable. Furthermore, Judge Mora's children are also patients at Seeta.

Approximately a year prior to the December 28, 2021, incident, Judge Mora took his then [redacted]-year-old son, [redacted] in for a scheduled eye exam on January 29, 2021. Judge Mora was wearing a face shield at the time, and the receptionist said he had to wear a mask. He explained that he does not medically tolerate a mask. The receptionist called Ms. Koch to the waiting area, and Judge Mora and Ms. Koch walked over to the side of the room, where other patients could not hear. Judge Mora explained that he does not medically tolerate a mask. Instead of arguing, Judge Mora sought an amicable resolution. He suggested that [redacted] go in by himself, as he was turning [redacted] in only four months, and Judge Mora would wait outside.

Judge Mora then waited for his son in his vehicle in the parking lot. At the end of the exam, [redacted] doctor, Dr. C[redacted], called Judge Mora and went over his findings with him on the phone. Judge Mora thanked Dr. C[redacted] for calling him as Judge Mora thought it best that Judge Mora wait outside, and Dr. C[redacted] said he would see Judge Mora the next time in the exam room. [redacted] then went to check out at the reception desk, but was told his Dad had to

come back in to pay. [redacted] called his Dad and asked him to come back inside. Judge Mora had [redacted] inquire about his face shield, and he was told to come back in wearing it. Judge Mora went back in, wearing only the face shield, paid the invoice, and left with no issues. Both the waiting room and reception/payment counter are in the same area. Oddly, the face shield was okay when Judge Mora had to pay at the counter, but it was not acceptable when he was in the waiting room prior to this.

Several months later, prior to the December 28, 2021, incident, Judge Mora called and made an eye doctor appointment for his son [redacted] Judge Mora made this appointment with the understanding that everything was resolved. He had explained that he could not medically tolerate the mask and was able to go in and pay with just the face shield. Furthermore, Dr. G[redacted] had told Judge Mora that he would see him next time in the exam room.

8 D. Judge Mora entered Seeta wearing a face shield, in lieu of a mask, as he does not medically tolerate masks.

(i) After entering Seeta, the receptionist requested that Judge Mora put on a mask. She did not ask Judge Mora to put on a mask or leave. Judge Mora advised the receptionist that he did not medically tolerate masks. The receptionist asked Judge Mora to wait for Ms. Koch to come out and speak with him. The receptionist did not ask Judge Mora to leave.

(ii) Stacey Koch did ask Judge Mora to put on a mask. Judge Mora did not put on a mask, as he does not medically tolerate masks. While he did not know it at the time, he suffered from anxiety caused by object phobia. Judge Mora initially did not comply because he believed there was a misunderstanding. He tried to

resolve it. Judge Mora is a patient there as well. Judge Mora started to explain to Ms. Koch that they both spoke in January about this issue. Ms. Koch became extremely irate and aggressive. Instead of speaking to a patient with respect, she began yelling at Judge Mora to put on a mask. Judge Mora started to feel weak and lightheaded, his heart was racing, and he began to sweat. After composing himself, Judge Mora attempted again to explain. Ms. Koch unlawfully demanded that Judge Mora provide medical documentation. Although Judge Mora knew that no documentation was required, he took the higher ground. He was not going to prove a point, or engage in a debate. Judge Mora was simply trying to bring his son to his eye examination. In fact, Judge Mora's son was wearing a mask. If Judge Mora had an agenda, his son would have been maskless. The December determination clearly stated that only people who could medically tolerate masks had to wear them. In addition, the Governor's *Interim Guidance on Executive Orders 202.17 and 202.18 Requiring Face Coverings in Public During the COVID-19 Outbreak*, dated April 17, 2020, specifically stated, "If a face covering would inhibit or otherwise impair an individual's health ...an individual is not required to wear or use such a covering." Further, essential business operators and enforcement authorities are "**prohibited from requesting or requiring medical or other documentation from an individual who declines to wear a face covering due to a medical or other health condition that prevents such usage**." A copy of the Interim Guidance with the above section bracketed and underlined is attached as Exhibit 19. Judge

Mora asked that [redacted] please be seen, and he would try to get her medical documentation even though he was not required to give it from the outset.

Ms. Koch continued yelling at Judge Mora, and said he would have to leave if he did not put on a mask. Her behavior was completely irrational and unprofessional. But Judge Mora maintained his composure, nevertheless. Judge Mora thought she meant that he would have to wait outside, like he did back in January for his other son. But Judge Mora tried explaining that he could not leave [redacted] his then minor [redacted]-year-old alone. Ms. Koch however was there to prove a point. She continued to berate Judge Mora and spoke over him. Ms. Koch then walked over to the telephone. Judge Mora thought she was calling Dr. G[redacted]. If she had, it would have cleared up the whole matter. However, she called the police. Such a measure was completely unnecessary and uncalled for under the circumstances. When Ms. Koch advised Judge Mora that she was on the phone with the police, Judge Mora said, we will talk with them when they arrive. At no point did Judge Mora say that the police wouldn't come. Such an accusation is preposterous. Being a Judge for over a decade, Judge Mora knows full well that the police would come. He also knew that he did nothing wrong. When Ms. Koch hung up the phone with the police, she stated, you are upsetting the other patients. Rather, Ms. Koch was upsetting other patients by attacking Judge Mora for no reason.

An elderly woman then stood up and stated, I am upset. I'm not upset about him (pointing at Judge Mora), I'm upset that I have been waiting for over a

half hour and have not been seen yet. Judge Mora then stated to the lady, thank you Ma'am. I would be more upset about that than someone 10- 15 feet away from everyone wearing a face shield. While waiting for the police to arrive, Judge Mora again calmly tried asking for [redacted] to be seen, and Judge Mora said he would call his doctor to see about getting the documentation.

Ms. Koch escalated the situation further by yelling at Judge Mora. She told him to stop talking! Judge Mora said, Excuse me? Ms. Koch commanded him to stop talking, claiming he was spreading his germs on her. Judge Mora asked Ms. Koch how far he was away from her, and she said far. In fact, Judge Mora was at least 10 feet away from her. Standing there with his face shield on, ten feet away, Judge Mora was not spreading germs anywhere. Furthermore, Judge Mora was not sick. Ms. Koch's reaction was completely disproportionate to the exchange. What was supposed to be a routine eye exam turned into a one-sided boxing match, with Ms. Koch throwing all the punches. Ms. Koch then picked up the phone again. Instead of calling Dr. G[redacted], Ms. Koch called the police back, telling them there was an emergency. She claimed that Judge Mora was wearing just a face shield, would not stop talking, and was spreading his germs on her. At that point, Judge Mora realized he was not dealing with a rational person. While Ms. Koch was still on the phone, Judge Mora politely asked her if she would like him to go and try to get medical documentation from his doctor. She said yes. Judge Mora said he would try to get it. Ms. Koch then told the police that Judge Mora was leaving, which he did. Judge Mora

immediately called his doctor, Dr. M[redacted], who stopped everything and emailed Judge Mora documentation, which he emailed to Ms. Koch. Ms. Koch then had Judge Mora and [redacted] come back later that afternoon, and [redacted] was seen without incident.

Most people are not capable of exhibiting the type of restraint Judge Mora exhibited. Clearly, Ms. Koch has a problem and was trying to degrade Judge Mora as much as possible. But the Commission does not have to just take Judge Mora's word for it. An employee of Seeta, Michael Brown, witnessed the encounter and describes what really occurred. His recitation is attached as Exhibit 20. In addition, Dr. M[redacted]'s encounter with Ms. Koch is detailed in a statement attached as Exhibit 21. Notably, Mr. Brown does not know Judge Mora. He offered to provide the letter—despite the repercussion he may face—because how Ms. Koch treated Judge Mora was egregious. That is, Mr. Brown is putting his job on the line to avail this Commission of the truth. And his gesture speaks volumes about how Judge Mora conducted himself. Further, Judge Mora left such a good impression with Mr. Brown that he decided Judge Mora was worth the risk.

(iii) Please see (ii) above. Judge Mora remained calm and respectful the entire time, he did not raise his voice, and his facial expressions were neutral. His tone was calm and respectful. Judge Mora did not make any offensive facial expression or gestures.

(iv) Please see (ii) above. Judge Mora was not asked, nor did he state his medical condition. Indeed, Ms. Koch was not lawfully entitled to request medical documentation.

(v) Please see (ii) above. Judge Mora could not leave his minor child in the office. Ms, Koch did not ask Judge Mora and his son to leave.

(vi) Please see (ii) above.

(vii) Judge Mora's demeanor was calm and professional the entire time.

(viii) Please see (ii) above. Judge Mora voluntarily offered to leave to diffuse the Situation. Or rather, give Ms. Koch an opportunity to calm down.

(ix) Judge Mora did not refuse to leave the premises. Furthermore, Judge Mora did not believe he may have been committing the crime of criminal trespass.2 And Judge Mora had not committed trespass. Seeta is a Public Accommodation, as defined by 42 USC, Chapter 126. Section 12181(F) lists, among many other establishments, a professional office of a health care provider. As Judge Mora had a license to be there (his appointment for his son's eye exam), he was not trespassing. When Judge Mora entered the public accommodation, he did so with license and privilege. This means that Judge Mora had a legal right to be there. Moreover, to the extent Ms. Koch claims to have ordered Judge Mora to leave, such an order would not be lawful. First, Judge Mora could not abandon

2 Trespass pursuant to PL § 140.05 is a violation. And the varying degrees of criminal trespass pursuant to Article 140 of the Penal Law are not cognizable under these circumstances.

his son. Doing so could constitute endangering the welfare of a child pursuant to PL §260.10. Second, it would not be lawful because Judge Mora had not done anything illegal. Assuming that Ms. Koch had the authority to even make such an order pursuant to PL §140.00, Judge Mora was following the letter of the law set forth in the Commissioner's determination. That is, Ms. Koch's inquiry had to end when Judge Mora said he couldn't medically tolerate a mask. Indeed, 10 NYCRR §2.60 exempts people who cannot medically tolerate masks, from wearing them. There is nothing in 10 NYCRR §2.60 stating that one must show proof or medical documentation. Furthermore, a violation of the regulation permits the agency enforcing it to fine a non-compliant entity. It does not give an angry office administrator the right to eject anyone she wants to. As such, it would not be a lawful order. Additionally, Judge Mora was entitled to be maskless. Instead, he went beyond the mandate by wearing a face shield. This demonstrates that he is not an activist nor was he trying to make a statement.

9. Judge Mora's chiropractor emailed Judge Mora, who then emailed Seeta, stating that Judge Mora suffers from a medical condition that prevents him from wearing a mask. A copy of the email is attached as Exhibit 22.

A. The email was submitted so Judge Mora's son, [redacted] would be allowed to have his eyes examined. Judge Mora was faced with an irrational, angry employee who was not going to permit his son to see the eye doctor unless Judge Mora pacified her. She had no authority to request a doctor's note from the outset. Judge Mora's only concern was that [redacted] have his much-needed eye

exam. To accomplish this end, Judge Mora asked his chiropractor to submit a letter on his behalf. He took the path of least resistance for his son's health. No one should be treated the way Judge Mora was treated. Ms. Koch's behavior is inexcusable.

B. Judge Mora's chiropractor did not identify what medical condition prevents Judge Mora from wearing a mask. Judge Mora was not trying to prove to Ms. Koch that he could not tolerate a mask. As stated, she had no grounds to require documentation and Judge Mora had no duty to provide documentation. The letter from the chiropractor is completely unrelated to the subject of this investigation. It was submitted to an office manager on a onetime basis just so Judge Mora could avoid the unreasonable confrontation she created, and hurdle the unlawful barrier to medical treatment she placed in front of him. Moreover, Judge Mora knew he could not tolerate masks because of the severe anxiety it provoked. This information is personal, confidential, and under no circumstances something Ms. Koch was entitled to know.

C. Please see B above. In addition, Judge Mora was not seeking a medical exemption note. A medical exemption is not applicable to these circumstances.

D. As previously stated, Judge Mora was excused on July 20, 2020, from the UCS masking requirement on medical grounds by Judge Davidson. See Exhibit 7. No documentation was requested by the UCS. Otherwise, Judge Mora has not sought a medical exemption. As stated, he was recently diagnosed for the first time with an anxiety disorder, specifically, object phobia.

10. Judge Mora's chiropractor was not providing Judge Mora with a letter exempting him from wearing a mask, as discussed above. Judge Mora's current therapist advised him that he suffers from a medical condition that exempts him from wearing a mask. Please note, Judge Mora did not have to be advised by a health care provider for his son to be seen by a doctor. Judge Mora knows all too well how he has been suffering, and that he does not tolerate masks. No other business or establishment has ever given Judge Mora a problem about not medically tolerating a mask. From the time Judge Mora stopped wearing a mask, he has been entering businesses and establishments without wearing a mask. On a few occasions, when pressed about the issue, Judge Mora did go out to his vehicle, and went back in with his shield. Again, although not required to do so, and despite his object phobia, Judge Mora did so just to be able to function in society without causing a scene. This, again, shows he is not an activist.

A. Judge Mora's therapist is K[redacted] R[redacted] B[redacted], LCSW.

B. See Exhibit 5.

11. Although Judge Mora fully admits that his actions did not comply with the strict letter of the mandates of the UCS, his actions did comply with the spirit of the mandates. By staying at least 6-feet away from others, Judge Mora fulfilled the sole goal of the mandates - Keep everyone safe. In addition to keeping everyone safe by observing the 6-foot rule, Judge Mora was attempting to keep himself safe, and trying to avoid further mental distress. Indeed, Judge Mora would not be fulfilling his ethical obligations that require him to preside over matters with competence and diligence if he did not address his mental distress as best as possible. Furthermore, Judge Mora knowingly sacrificed

his own wellbeing to comply. He wore a mask and face shield despite the toll it took. He did it knowing that it would be painful for him each and every time. Judge Mora's conduct went above and beyond the standard espoused in Section 100.1 of the Rules. Based on all of the above, Judge Mora considers his conduct consistent with Section 100.1 of the Rules in that he has maintained high standards of conduct so that the judiciary is preserved.

12. Respectfully, Judge Mora's conduct was consistent with the tenants of Section 100.2(A) of the Rules. Particularly, Judge Mora promoted public confidence in the integrity of the judiciary by doing whatever was physically possible to adhere to the mask mandates. As stated, even when it caused panic attacks. If Judge Mora did not respect the law and the Chief Administrative Judge, he would not have taken any of the numerous precautions to follow the spirit of the mandates. Judge Mora sincerely regrets, and apologizes, for any appearances to the contrary.

13. For the same reasons stated in 11 above, Judge Mora considers his conduct consistent with Section 100.3(C)(1) of the Rules. Judge Mora cooperated with other judges and court officials in the administration of court business to the best of his mental ability. Judge Mora ensured that he fulfilled his administrative obligations when the court was not in session. He endeavored to keep the court functioning. He did not inconvenience others or put himself before court staff. To the contrary, he tried as best as humanly possible to balance his obligations while respecting others.

14. Judge Mora's conduct during the encounter in the Seeta Eye Center was more than consistent with Section 100.4(A)(2) of the Rules. Judge Mora conducted his extra-

judicial activity that day in such a manner as to not detract from the dignity of judicial office. Despite the inhuman, degrading, hostile way he was being treated, Judge Mora remained calm and respectful the entire time; he did not raise his voice, and his facial expressions were neutral.

As such, Judge Mora exemplified the gold standard of the type of temperament expected of jurists. Even more so considering the multitude of challenges Judge Mora was facing at the time. In every instance that Judge Mora was internally battling with anxiety, he managed to sever it from influencing his temperament and treatment of others. There are few other circumstances that demonstrate such strong character and commitment to upholding the highest ethical standards. Put simply, Judge Mora conducted himself with the utmost professionalism regardless of how he was treated or the intense anxiety he experienced.

CONCLUSION

Judge Mora acted ethically and responsibly by complying to the best of his ability with the mandates. He has fully and transparently responded to the Commission's inquiries and hopes that the information provides the Commission with a full picture. Judge Mora has an unblemished reputation in the legal community. He has served and continues to serve the public and the Bar with the proper decorum expected of a judge, as well as a lawyer.

This was a very dark time for Judge Mora. With the help of his therapist, Judge Mora is doing all that he can do to get well and overcome his anxiety and object phobia. Prior to experiencing his own mental health issues, Judge Mora knew that individuals experienced them. However, Judge Mora had no idea as to how debilitating they could be. This entire experience

has made Judge Mora more patient, sensitive, and kind to all who come before him. It has truly been humbling. Judge Mora apologizes to this Commission, the Honorable Judge Marks, and the Honorable Chief Judge DiFiore for any appearance of defiance or insubordination. Judge Mora only intended to do the right thing amid very difficult circumstances. Accordingly, we respectfully request that these complaints be dismissed in the interests of justice.

Judge Mora remains ready to fully cooperate with all additional requests by the Commission. Myself, and Judge Mora, would like to thank the Commission for the opportunity to respond to all of the inquiries and consideration of this matter.

Thank you.

Respectfully submitted,

Chad J. LaVeglia, Esq.

Hon. Frank M. Mora

EXHIBIT 1

Hon. Frank M Mora

From: NYCourts
Sent: Tuesday, September 21, 2021 12:48 PM
To: Hon. Frank M Mora
Subject: Religious Request for COVID-19 Vaccine Exemption – Submitted Successfully

Your Religious Request for COVID-19 Vaccine Exemption has been received and is being reviewed by the committee.

You will receive a separate email with the decision or if additional information is needed.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I ~~swear or~~ affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I ~~swear or~~ affirm that each statement is true and accurate, and I accept the conditions set forth:

FMM	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
FMM	I understand and assume the risks of non-vaccination.
FMM	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
FMM	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
FMM	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
FMM	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
FMM	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
FMM	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
FMM	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

See attached statement made a part hereof, dated September 21, 2021. (FMN)

I ~~swear or~~ affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: 9/21/21

Print Name: Frank Mora

Email: [redacted]@nycourts.gov

Phone: [redacted]

Sworn and subscribed before me
This 21st day of September, 2021

Lori A. Kiernan
Notary Public

My commission expires: April 9, 2022

LORI A. KIERNAN
Notary Public - State of New York
No. 01KI6002119
Qualified in Dutchess County
My Commission Expires April 09, 2022

September 21, 2021

My name is Frank Mora. I claim exemption from immunizations/vaccinations based on my sincere and genuine religious convictions and beliefs. I was baptized a Roman Catholic at Our Lady of Mount Carmel Church on December 29, 1970. I was a member of the Church's Pastoral Council, a Lector, and a Trustee for four (4) years. Mount Carmel was my parish since my birth until switching to my current parish. My family members are now parishioners of Holy Trinity Church, where we regularly attend mass. I am a Trustee at Holy Trinity, a member of the Finance Council, and a Lector.

I, as a parent entrusted by God for the care of [redacted] and [redacted] have claimed exemption from immunizations/vaccinations from my childrens' births, until they were unethically kicked out of school in 2019 by the NYS Legislature and former disgraced Governor. My children are [redacted], and [redacted] years old, respectively. I have studied Sacred Scripture (the Bible) for many years, the Catechism of the Catholic Church (CCC), as well as Canon Law, and other Church documents. I am opposed to <u>all</u> immunizations.

When we have politicians such as Assemblyman Dinowitz saying my religious beliefs are "Utter Garbage!," we, as a country, have seriously lost our way. Our founding fathers are turning over in their graves. Our country was founded on religious freedom. Many brave men and women died for this inalienable right. When we as a society demand that parents, and now adults, prove they have "sincere religious beliefs," we truly are going down a slippery slope. When we as a society force parents to choose between a mandatory public education for their children and for adults to go to work, or to stand firm in their religious beliefs, we have failed!

The Catechism of the Catholic Church, which is the supreme teaching authority of the Catholic Church, as illumined by Sacred Scripture and Apostolic Tradition, under the Magisterium of the Church and the Apostolic Authority of our Holy Father, the Pope, along with Canon Law, illumines by beliefs.

The Catechism of the Catholic Church defers to moral conscience as the guideline that states, "In all he says and does, man is obliged to follow faithfully what he knows to be just and right." **1778**

The Catechism of the Catholic Church teaches us the following (see pages 438-441):

> Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice ever calling him to love and to do what is good and to avoid evil, sounds in his heart at the right moment... For man has in his heart a law inscribed by God... His conscience is man's most secret core and sanctuary. There he is alone with God whose voice echoes in his depths. **1776**

Moral conscience, present at the heart of the person, enjoins him at the appropriate moment to do good and to avoid evil. It also judges particular choices, approving those that are good and denouncing those that are evil. It bears witness to the authority of truth in reference to the supreme Good to which the human person is drawn, and it welcomes the commandments. When he listens to his conscience, the prudent man can hear God speaking. **1777**

Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescriptions of divine law. **1778**

Man has the right to act in conscience and in freedom so as personally to make moral decisions. He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters. **1782**

Conscience must be informed and moral judgment enlightened. A well-formed conscience is upright and truthful. It formulates judgments according to reason, in conformity with the true good willed by the wisdom of the Creator. The education of conscience is indispensable for human beings who are subjected to negative influences and tempted by sin to prefer their own judgment and to reject authoritative teachings. **1783**

Faced with a moral choice, conscience can make either a right judgment in accordance with reason and the divine law or, on the contrary, an erroneous judgment that departs from them. **1786**

Man is sometimes confronted by situations that can make moral judgments less assured and decision difficult. But he must always seriously seek what is right and good and discern the will of God expressed in divine law. **1787**

Some rules apply in every case: One must never do evil so that good may result from it; The Golden Rule: Whatever you wish that men would do to you, do so for them; and Charity always proceeds by way of respect for one's neighbor and his conscience: Thus sinning against your brethren and wounding their conscience...you sin against Christ. (1 Cor 8:12). **1789**

Sacred Scripture tells us that we have been created in the image and likeness of God. It is God who has infused and charged us with dominion over all of the birds of the sky, the fish of the sea, the cattle on the land, and every creeping thing that creeps

on the earth. Our bodies have been miraculously and wonderfully made, and as such, are equipped to grow and be healthy, naturally, as God intended. God is our Creator and our Healer. He has created us to thrive naturally, and we honor God's way of health.

"Truly you have formed my inmost being; you knit me in my mother's womb. I give you thanks that I am fearfully, wonderfully made; wonderful are your works." **Psalm 139:13-14**

"Trust in the Lord with all your heart, on your own intelligence rely not; In all your ways be mindful of him, and he will make straight your paths." **Proverbs 3: 5-6**

"Guide me in your truth and teach me, for you are God my savior, and for you I wait all the day." **Psalm 25: 4-5**

"I will instruct you and show you the way you should walk; I will counsel you, keeping my eye on you." **Psalm 32: 8**

"If you really listen to the voice of the Lord, your God," he told them, "and do what is right in his eyes: if you heed his commandments and keep all his precepts, I will not afflict you with any of the diseases with which I afflicted the Egyptians; for I, the Lord, am your healer." **Exodus: 26**

The Book of Exodus further holds that it is "The Lord, your God, you shall worship: then I will bless your food and drink, and I will remove all sickness from your midst; no woman in your land will be barren or miscarry; and I will give you a full span of life." **Exodus 23:25-26**

The Book of Job reveals how God allowed Satan to inflict all sorts of diseases and evil upon Job, to show Satan that Job would not turn from God, no matter what befell him. No matter what human beings may have injected Job with (if in fact immunizations were around at that time), it would not have mattered, as God gave Satan authority over Job to inflict him. And no matter what diseases and evil Satan inflicted Job with, the Book of Job further tells us that God has placed a hedge of protection around His people to protect against disease. **Job 1:10, 12**

The Book of Leviticus tells us that the life of a living body is in its blood ... and the blood is the seat of life. **Leviticus 17:11**

"You must know that your body is a temple of the Holy Spirit, who is within - the Spirit you have received from God. You are not your own. You have been purchased, and at a price. So glorify God in your body." **1 Corinthians 6: 19-20**

"People who are in good health do not need a doctor; sick people do." **Matthew 12**

"People who are healthy do not need a doctor; sick people do." **Mark 2:17**

2 Timothy 3:12-14 says it very well, "Anyone who wants to live a godly life in Christ Jesus can expect to be persecuted. But all the while evil men and charlatans will go from bad to worse, deceiving others, themselves deceived."

I do not wish to interfere with God's natural way. To inject foreign substances (immunizations) into our blood, in order to hopefully protect against a possible disease, is contrary to God's law, and is against my conscience.

To vaccinate would be an act of violence against my conscience, and thus, an evil. It is my sincere religious conviction and belief that God has created us whole, with everything we need to grow according to His natural ways, and to vaccinate is a violation of God's way. The Book of James tells us that if there is anyone sick among us, he should ask for the presbyters of the Church. They in turn will pray over him, anointing him with oil in the Name of the Lord. This prayer uttered in faith will reclaim the one who is ill, and the Lord will restore him to health. **James 5:4-15**

My spiritual health is much more important than my physical health. I'm not discounting physical health, on the contrary, by the Grace of God, I had the Covid and have completely recovered and am abundantly physically healthy. My spiritual health far surpasses the physical. Our life here on Earth is but a twinkle of the eye compared to our eternal life that awaits. My main job here on Earth is to prepare and guide my wife and children (and whoever else I can help along the way), to Heaven, to be with the One True God - Father, Son, and Holy Spirit!

You serve who you want! "But as for me and my household, we will serve the Lord." **Joshua 24:15**

Very truly yours,

Frank M. Mora

Hon. Frank M Mora

From: NYCourts
Sent: Thursday, November 4, 2021 8:26 PM
To: Hon. Frank M Mora
Cc: Omar Cumberbatch; James McAllister; Ellen Palazzo; Vanessa Kanelopoulos; Richard L. Hauser
Subject: Request for Exemption – Additional Information Needed
Attachments: Additional Information Required.pdf; Religious Exemption from COVID-19 Vaccination Supplemental Form.pdf

Your request has been reviewed by the UCS Vaccine Exemption Committee and requires additional information. Please review the attached letter for details and further instructions.

You must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/ until you receive a final decision.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

UCS VACCINATION EXEMPTION COMMITTEE

11/4/2021

Dear Frank Mora,

Your request for a religious exemption to the UCS Vaccination Mandate was considered by the UCS Vaccination Exemption Committee and the Committee requires more information before it can make a final determination.

The Committee requires the following additional information – Please complete section B of the attached "Religious Exemption from COVID-19 Vaccination Supplemental Form." Please read the instructions carefully.

You must submit this additional information through the UCS Employees Web Portal on https://portal.nycourts.gov/ExemptionCOVID19Vaccination/ by the close of business on 11/18/2021. If you feel you have additional information to support your exemption request, please provide it through the UCS Employee Web Portal along with the information specifically requested.

Please be advised you must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/.

Signed,

UCS Vaccination Exemption Committee

Hon. Frank M Mora

From: Mindy Jeng
Sent: Wednesday, November 10, 2021 10:29 AM
To: NYCourts; Hon. Frank M Mora
Subject: RE: Request for Exemption – Additional Information Needed

Dear Judge Mora:

My name is Mindy Jeng, and I am counsel to the Vaccine Exemption Committee. I wanted to provide a few clarifications and answers to your questions.

The individuals (Omar Cumberbatch, James McAllister, Ellen Pallazzo, Vanessa Kanelopoulos, Richard Hauser) cc'd are in Human Resources or the Administrative Judge's office and do not have access to your submissions and statements relating to the religious and medical exemption requests. They are kept informed about who needs to keep testing. Only the Vaccine Exemption Committee are reviewing the exemption submissions, and all names are redacted from the files before they go before the Committee. (There are some technology people who oversee the system, and individuals doing the redactions who also have to review the submissions. They are all informed that these materials are to be kept in the strictest confidence.) Here is some more information on the Vaccine Exemption Committee:

UCS Vaccination Exemption Review Committee:

- The UCS Vaccination Exemption Review Committee (Committee) will initially meet as a full group. As necessary, the Committee may be divided into two working groups, as indicated below, i.e., A and B Groups, to handle the expected volume of exemption requests.
    - **Note**: as of this morning, we have received 1,131 requests for exemptions from nonjudicial employees statewide [605 NYC, 526 ONYC] - I do not have a breakdown of how many are religious v. medical.

- The Committee consists of professionals from diverse background and areas of expertise which include executive, human resources, legal, Americans with Disabilities (ADA) and/or management experience [or some combination thereof].

- In the event of a full Committee meeting, quorum will be five voting members.

- Working groups will consist of five or six voting members. A minimum of three voting members are required for a working group to make a determination upon any exemption request.

- Meetings will be conducted by videoconference unless otherwise indicated by the chair.

- All materials submitted by requestors, Committee discussions and Committee communications are confidential. Materials will not be disseminated, nor their contents disclosed, outside of the Committee.

- Each exemption request will be anonymized by Counsel to the Committee or the Committee Administrator before presentation/review by the Committee through assignment of a unique, non-identifying control number and redaction of any identifying information such as name, title and address, or other information as necessary that could be identifying.

- All requestors will receive written notification of determination from the Committee's Administrator or Counsel and/or where applicable, notification that additional information is needed to consider their request/render a determination.

- The determination of the Committee is final, i.e., there is no administrative/internal mechanism for appealing the determination of the Committee.

UCS Vaccination Exemption Review Committee Members

Justin Barry, Co-Chair	(Working Group A)
Nancy Barry, Co-Chair	(Working Group B)
Rosemary Martinez-Burges	(Working Group B)
Jennifer DiLallo	(Working Group A)
Shawn Kerby	(Working Group B)
Keith Miller	(Working Group A)
Linda Dunlap-Miller	(Working Group B)
Scott Murphy	(Working Group B)
Michelle Smith	(Working Group A)
John Sullivan	(Working Group A)
Dan Weitz	(Working Group B)

The standards applied to religious and medical exemption requests are the standards for vaccine exemption in the Second Circuit, under federal employment law and the First Amendment.

Best regards,
Mindy Jeng

Mindy M. Jeng, Esq.
Administrative Counsel
New York State Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004
[redacted]@nycourts.gov
Pronouns: she/her/hers

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Monday, November 8, 2021 2:22 PM
To: NYCourts [redacted]@nycourts.gov>
Subject: RE: Request for Exemption – Additional Information Needed

Please advise the specific person that this email is coming from.

There are five (5) people cc'd on the below email. Why do all of these people have access to my personal medical information and my personal deeply held and sincere religious beliefs?

Please advise the specific people that are on the "committee" that is empowered to decide if my personal deeply held and sincere religious beliefs meet their standards.

How many people in total have access to my info?

What are the specific and objective standards that are applied to my personal deeply held and sincere religious beliefs?

From: NYCourts [redacted]@nycourts.gov>
Sent: Thursday, November 4, 2021 8:26 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Omar Cumberbatch [redacted]@nycourts.gov>; James McAllister <[redacted]s@nycourts.gov>; Ellen Palazzo [redacted]@nycourts.gov>; Vanessa Kanelopoulos <[redacted]@nycourts.gov>; Richard L. Hauser [redacted]@nycourts.gov>
Subject: Request for Exemption – Additional Information Needed

Your request has been reviewed by the UCS Vaccine Exemption Committee and requires additional information. Please review the attached letter for details and further instructions.

You must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/ until you receive a final decision.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

Hon. Frank M Mora

From: NYCourts
Sent: Friday, November 12, 2021 11:35 AM
To: Hon. Frank M Mora
Cc: Omar Cumberbatch; James McAllister; Ellen Palazzo; Vanessa Kanelopoulos; Richard L. Hauser
Subject: Request for COVID-19 Vaccine Exemption - Submitted Successfully

Your request for COVID-19 Vaccine Exemption has been received and is being reviewed by the committee.

You will receive a separate email with the decision or if additional information is needed.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

Section B

You have provided information in a previous statement indicating that your religious faith calls for you to abstain from medicines and vaccines due to concerns regarding the sanctity of your body or its purity. Please answer the below questions to allow us to gain a better understanding of your beliefs.

1. Please list all the medicines, medical treatments and procedures, vaccines, and/or foods that you abstain from due to your religious beliefs:

2. Please list the date you began to abstain from the above listed medicines and vaccines and/or other medical treatments:

3. Please provide a detailed explanation as to why your religious faith requires you to abstain from the listed substances in question 1.

See attached statement made a part hereof, for all 5 questions, dated November 12, 2021.

(mm)

(continue to next page)

4. Have you received an influenza (flu), pneumonia, tetanus, shingles, HPV or any other type of vaccine since turning 18 years of age? If yes, please specify the type of vaccine(s) and when it/they was/were administered.

5. If you listed any vaccines in question 4, please explain how your religious beliefs permit you to take these vaccines but prohibit the taking of a COVID-19 vaccine.

Please complete notarization and signature on page 7.

I acknowledge that false statements intentionally made herein can lead to disciplinary action, up to and including termination of employment, and may be punishable as class A misdemeanor under PL 210.05.

Signature: _____

Date: 11/12/21

Print Name: Frank Mora

Email: [redacted]e NYcourts.gov

Phone: [redacted]

Sworn and subscribed before me
This 12th day of November, 2021

LORI A. KIERNAN
Notary Public - State of New York
No. 01KI6002119
Qualified in Dutchess County
My Commission Expires April 09, 2022

Lori A. Kiernan
Notary Public

My commission expires: April 9, 2022

November 12, 2021

My name is Frank Mora. This is in response to your demand for more information regarding my religious "faith" per Section B from the email sent to me from "NYCourts" dated November 4, 2021. I repeat and reiterate everything in my statement dated September 21, 2021.

Your statement on Section B wherein you claim that I "have provided information in a previous statement indicating that your religious faith calls for you to abstain from **medicines** and vaccines due to concern regarding the sanctity of your body or its purity" in incorrect. (Emphasis added). I stated no such thing regarding "medicines."

Question 1 - I fully stated my personal deeply held and sincere religious beliefs regarding vaccines in my almost four (4) page statement dated September 21, 2021. Regarding medicines, medical treatments and procedures, I do not speculate as to what will happen in the future. My family currently does not take any medicines. Again, I will not speculate as to the future, as it is impossible to comment on something of which I have no knowledge. In addition, there is no comparison to taking a vaccine to possibly prevent a future disease (please read my statement dated September 21, 2021 for an in-depth explanation of this issue), and taking a medicine or having a medical treatment or procedure to help a body suffering from a crisis. If my body was in crisis, I would consider all of the options available to me, and discuss what to do with my doctor. I would also consult the Bible, Catechism of the Catholic Church, and pray to God for guidance. In anything that God sends my way, I would seek His guidance for solutions. Although my beliefs reject vaccinations, as a healthy body does not need intervention (please read my statement dated September 21, 2021 for an in-depth explanation of this issue), there is a significant difference between a body in crisis needing help and a body that is healthy accepting a procedure. I believe God accepts help in a crisis and rejects vaccinations for "prevention."

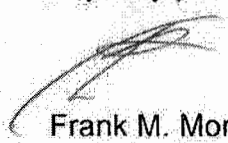
Question 2 - Since 18 years of age.

Question 3 - This is fully explained in my statement dated September 21, 2021.

Question 4 - No.

Question 5 - N/A.

Very truly yours,



Frank M. Mora

Hon. Frank M Mora

From: NYCourts
Sent: Thursday, December 23, 2021 11:14 AM
To: Hon. Frank M Mora
Cc: Omar Cumberbatch; James McAllister; Ellen Palazzo; Vanessa Kanelopoulos; Richard L. Hauser
Subject: Request for Exemption – Denied
Attachments: Denial.pdf

Your request has been denied by the UCS Vaccine Exemption Committee. Please review the attached letter for more information on your request and further instructions.

Thank you.

Please do not respond to this email - this mailbox is not being monitored

Please be CAREFUL when clicking links or opening attachments.

NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

UCS VACCINATION EXEMPTION COMMITTEE

12/23/2021

Dear Frank Mora,

Your request for a religious exemption to the UCS Vaccination Mandate was considered by the UCS Vaccination Exemption Committee and denied.

Please be advised that you must submit proof of the first dose of your COVID-19 vaccination through the UCS Revised Mask Policy SharePoint site at https://nycourts.sharepoint.com/sites/COVID-19/CPV in 10 calendar days or if the tenth day falls on a weekend or holiday, the following business day. Please submit by close of business on 01/03/2022, and proof of the second dose (If the vaccine is Pfizer or Moderna) within the medically recommended time frame. Until you are fully vaccinated (defined as two weeks after the single Johnson & Johnson vaccination or two weeks after the second Pfizer or Moderna vaccination), you must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/.

Signed,

UCS Vaccination Exemption Committee

EXHIBIT 2

Hon. Frank M Mora

From: Hon. Anne Minihan
Sent: Monday, January 3, 2022 12:23 PM
To: Hon. Frank M Mora
Cc: Hon. Norman St. George; Scott Murphy; Jennifer DiLallo; Nancy J. Barry Esq.; Justin Barry; Omar Cumberbatch; James McAllister
Subject: non-compliance with UCS Covid protocol

Good afternoon, Judge Mora,

As we discussed in our phone conversation a few minutes ago, if you fail to upload proof of one dose of an approved Covid vaccination by close of business today, you may not report in person to work tomorrow. If is your intention to not upload proof, you must make the necessary arrangements today so that you can preside virtually over your assigned matters until the necessary proof has been submitted.

Thank you,

AEM
Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

[redacted]

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 3

9-ADMJ-1-31-22

The HON. ANNE E. MINIHAN, pursuant to the authority vested in her as the Administrative Judge of the Ninth Judicial District,

DOES HEREBY:

ORDER that, until further Administrative Order, the **HON FRANK M. MORA**, Judge of the Poughkeepsie City Court, shall only preside over the following matters in the Poughkeepsie City Court:

Civil matters in which the litigants mutually consent to proceed with the Judge appearing remotely, and

The issuance of Decisions and Orders related to criminal matters which arise from motions submitted on criminal matters where no appearances are required.

HON. ANNE E. MINIHAN
Administrative Judge,
Ninth Judicial District

Dated: White Plains, New York
January 31, 2022

Hon. Frank M. Mora

Lori Conners, Chief Clerk
Poughkeepsie City Court

EXHIBIT 4

Hon. Frank M Mora

From: Law.com Newsroom Update <lawcom@alm.com>
Sent: Wednesday, April 27, 2022 12:11 PM
To: Hon. Frank M Mora
Subject: 'I Felt Afraid to Ask': Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations

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Law.com

Newsroom Update

Apr 27, 2022

DIVERSITY

'I Felt Afraid to Ask': Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations



By Christine Charnosky

This is the first installment of a new Law.com series called, "Disabling Ableism: Making the Legal Profession More Accessible," which aims to highlight both the challenges and opportunities law students with disabilities face before, during and after law school, as well as how the legal industry can better embrace disability as a form of diversity.

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'I Felt Afraid to Ask': Law Students With Disabilities Are Often Torn Between Trying to Fit In and Seeking Accommodations

This is the first installment of a new Law.com series called, "Disabling Ableism: Making the Legal Profession More Accessible," which aims to highlight both the challenges and opportunities law students with disabilities face before, during and after law school, as well as how the legal industry can better embrace disability as a form of diversity.

By Christine Charnosky | April 26, 2022



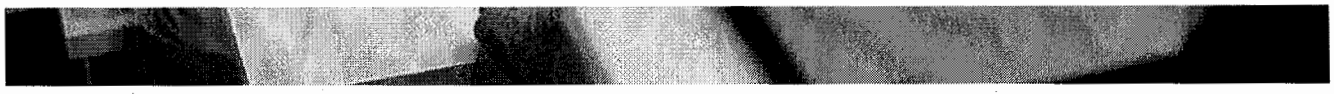


Photo: Matej Kastelic/ Shutterstock

This is the first installment of a new Law.com series called, "Disabling Ableism: Making the Legal Profession More Accessible," which aims to highlight both the challenges and opportunities law students with disabilities face before, during and after law school, as well as how the legal industry can better embrace disability as a form of diversity.

"There is a stigma that a person in a wheelchair is slow or not capable" of succeeding in law school, Ron Kort, who is a 1L at New York Law School pursing his second graduate degree, told Law.com recently.

But Kort, who was born with spinal muscular atrophy, added: "the argument can be that [people with a disability are] some of most loyal and battletested people out there."

Those currently in (or applying to) law school and those working in the profession struggle between trying to fit in to an incredibly competitive environment and trying to get the accommodations they need while fighting the constant worry that they will be viewed as less capable.

"I can do anything you can, but I may need to do it a little differently," La Shuana Cole, a Bronx assistant district attorney who has a visual impairment due to cancer, told Law.com.

There is a strong desire among people with disabilities to be treated the same as everyone else, Haley Moss, who was diagnosed with autism at the age of 3 and was sworn in to the Florida bar in January 2019 after graduating from the University of Miami School of Law, told Law.com.

Cole acknowledged this as well, saying that she has always been "treated so differently by my family because of my visual impairment that I felt resistant to accept accommodations [in law school] because I didn't want people to view me in that way."

National Association for Law Placement research (https://www.2civility.org/its-time-to-remove-professional-barriers-for-lawyers-with-disabilities/) suggests that between 2.5% and 3.5% of law school graduates self-identify as having a disability, according to 2Civility, an Illinois-based commission devoted to eliminating bias within the legal profession.

Beth Karp, director of accommodations at the National Disabled Law Students Association (https://ndlsa.org/about-ndlsa/) (NDLSA), added that "you can get a very rough estimate of the percentage of disabled law students using [Law School Admission Council] data." In a 2016-2017 report (https://www.lsac.org/data-research/research/accommodated-test-taker-trends-and-performance-june-2012-through-february), LSAC reported having "3,789 test-takers who requested accommodations out of 113,583 overall, coming out to about 3%."

A 2011 American Bar Association report (//www.americanbar.org/content/dam/aba/administrative/market_research/20110314_aba_disability_statistics_report.pdf) states that 5,292 (3.4%) of the 157,598 law students at ABA-accredited law schools requested accommodations, according to the ABA Commission on Mental and Physical Disability Law's 2011 Goal III Report.

"The range of disabilities is so broad, and often the stigma attached to self-reporting is so strong, that there are many who might prefer to not openly reveal their disabilities," according to 2Civility.

That stigma is what often stops law students and prospective law students with disabilities from seeking

accommodations.

Cole, for example, declined accommodations that had been offered to her at New York Law School, a decision she said ultimately led her to have to repeat her first year.

"Once I took accommodations, it made a world a difference," she said.

While attending the University of Pennsylvania Carey Law School, Britney R. Wilson, who has cerebral palsy, worried that others would think she couldn't do things on her own.

So while Penn Law offered some accommodations, "I felt afraid to ask for other accommodations that probably would have been helpful because law school is very competitive," said Wilson, who is now associate professor of law and director of the Civil Rights and Disability Justice clinic at New York Law School.

Moss said she declined speaking to professors at the University of Miami School of Law about her autism because "I was afraid of drawing more attention to myself."

Wilson said those with disabilities that are "non-apparent" often "have to work harder to prove their disability."

Edward Friedman, a 1L at Yale Law School with cerebral palsy, agreed that having a "very visible disability" can be an advantage in that respect.

Still, he added, "it takes a lot of energy on my part to advocate for myself." He added that he seeks accommodations not only for himself but because he can make things better for others with disabilities.

Disability as Diversity

Complicating that self-advocacy is the fact that disability is often overlooked in the broader conversation around diversity.

"I wasn't eligible for a lot of diversity fellowships because I'm a straight white male," Friedman said. "People who look at my headshot may not immediately see me as diverse. The disability community brings a lot of rich perspectives to the table, in the same way as other underrepresented groups, and it is important for us to be included in the diversity conversation."

"Disability is a social justice issue," Wilson said, adding that in the civil rights work that she engages in, "I'm always adding 'and disability.'"

"Although I think more people are beginning to at least acknowledge this, in disability spaces, they are not always addressing the impact of issues on people of color with disabilities," Wilson added. "It's also more than just a representation or diversity issue within the disability community itself, it's the need to recognize that social justice issues, more broadly, are disability issues and impact people with disabilities."

"I was a Black woman (with a disability) at an Ivy League school," Wilson said. "You get afraid of people thinking you got in because of 'x' or 'y.'"

"I was having to deal with the pressures and stereotypes of racism and sexism while navigating my disability," she added.

Disability is, of course, a form of diversity and should be included in those conversations regarding diversity, equity and inclusion, Wilson said. But "I also wouldn't want the inclusion of disability as part of

DEI to undermine the importance of race, gender, etc., and particularly, the combined effects of those identities."

Authors Liz Fosslien and Mollie West Duffy have written (https://www.lizandmollie.com /workshops)that "diversity is having a seat at the table, inclusion is having a voice, and belonging is having that voice be heard."

But Wilson took that metaphor a step further, arguing that "there's something wrong with the table."

Another metaphor frequently employed when discussing diversity is "being invited to the party."

For example, "Diversity is where everyone is invited to the party, inclusion means that everyone gets to contribute to the playlist and equity means that everyone has the opportunity to dance," according to University of Michigan's website (https://diversity.umich.edu/about/defining-dei/), quoting Chief Diversity Officer Robert Sellers.

But Amber Hikes, chief equity and inclusion officer at the American Civil Liberties Union (ACLU) said during an Association of American Law Schools panel (https://www.law.com/2022/01/07/diversity-equity-inclusion-and-belonging-how-law-schools-can-improve-diverse-hiring-and-retention/) this past January that the "dance" analogy is problematic as well because it still implies "someone else having 'ownership' over you."

That doesn't equal belonging, which includes creating spaces, having equal and equitable access as opposed to asking for access, Hikes said, adding that "'belonging' is a deeply aspirational goal," Hikes said.

"I don't want to seem like I'm a burden," Cole said, "so I balance between speaking up for self and using my own resources to make it easier for myself."

Diversity is "expressed in myriad forms, including race and ethnicity, gender and gender identity, sexual orientation, socioeconomic status, language, culture, national origin, religious commitments, age, (dis)ability status and political perspective," according to the University of Michigan's DEI policy found on its website.

Equity includes responding to bias, harassment and discrimination and having a policy of equal opportunity for all persons and not discriminating on the "basis of race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran status," according to University of Michigan's policy.

Inclusion is making sure differences are welcomed, different perspectives are heard and every individual feels a sense of belonging, according to University of Michigan.

Wilson said the true issue that needs to be addressed is ableism.

In her classes at NYLS, she uses attorney-activist Talila Lewis's definition of ableism (https://www.talilalewis.com/blog/working-definition-of-ableism-january-2022-update) to make her point: "A system of assigning value to people's bodies and minds based on societally constructed ideas of normalcy, productivity, desirability, intelligence, excellence and fitness."

Lewis's definition also includes: "These constructed ideas are deeply rooted in eugenics, anti-Blackness, misogyny, colonialism, imperialism and capitalism."

Continuing: "This systemic oppression leads to people and society determining people's value based on their culture, age, language, appearance, religion, birth or living place, 'health/wellness,' and/or their

ability to satisfactorily re/produce, 'excel' and 'behave,'" the definition continues, adding "You do not have to be disabled to experience ableism," according to Lewis's website.

"People are different and it's not a horrible thing," Wilson said. "It's the treatment of people with disabilities that is the issue."

Law schools' age-old reliance on "cold calling," for example, is particularly problematic in that regard.

For example, while in law school, Cole was afraid to be cold-called because she has to look closely at things to see them, which causes her to become very nervous. She could never see what was written on the board or in PowerPoint presentations.

Moss said cold calling "always made me look like I didn't understand or know things because I was so nervous to be called on that there would be a disconnect between my brain and my mouth, so [my answers] didn't reflect what I knew or the work I had put in."

"It would have almost been easier to say I didn't do it to save myself the embarrassment," Moss added.

Attorneys and law students said those types of situations create an unfair and inaccurate picture of disability.

"We see all kinds of issues in law schools," Marissa Ditkowsky, a staff attorney at Tzedek DC and executive director of NDLSA, told Law.com in a recent interview. "There are issues with accommodations and with accessing accommodations and a lack of disabled peers, administration and faculty."

Ditkowsky recently wrote (https://ndlsa.org/2020/11/12/ndeam-75-14-ways-employers-can-increase-access-and-opportunity-part-1/) in an article posted to NDLSA's website that society as a whole needs to understand that being disabled is an asset, not a hindrance.

"Being disabled gives us a unique perspective," Ditkowsky, who has myotonic dystrophy type 2, wrote. "I am more adaptable and creative. I've had no choice but to be me. I am more resilient. I know how to do more with less. "

"I relate to my clients in a way that many of my colleagues cannot. It means that I know to ask about, consider and research topics that my colleagues do not, not because they are incompetent lawyers, but because they simply do not have the lived experience," Ditkowsky continued. "I am an asset because I am disabled. It is not the only part of who I am, but it is important, and it makes me better at what I do."

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EXHIBIT 5

[redacted], LCSW
[redacted], NY

June 15, 2022

Dear Sir or Madam:

[redacted]

[redacted], LCSW
NYS License No. [redacted]

EXHIBIT 6

M[redacted] CHIROPRACTIC
[redacted]
[redacted] NEW YORK [redacted]
[redacted] FAX

May 18, 2022

To Whom It May Concern:

[redacted]

Sincerely,

[redacted]

G[redacted] M[redacted], DC

EXHIBIT 7

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Tuesday, July 21, 2020 8:27 AM
To: Hon. Kathie Davidson
Subject: RE: Face shield

Good morning. Thank you again!

From: Hon. Kathie Davidson [redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 7:29 PM
To: Hon. Frank M Mora [redacted]@nycourts.gov>
Subject: RE: Face shield

Good Evening Frank,

I spoke with Judge Caruso this evening since your request is based on a medical reason you do not have to wear the mask. Please continue to practice the 6 feet social distancing.

Have a nice evening,

Kathie

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 3:39 PM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Subject: RE: Face shield

Good afternoon. Any word on the face shield? I'm on the bench tomorrow and just want to make sure it will not be a problem.

From: Hon. Frank M Mora
Sent: Monday, July 20, 2020 8:17 AM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Subject: RE: Face shield

Thank you so much!

From: Hon. Kathie Davidson [redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 8:17 AM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Subject: RE: Face shield

GM

This I believe would be an exception let me check with Judge Caruso and get back to you.

Kathie

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 8:14 AM
To: Hon. Kathie Davidson [redacted]@nycourts.gov>
Subject: RE: Face shield

Uh oh. Due to health concerns, I don't normally wear a mask for more than a few minutes at a time. Since I am well more than 6 feet away on the bench, is it possible to get a "waiver," and just use the face shield?

From: Hon. Kathie Davidson [redacted]@nycourts.gov>
Sent: Friday, July 17, 2020 12:10 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>; James McAllister [redacted]@nycourts.gov>
Subject: RE: Face shield

Good Morning Frank,

I apologized for giving you incorrect information regarding the wearing of a mask with a face shield. I have been informed by Judge Caruso that you must wear a mask with the face shield. Again my apologies.

Have a nice weekend,

Kathie

Hon. Kathie E. Davidson
Administrative Judge
Ninth Judicial District
Westchester County Supreme Court
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
[redacted]
e-mail: [redacted]@nycourts.gov

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 2:00 PM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: RE: Face shield

Thank you.

From: Hon. Kathie Davidson [redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 2:00 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: RE: Face shield

yes

Hon. Kathie E. Davidson
Administrative Judge
Ninth Judicial District
Westchester County Supreme Court
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
[redacted]
e-mail: [redacted]@nycourts.gov

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 1:32 PM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: Face shield

Kathie,

I was issued a Face shield by my court officers to wear in lieu of a mask on the bench. Please confirm that I am authorized to do so.

Thank you.

Frank

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 8

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

May 24, 2022

To Whom It May Concern:

My name is Jermaine Dublin. I am a court officer in Poughkeepsie City Court. In August 2021, Judge Mora advised me that he was not able to wear his face shield. He did not say why but asked that I put the portable plexiglass shield in front of the bench, which I did. Although I cannot recall the dates, Judge Mora used it in the courtroom a few times. On one occasion, an attorney complained to Judge Mora that he was not wearing a face shield. This happened just before I was going to call that attorney's cases. Although Judge Mora looked distressed, he made no comment, adjourned the rest of the calendar, and went into his chambers. I happened to walk by Judge Mora's Chambers in the afternoon and asked how he was doing. He said he was working through some issues, and thanks for asking. He did not tell me what those issues were.

Thank you.

Very truly yours,

JERMAINE DUBLIN

EXHIBIT 9

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Friday, August 20, 2021 9:07 AM
To: Hon. Sam Walker
Subject: RE: COVID-19 Testing Program

Sam,

Good morning. Thanks for the info. Yes, I do have questions. Here they are:

1. It's my understanding that the USA is part of the Nuremberg Code, which outlaws coerced medical treatments. By treating "vaccinated" people differently than unvaccinated people, that is coercion.

2. What "science" determines that orange card holders are allowed to go mask-less in nonpublic areas, but not in public?

3. What "science" determines that orange card holders and not those with natural immunity (i.e. those who had Covid) are allowed to go mask-less?

4. How is it that an employer is allowed to mandate a medical procedure (i.e. Wearing medical devices (masks); Covid tests)?

5. How is it that an employer is allowed to ask for medical information (i.e. medical test results)?

6. What "science" determines that testing weekly is going to protect anyone, as a person can have Covid, get tested, it come back negative because enough time has not gone by for it to show up on a test, then go to work with Covid for over a week?

7. There is talk about mandatory "vaccination." How is it that an employer will be allowed to mandate a medical procedure (i.e. mandatory "vaccination")?

8. The "science" is now showing that "vaccinated" people are getting Covid and spreading Covid. On August 6, 2021, the director of the CDC stated that "what they ["vaccinations"] can't do anymore is prevent transmission." Why then, would "vaccination" not be an individual's choice?

9. Data clearly shows that there is no statistical difference between states with mask mandates and those without. What "science" is the CDC, and in turn OCA, relying on to show that masks work? Even presuming that masks work, why is it not an individual's choice to wear a mask or not? If the mask works for the individual wearing it, then why are those who wish not to wear it, forced to?

10. OSHA has guidelines on wearing masks, because they are known to be harmful. What "science" shows that masks are safe to be worn for the period of time employees are being asked to wear them?

11. I have "approval" to wear a face-shield in lieu of a mask. Plexiglass was supposed to be installed on all of the benches last year in the height of the "pandemic," but that did not happen. If plexiglass was installed, the face-shield "requirement" would be moot. Why was plexiglass not installed, as the public was told every court either had it or was going to get it?

12. What "science" determines that I am a "threat" to anyone if I am over 6 feet away from everyone in the courtroom?

Thank you.

Frank

From: Hon. Sam Walker [redacted]@nycourts.gov>
Sent: Thursday, August 19, 2021 10:13 AM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Subject: Fw: COVID-19 Testing Program

Goodmorning:

Just in case you may not have received this memo from Judge Marks.

Please let me know if you have any questions.

Sam Walker
Supervising Judge, City Courts

From: Cindy Martucci-Kiyar <[redacted]@nycourts.gov> on behalf of Hon. Lawrence Marks <[redacted]@nycourts.gov>
Sent: Thursday, August 19, 2021 9:54 AM
Subject: COVID-19 Testing Program

Good morning.

Please see the attached memorandum from Chief Administrative Judge Marks.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 10

From: Sam D. Walker

To: Frank Mora

Subject: Covid-19 Protocols for Judges

Date: August 23, 2021

Good afternoon, Judge Mora:

As we discussed, there is an OCA requirement that all judges in the public areas of the courthouse to include the courtroom wear a mask or a shield. At the beginning of the Covid-19 outbreak you requested special permission, due to a pre-existing condition, to wear a shield instead of a mask. Your request was granted.

It was brought to my attention that you have been traversing the courthouse in both the public and private areas without wearing a mask and/or a shield, and you have not provided any proof that you were vaccinated.

I provided you with a copy of the latest Memorandum from Chief Administrative Judge Marks, addressing COVID-19 Testing Program For Judges. Emanating from Judge Mark's Memorandum, you submitted a series of questions which I will attempt to answer below.

Please be reminded that I do not set policy on how to confront the COVID-19 Pandemic. This is done by OCA. I just advise on what those policies are, and you are expected to follow them.

1. It's my understanding that the USA is part of the Nuremberg Code, which outlaws coerced medical treatments. By treating "vaccinated" people differently than unvaccinated people, that is coercion.

A. I don't understand the relevance of the Nuremberg Code. It's not a question of you being mandated to take the vaccine. In fact, you were exempted based upon a pre-existing condition, and based upon your request you were given permission to wear a shield instead of a mask. All we are requesting is that you wear a shield or mask in the courtroom or in public areas of the courthouse.

2. What "science" determines that orange card holders are allowed to go mask-less in nonpublic areas, but not in public?

A. OCA has directed this policy and we are all expected to comply.

3. What "science" determines that orange card holders and not those with natural immunity (i.e. those who had Covid) are allowed to go mask-less?

A. OCA has directed this policy and we are all expected to comply.

4. How is it that an employer is allowed to mandate a medical procedure (i.e. Wearing medical devices (masks); Covid tests)?

A. The wearing of a mask or face shield is not a medical procedure, it's a safety precaution.

5. How is it that an employer is allowed to ask for medical information (i.e. medical test results)?

A. You don't have to respond to the inquiry, but then you must wear a mask or face shield in all public and private areas of the courthouse.

6. What "science" determines that testing weekly is going to protect anyone, as a person can have Covid, get tested, it come back negative because enough time has not gone by for it to show up on a test, then go to work with Covid for over a week?

A. OCA has directed this policy and we are all expected to comply.

7. There is talk about mandatory "vaccination." How is it that an employer will be allowed to mandate a medical procedure (i.e. mandatory "vaccination")?

A. If such a mandate is directed, and if you cannot comply, then you may have to reconsider your position.

8. The "science" is now showing that "vaccinated" people are getting Covid and spreading Covid. On August 6, 2021, the director of the CDC stated that "what they ["vaccinations"] can't

do anymore is prevent transmission." Why then, would "vaccination" not be an individual's choice?

A. Because OCA has determined this as a safety policy. If you don't get vaccinated, you must wear a mask or face shield in all public and private areas of the courthouse.

9. Data clearly shows that there is no statistical difference between states with mask mandates and those without. What "science" is the CDC, and in turn OCA, relying on to show that masks work? Even presuming that masks work, why is it not an individual's choice to wear a mask or not? If the mask works for the individual wearing it, then why are those who wish not to wear it, forced to?

A. Because OCA has determined this as a safety policy. If you cannot comply you may have to reconsider your position.

10. OSHA has guidelines on wearing masks because they are known to be harmful. What "science" shows that masks are safe to be worn for the period of time employees are being asked to wear them?

A. OCA has determined this as a safety policy. If you cannot comply you may have to reconsider your position.

11. I have "approval" to wear a face-shield in lieu of a mask. Plexiglass was supposed to be installed on all of the benches last year in the height of the "pandemic," but that did not happen. If plexiglass was installed, the face-shield "requirement" would be moot. Why was plexiglass not installed, as the public was told every court either had it or was going to get it?

A. OCA determined that plexiglass would not be installed in every courtroom.

12. What "science" determines that I am a "threat" to anyone if I am over 6 feet away from everyone in the courtroom?

A. OCA has determined this as a safety policy. If you cannot comply, you may have to reconsider your position.

If you are having difficulty complying with the directives of OCA please let me know. Until then, you will be required to comply, as you have always done, with wearing a shield in all public and private areas of the courthouse.

Thanks

Sam D. Walker

EXHIBIT 11

Hon. Frank M Mora

From: Lucian Chalfen
Sent: Tuesday, January 18, 2022 1:04 PM
To: Lori Conners
Cc: Hon. Frank M Mora; James McAllister; Omar Cumberbatch; Selena Hall; Lori Kiernan
Subject: RE: Law 360 Reporter Inquiry

Very good plan. He is a regular here but I don't know what he is after.

From: Lori Conners <[redacted]@nycourts.gov>
Sent: Tuesday, January 18, 2022 12:59 PM
To: Lucian Chalfen [redacted]@nycourts.gov>
Cc: Hon. Frank M Mora <[redacted]@nycourts.gov>; James McAllister <[redacted]@nycourts.gov>; Omar Cumberbatch <[redacted]@nycourts.gov>; Selena Hall <[redacted]@nycourts.gov>; Lori Kiernan [redacted]@nycourts.gov>
Subject: Law 360 Reporter Inquiry

Mr. Chafen,
Please note that Frank G. Runyeon, Journalist from the publication LAW 360, appeared at our offices to request an appointment/meeting with Judge Mora after having observed the criminal court calendar. Mr. Runyeon was advised that I would confirm the protocol for such a request and get back to him.

My understanding is that I will direct Mr. Runyeon to you for further information.

Lori L. Conners, Chief Clerk
Poughkeepsie City Court
62 Civic Center Plaza
Poughkeepsie, NY 12601
[redacted]@NYCourts.gov
T: [redacted]
F: [redacted]

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EXHIBIT 12

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Thursday, January 20, 2022 11:43 AM
To: Lucian Chalfen; Lori Conners
Cc: James McAllister; Omar Cumberbatch; Selena Hall; Lori Kiernan
Subject: RE: Law 360 Reporter Inquiry

Lucian,

I have a couple of calls into you. I know you're swamped, so I'll send by email. I texted Mr. Runyeon last night the following:

Good evening. I'm sorry I'm just getting back to you, however, my phone does not deliver messages promptly and I have to get it repaired. Please address your inquiries to Lucian Chalfen, our Public Relations Director, at [redacted].

His reply was this:

Thank you Judge. I do believe you can better speak to why you were at the courthouse on an almost daily basis after being denied the vaccine exemption, why you don't wear a mask there, and why you conducted arraignments virtually. Chalfen says you were in violation of the administration's orders on all counts.

I did not call or text him back, as we all know reporters sometimes fib. I don't know Mr. Runyeon, so I have no idea regarding him personally. I'm confident you did not tell him that, as I have written approval for everything I have done.

Please advise.

Frank

From: Lucian Chalfen[redacted]@nycourts.gov>
Sent: Tuesday, January 18, 2022 1:04 PM
To: Lori Conners[redacted]@nycourts.gov>
Cc: Hon. Frank M Mora[redacted]@nycourts.gov>; James McAllister[redacted]@nycourts.gov>; Omar Cumberbatch [redacted]@nycourts.gov>; Selena Hall <[redacted]@nycourts.gov>; Lori Kiernan <[redacted]@nycourts.gov>
Subject: RE: Law 360 Reporter Inquiry

Very good plan. He is a regular here but I don't know what he is after.

From: Lori Conners <[redacted]@nycourts.gov>
Sent: Tuesday, January 18, 2022 12:59 PM
To: Lucian Chalfen <[redacted]@nycourts.gov>
Cc: Hon. Frank M Mora <[redacted]@nycourts.gov>; James McAllister <[redacted]@nycourts.gov>; Omar Cumberbatch <[redacted]@nycourts.gov>; Selena Hall[redacted]@nycourts.gov>; Lori Kiernan <[redacted]@nycourts.gov>
Subject: Law 360 Reporter Inquiry

Mr. Chafen,

Please note that Frank G. Runyeon, Journalist from the publication LAW 360, appeared at our offices to request an appointment/meeting with Judge Mora after having observed the criminal court calendar. Mr. Runyeon was advised that I would confirm the protocol for such a request and get back to him.

My understanding is that I will direct Mr. Runyeon to you for further information.

Lori L. Conners, Chief Clerk
Poughkeepsie City Court
62 Civic Center Plaza
Poughkeepsie, NY 12601
[redacted]@NYCourts.gov
T: [redacted]
F: [redacted]

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 13

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

April 26, 2022

To Whom it May Concern:

Kindly note that on January 18, 2022, after handling his morning calendar virtually off-premises, Judge Mora came in to retrieve some of his personal items, around lunch time. He was wearing his face shield until he went into his personal chambers. Judge Volkman had already left for lunch, and there were several individuals out that day, so Judge Mora and I were the only ones in the back area.

As I normally do, I let Judge Mora know that I was leaving for lunch. When I left, Judge Mora was the only one in the back area. I came back a little early from lunch, and another employee came into my office. I normally let Judge Mora know when I get back, however, I neglected to tell him this time. He then started to walk into my office, holding his face shield and one of his personal files. As soon as he saw me, he immediately stopped and put on his face shield. He commented, "Oh, you're back!" I said, "sorry for not telling you," and that was that.

At that point, the other employee had their cell phone out and was showing pictures of their new grandbaby. I cannot say who took the picture that came out in the Law360 article on January 20, 2022, but it was only the other employee and I in my office, and I did not take the picture.

Thank you.

Very truly yours,

Lori A. Kiernan

Lori A. Kiernan
Confidential Secretary to
THE HON. FRANK M. MORA
THE HON. SCOTT L. VOLKMAN

EXHIBIT 14

Access History

01/26/2022 10:28:41

Date/Time	Node Date/Time	Who	Location	Description
01/18/2022 12:33:42	01/18/2022 12:33:42	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/13/2022 12:43:48	01/13/2022 12:43:47	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/11/2022 12:07:14	01/11/2022 12:07:15	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/11/2022 11:15:21	01/11/2022 11:15:21	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/10/2022 08:27:29	01/10/2022 08:27:29	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/06/2022 15:26:58	01/06/2022 15:26:59	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/06/2022 15:22:52	01/06/2022 15:22:52	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/06/2022 14:56:47	01/06/2022 14:56:48	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/05/2022 12:38:40	01/05/2022 12:38:39	Mora, Frank	PD Double Doors Portal	Access granted
01/05/2022 12:27:22	01/05/2022 12:27:21	Mora, Frank	PD Green Mile Door Portal	Access granted
01/03/2022 16:39:49	01/03/2022 16:39:49	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/03/2022 16:39:45	01/03/2022 16:39:45	Mora, Frank	CH Door across from Juvenile Portal	Access granted
01/03/2022 08:17:04	01/03/2022 08:17:04	Mora, Frank	CH Court Stairwell Door Portal	Access granted
01/03/2022 08:17:01	01/03/2022 08:17:01	Mora, Frank	CH Door across from Juvenile Portal	Access granted
01/03/2022 08:16:56	01/03/2022 08:16:57	Mora, Frank	Juvenile Glass Doors Portal	Access not completed
01/01/2022 10:41:57	01/01/2022 10:41:57	Mora, Frank	CH Court Stairwell Door Portal	Access granted

EXHIBIT 15

Hon. Frank M Mora

From: Hon. Anne Minihan
Sent: Wednesday, January 5, 2022 2:54 PM
To: Hon. Frank M Mora
Subject: RE: Personal Belongings

Frank,

Thanks are absolutely not necessary – anything that can be done to make it easier on you and the folks in Poughkeepsie, I'm happy to do or authorize. I have zero interest in making this more difficult than it needs to be. Hang in there.

Anne

Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

[redacted]

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Wednesday, January 5, 2022 2:07 PM
To: Hon. Anne Minihan <[redacted]@nycourts.gov>
Cc: Larry Daley[redacted]@nycourts.gov>; James McAllister[redacted]@nycourts.gov>; Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners[redacted]@nycourts.gov>
Subject: RE: Personal Belongings

Judge Minihan,

Thank you!!! I'm sure the staff will appreciate it also, as it will be less taxing on them.

Frank

From: Hon. Anne Minihan <[redacted]n@nycourts.gov>
Sent: Wednesday, January 5, 2022 12:50 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Larry Daley[redacted]@nycourts.gov>; James McAllister[redacted]@nycourts.gov>; Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners[redacted]@nycourts.gov>
Subject: RE: Personal Belongings

Good afternoon, Judge Mora,

If you want to go to the court to retrieve your belongings, or to drop off papers or files, or get office supplies you need (or tech equipment), just go while court is open. You can continue doing that so long as you're working remotely (i.e. you're not moving out so you don't need to take all of your personal things unless you want to). Obviously wear your mask and observe the other Covid protocols that everyone entering our courts has to follow.

Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

[redacted]

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Wednesday, January 5, 2022 11:10 AM
To: Hon. Anne Minihan <[redacted]@nycourts.gov>
Cc: Larry Daley <[redacted]@nycourts.gov>; James McAllister <[redacted]@nycourts.gov>; Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>
Subject: Personal Belongings

Judge Minihan,

Per your suggestion in a separate email, I am emailing you and those cc'd, to gain access to my chambers to retrieve some of my personal belongings. I'm still at a loss as to how I am barred from "any UCS facility" until I submit proof of vaccination (which I cannot do based on my sincere and genuinely held religious beliefs), while unvaxinated attorneys, litigants, jurors, and members of the public are allowed to enter the facilities, as well as unvaxinated judges/non-judicial staff who received a medical or religious exemption.

May I enter after hours when it is unoccupied to retrieve some of my items, which include private and sensitive medical documentation for my family?

Frank

Please be CAREFUL when clicking links or opening attachments.

EXHIBIT 16

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

May 12, 2022

To Whom it May Concern:

To the best of my knowledge, Judge Frank M. Mora did not preside over any cases in this Court from within the Courthouse after January 3, 2022, and worked virtually off-premises since January 4, 2022.

Sincerely,

Lori L. Conners

LORI L. CONNERS
Chief Clerk

STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
CITY COURT OF POUGHKEEPSIE
62 CIVIC CENTER PLAZA
POUGHKEEPSIE, NEW YORK 12601
TEL: (914) 483-8200 FAX: (212) 416-1393

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES McALLISTER
District Executive

LORI L. CONNERS
Chief Clerk

SELENA M. HALL
Deputy Chief Clerk

May 12, 2022

To Whom It May Concern:

Judge Frank M. Mora did not preside over any cases in this Court from within the Courthouse after January 3, 2022, and worked virtually off-premises since January 4, 2022. I can say this with certainty, as my office is diagonally across from Judge Mora's chambers. His chambers is right next to the hallway restroom. This is the restroom that I use throughout the day. In addition, I pass Judge Mora's chambers each day (sometimes several times per day) on my way into the courtroom.

Very truly yours,

Lori A. Kiernan

Lori A. Kiernan
Confidential Secretary to
THE HON. FRANK M. MORA
THE HON. SCOTT L. VOLKMAN

EXHIBIT 17

Hon. Frank M Mora

From: Hon. Anne Minihan
Sent: Tuesday, January 18, 2022 5:36 PM
To: Hon. Frank M Mora
Cc: Larry Daley; Hon. Barry E. Warhit; Scott Murphy; Jennifer DiLallo; Lori Conners; James McAllister; Omar Cumberbatch; Hon. Sam Walker
Subject: Covid protocol and facility access

Good afternoon, Judge Mora,

In follow up to our conversation a little while ago, under no circumstances are you permitted to access the Poughkeepsie City Court facility unless you are masked.

Further, and in light of recent events, it has become necessary to limit your access to the facility. Until further notice, you must have my express permission, or that of Judge Warhit or Judge Walker, before you will be allowed into the courthouse facility. Permission, when granted, will be for a stated and limited purpose. I, or the judge granting you permission, will provide notification to Operations and to Ms. Conners of the date, time, and purpose of your visit. You will check in with Sergeant Jones when you arrive and check out with him when you leave. Again, you will need to be masked for the duration of your visit. In the event that you are unable or unwilling to wear a mask, you will have to make arrangements with court staff to deliver whatever you need to you outside the building.

If you have any questions, please contact me.

Thank you.

AEM

Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
Westchester County Courthouse
111 Dr. Martin Luther King Junior Blvd.
White Plains, New York 10601

[redacted]

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EXHIBIT 18

DECEMBER 10, 2021 Albany, NY

Governor Hochul Announces Major Action to Address Winter Surge and Prevent Business Disruption as COVID-19 Cases and Hospitalizations Rise Statewide

CORONAVIRUS (/KI /CORONAVIRUS) COVID-19 VACCINE (/KI /COVID-19-VACCINE) HEALTH (/KI /HEALTH) (/KEYWORDS /HEALTH)

Hochul Shares New Yorkers' Frustration with Winter Surge, Says We Do Not Have to Be Here But We Are

Hochul Thanks More Than 80% of Adult New Yorkers for Getting Fully Vaccinated and Doing the Right Thing

To Protect the Health of New Yorkers, Businesses and Venues Must Implement a Mask Requirement or Require Proof of Fully Vaccinated Status

Hochul Gives Options to Businesses with Mask or Vaccine Requirement

State to Reassess Measure on Jan. 15, 2022

Read Frequently Asked Questions Regarding to New Requirements here

Governor Kathy Hochul today announced masks will be required to be worn in all indoor public places unless businesses or venues implement a vaccine requirement. This a major action to address the winter surge comes as COVID-19 cases and hospitalizations rise statewide (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcoronavirus.health.ny.gov%2Fcovid-19-data-new-york&data=04%7C01%7CAshley.Struble%40dig.tal.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=qzs0%2bpx1pNk8fZ%2ExAR4kfRjTZA%2B5xRu%2FmTCKqKwCg%3D&reserved=0) to be in alignment with the CDC's recommendations (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fmmwr%2Fvolumes%2F70%2Fwr%2Fmm7050e2.htm&data=04%7C01%7CAshley.Struble%40dig.tal.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=ezs%2Bcb%2oF4%2FRN%2Bsyf%2BIGf%2Bz%2eoKAIFQ%3D&reserved=0) for communities with substantial and high transmission. The State Health Commissioner issued a determination solidifying the requirement.

This determination is based on the State's weekly seven-day case rate as well as increasing hospitalizations. The new business and venue requirements extend to both patrons and staff. This measure is effective Dec. 13, 2021 until Jan. 15, 2022, after which the State will re-evaluate based on current conditions. The new measure brings added layers of mitigation during the holidays when more time is spent indoors shopping, gathering, and visiting holiday-themed destinations.

"As Governor, my two top priorities are to protect the health of New Yorkers and to protect the health of our economy. The temporary measures I am taking today will help accomplish this through the holiday season. We shouldn't have reached the point where we are confronted with a winter surge, especially with the vaccine at our disposal, and I share many New Yorkers' frustration that we are not past this pandemic yet," **Governor Hochul said.** "I want to thank the more than 80 percent of adult New Yorkers who have done the right thing to get fully vaccinated. If others will follow suit, these measures will no longer be necessary."

"I have warned for weeks that additional steps could be necessary, and now we are at that point based upon three metrics: Increasing cases, reduced hospital capacity, and insufficient vaccination rates in certain areas," **Governor Hochul added.**

Since Thanksgiving, the statewide seven-day average case rate has increased by 43% and hospitalizations have increased by 29%. While the percentage of New Yorkers fully vaccinated continues to increase—gaining 2% from Thanksgiving weekend to now—the uptick is not fast enough to completely curb the spread of the virus, particularly among communities with low vaccination coverage.

The State Department of Health has produced nation-leading studies, published in the CDC's MMWR (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fmmwr%2Fvolumes%2F70%2Fwr%2Fmm7037a7.htm%3Fs_cid%3Dmm7037a7_w&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbecb51c%3D%7C3000&sdata=yqlFaUh2AfraOMvpOXSVfOJRcCpAU5%2Fqatl%2Bfjtwex2k%3D&reserved=0) and the New England Journal of Medicine (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nejm.org%2Fdoi%2Ffull%2F10.1056%2FNEJMoa2116063&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbecb51c%3D%7C3000&sdata=XjY1ocSnwtpb2IxcF607Sf76axPMU25SC7IBFYExYU8%3D&reserved=0), which demonstrate the COVID-19 vaccines' effectiveness - particularly in preventing severe disease. The Department continues to urge eligible New Yorkers of all ages to get fully vaccinated and boosted as soon as possible.

Acting Health Commissioner Dr. Mary T. Bassett said, "Community spread requires a community-minded solution, as the Omicron variant emerges and the overwhelmingly dominant Delta variant continues to circulate. We have the tools we need to protect against the virus - and now we must ensure we use them. There are tools each individual can use, and there are actions we can take as government. Getting vaccinated protects you, and wearing a mask is how we will better protect each other. Both vaccination and mask-wearing are needed to slow this COVID-19 winter surge."

A violation of any provision of this measure is subject to a maximum fine of $1,000 for each violation. Local health departments are being asked to enforce these requirements.

Business/Venue Proof of Vaccination Requirement

Businesses and venues that implement a proof of vaccination requirement must ensure that anyone 12 years of age or older is fully vaccinated before entering indoors. Businesses/venues can accept Excelsior Pass (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fepass.ny.gov%2Fhome&data=04%7C01%7CChristina.Levin%40digital.ny.gov%7C9b811a4406f5489696160&d9bc239fd%3D%7C3000&sdata=OkWeflwKa9eCmHJRkS3%2BOhJhd8wJTfLm%3ar8RaWAnU%3D&reserved=0), Excelsior Pass Plus (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fepass.ny.gov%2Fhome&

data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=GvuShtseFUXgBIxshIkuyT0jPUt05Zur9ubOnt7%2C%2D&reserved=0), public transit, homeless shelters, correctional facilities, nursing homes, and health care settings per CDC guidelines.

New York State and the State's Department of Health continue to strongly recommend mask-wearing in all public indoor settings as an added layer of protection, even when not required. Children 2 - 5 who remain ineligible for vaccination must wear a proper-fitting mask.

COVID-19 vaccines and booster doses (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcovid19vaccine.health.ny.gov%2Fbooster-doses&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=KBloPfOm502%2BMvvW9wM9ajx3RNTtTHohd3%2BIY%2FrDQvQ%3D&reserved=0) are free and widely available statewide. New Yorkers can visit vaccines.gov, text their ZIP code to 438829, or call 1-800-232-0233 to find nearby locations. To schedule an appointment at a state-run mass vaccination site, New Yorkers can visit the Am I Eligible site (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fam-i-eligible.covid19vaccine.health.ny.gov%2F&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=rM0y7mj%2BOI4E6VckY%2BKo7N7VW8ac9IHJKJR96rD8xTTI%3D&reserved=0). New Yorkers can also contact their health care provider, county health departments, Federally Qualified Health Centers (FQHCs), rural health centers, or pharmacies.

New Yorkers can retrieve their Excelsior Pass or Excelsior Pass Plus here (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fpass.ny.gov%2Fhome&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=UUsO5fTI9aTt8AJv%2FVI46%2FRkdtcKU2r2QOBDazY7zzc%3D&reserved=0). Businesses and venues can download the Excelsior Pass Scanner app (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapps.apple.com%2Fus%2Fapp%2Fnys-excelsior-pass-scanner%2Fid1552709177&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=yWDsOMLgpDmHkefCLG5ILwuUxtjOqHoYeMECzBchPrg%3D&reserved=0)—free for any business nationwide and available in more than ten languages—here (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapps.apple.com%2Fus%2Fapp%2Fnys-excelsior-pass-scanner%2Fid1552709177&data=04%7C01%7CAshley.Struble%40digital.ny.gov%7C97232375e94245c3c12b08d9bbec51C%3D%7C3000&sdata=yWDsOMLgpDmHkefCLG5ILwuUxtjOqHoYeMECzBchPrg%3D&reserved=0).

data=04%7C01%7CChristina.Levin%40digital.ny.gov%7C9b811a4405f548969f1608d9bc239fd%3D%7C3000&sdata=DM5EsJYoPhjQryZOh9e85ZzBRekVSKjal74c%2F%2FGI7I%3D&reserved=0), SMART Health Cards issued outside of New York State, full-course vaccination through NYC COVID Safe app (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapps.apple.com%2Fus%2Fapp%2Fnyc-covid-safe%2Fid1565212506&data=04%7C01%7CChristina.Levin%40digital.ny.gov%7C9b811a4405f548969f1608d9bc239fd%3D%7C3000&sdata=hmW7DSkSXeXYz%2GCjcdbx%2StsM%2FxvAVhHVZH2WAA%3D&reserved=0), a CDC Vaccination Card, or other official immunization record.

In accordance with CDC's definition, fully vaccinated is defined as 14 days past an individual's last vaccination dose in their initial vaccine series (14 days past the second shot of a two-dose Pfizer-BioNTech or Moderna vaccine; 14 days past the one-shot Janssen/Johnson & Johnson vaccine). The State also accepts WHO-approved vaccines for these purposes. Parents and guardians can retrieve and store an Excelsior Pass and/or Excelsior Pass Plus for children or minors under legal guardianship.

Vaccines for children ages 5 – 11 have only been available since November 2021. Therefore, in order to enter a business or venue that implements a proof of vaccination requirement, children ages 5 – 11 only have to show proof of having had at least one dose of the COVID-19 vaccination.

Vaccines have been available for 16–17-year-olds since April 2021 and for 12—15-year-olds since May 2021. At the time of the determination, 63% of the 12 – 17 age group has been fully vaccinated in New York State.

Business/Venue Mask-Wearing Requirement

Businesses and venues that implement a mask requirement must ensure all patrons past their second birthday and medically able to tolerate a face covering wear a mask at all times while indoors outside of physical eating or drinking.

Continued Masking Requirements

Unvaccinated individuals continue to be responsible for wearing masks, in accordance with federal CDC guidance (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2Ffully-vaccinated-guidance.html&data=04%7C01%7CAshley.Shaw%40dig.ny.gov%7C9725237 5e9424 5e3c12e08d9bbec51C%3D%7C3000&sdata=7uEkcGzWY2%2FOkdJkm1Ed9pPxrpDLW2d4fVbexyly4%3D&reserved=0). Further, the State's masking requirements continue to be in effect for pre-K to grade 12 schools (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcoronavirus.health.ny.gov%2Fsystem%2Ffiles%2Fdocuments%2F2021%2F09%2Fschool-guidance_0.pdf&

EXHIBIT 19

NEW YORK STATE OF OPPORTUNITY. | Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

Interim Guidance on Executive Orders 202.17 and 202.18 Requiring Face Coverings in Public During the COVID-19 Outbreak

April 17, 2020

Background:

In December 2019, a new respiratory disease called the novel coronavirus (COVID-19) was detected. COVID-19 is caused by a virus (SARS-CoV-2) that is part of a large family of viruses called coronaviruses. Recently, community-wide transmission of COVID-19 has occurred in the United States, including New York where the number of both confirmed and suspected cases is increasing. To reduce the community-wide transmission of COVID-19, Governor Andrew M. Cuomo has taken aggressive action through Executive Order 202, as amended, to combat the spread of this infectious disease, reducing the density of people in areas of common congregation by closing the in-person operations of non-essential businesses and prohibiting all non-essential gatherings of individuals of any size for any reason.

Executive Orders:

Executive Order 202.17, issued on April 15, 2020, provides the following directive:

> *Effective at 8 p.m. on Friday, April 17, 2020 any individual who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or cloth face-covering when in a public place and unable to maintain, or when not maintaining, social distance.*

Executive Order 202.18, issued on April 16, 2020, provides the following directive:

> *Any person utilizing public or private transportation carriers or other for-hire vehicles, who is over age two and able to medically tolerate a face covering, shall wear a mask or face covering over the nose and mouth during any such trip; any person who is operating such public or private transport, shall likewise wear a face covering or mask which covers the nose and mouth while there are any passengers in such vehicle. This directive shall take effect in the same manner as Executive Order 202.17, at 8 p.m. on Friday, April 17, 2020.*

Guidance:

Individuals must procure, fashion, or otherwise obtain face coverings and wear such coverings when they are in a public and are:

- within six feet of distance from other individuals; or
- in a situation or setting where they are unable to maintain six feet of distance from other individuals; or
- in a public or private transportation carrier or for-hire vehicle.

Face coverings include, but are not limited to, cloth (e.g. homemade sewn, quick cut, bandana), surgical masks, N-95 respirators, and face shields. Please visit the Centers for Disease Control and Prevention's "Coronavirus Disease 2019 (COVID-19)" website for information on cloth face covers and other types of personal protective equipment (PPE), as well as instructions on use, cleaning, and disposal. Please note that the most protective PPE (e.g. N-95 respirators) remains a critical need for health care workers and first responders and, therefore, should be prioritized for those settings.

Individuals are required to wear a face covering in the abovementioned situations and settings, provided that they are older than two (2) years of age and able to medically tolerate a covering. If a face covering would inhibit or otherwise impair an individual's health or if an individual is not older than two (2) years of age, an individual is not required to wear or use such a covering. Further, essential business operators and enforcement authorities are prohibited from requesting or requiring medical or other documentation from an individual who declines to wear a face covering due to a medical or other health condition that prevents such usage.

Nothing in Executive Order 202.17 or 202.18 shall remove the obligation of essential businesses, as well as state and local government agencies and authorities, to procure, fashion, or otherwise obtain face coverings and provide such coverings to employees who directly interact with the public during the course of their work at no-cost to the employee, pursuant to Executive Order 202.16.

Public and private transport operators required to wear a face covering while transporting passengers should consult the New York State Department of Health's "Interim Guidance on Executive Order 202.16 Requiring Face Coverings for Public and Private Employees Interacting with the Public During the COVID-19 Outbreak," issued on April 14, 2020, for further information.

Additional Information:
New York State Department of Health Coronavirus (COVID-19) Website
https://coronavirus.health.ny.gov/

United States Centers for Disease Control and Prevention Coronavirus (COVID-19) Website
https://www.cdc.gov/coronavirus/2019-ncov/index.html

EXHIBIT 20

Michael Brown
[redacted]vd.
[redacted]

June 13, 2022

Dear Sir or Madam:

I am employee of Seeta Eye Center in Poughkeepsie. I have worked here for 1 year, as a technician. I found out that Stacey Koch, the manager of Seeta, who is my boss, filed a complaint against Judge Mora for an incident that happened on December 28, 2021. Prior to this date, I had never met Judge Mora. I found it hard to believe that she filed a complaint. After reading the complaint, I was even more dismayed. I am writing this letter because I feel Judge Mora did not do anything to warrant the police being called on him, or a complaint being filed against him.

I recall that day very vividly as I was asked to come out to the waiting area. Judge Mora was there with his son, who was scheduled for an eye exam. From the moment Stacey addressed Judge Mora, she was very hostile, demanding that he wear a mask. Judge Mora tried to explain that he did not medically tolerate a mask (he was wearing a face shield), but Stacey would not let him speak. She kept cutting him off. Unlike what Stacey wrote in her complaint, Judge Mora did not taunt her. He was calm and a complete gentleman during the entire ordeal. Judge Mora did not create a scene. It was actually Stacey who created a scene. She told Judge Mora that he was upsetting the other patients. An elderly lady actually stood up and said she was upset, but not with Judge Mora, but that she was waiting for over a half hour and had not been seen yet. That comment made me laugh.

What Stacey did not write in her complaint was that she actually called the police a second time. She did this after telling Judge Mora to stop talking, as he was spreading germs on her. I found her statement very bizarre. Judge Mora had a face shield on, and was about 10 feet away from her. After telling Judge Mora to stop talking, she called the police, and told them it was an emergency because Judge Mora was wearing a face shield, would not stop talking, and was spreading germs on her. While still on the phone with the police, Judge Mora said he would leave and try to get medical documentation for her, and she told the police they did not have to come. Judge Mora then left. About an hour later Judge Mora came back with his son and I escorted them into the exam room. There were no other issues the second time. I'm not sure why Stacey did not handle it this way the first time. Judge Mora has been back twice since December, and both times he wore his face shield, and there were no issues.

Thank you.

Sincerely,

Michael Brown

EXHIBIT 21

M[redacted]I CHIROPRACTIC
[redacted] NEW YORK [redacted]
[redacted]

May 18, 2022

To Whom It May Concern:

Judge Mora is a patient of this office, and requested this letter. On December 28, 2021, Judge Mora contacted my office saying it was urgent that he speak with me. He explained that he went to the eye doctor with his son and needed a doctor's note, as the office manager would not accept his word that he could not medically tolerate a mask. Judge Mora stated he was not trying to cause waves, and just wanted to get his son's eyes examined. I typed up a note and emailed it to Judge Mora.

Shortly after sending that email, my office received a call from Stacey Koch from Seeta Eye. My receptionist confirmed that Judge Mora was a patient and that we indeed wrote the note. She then asked my receptionist for further details regarding his health condition, and a diagnosis. My receptionist then passed the call on to me, as she knew not to give health information without a HIPAA release. I spoke with Ms. Koch and she asked why a diagnosis was not listed on the note. She wanted to know what Judge Mora's condition was.

Ms. Koch was insistent that I provide a diagnosis, and explanation on why Judge Mora could not wear a mask. At that point, I explained very clearly that I had no problem verifying that the note was authentic, however, she continued to ask specifics about Judge Mora's condition. This is a clear violation of HIPAA without a release form from Judge Mora. I explained that by merely asking about a patient's condition, it is a HIPAA violation. Ms. Koch became belligerent, continuing to demand a diagnosis. I was very surprised by this. I explained to her that someone who works in the medical field should know full well that a HIPAA release is required before a doctor can divulge information. After that, she hung up.

Sincerely,

[redacted]

G[redacted] M[redacted]i, DC

EXHIBIT 22

Fw: Mask exemption

From: Frank Mora ([redacted]@yahoo.com)

To: [redacted]@seetaeye.com

Date: Tuesday, December 28, 2021, 03:56 PM EST

----- Forwarded Message -----
From: G[redacted] <[redacted]@optonline.net>
To: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, December 28, 2021, 03:53:54 PM EST
Subject: Mask exemption

M[redacted] Chiropractic
[redacted]

December 28, 2021

To Whom It May Concern:

Frank Mora is currently under my care. Due to his current health condition, he is medically unable to wear a mask.

Sincerely,

G[redacted] M[redacted], DC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHERYL FERRELLI, JEANMARIE TROJAN, EILEEN CREIGHTON, LINDA RUKAVINA, and JOSETTE ALTOBELLI, *Plaintiffs*, v. STATE OF NEW YORK UNIFIED COURT SYSTEM, NANCY J. BARRY, and JUSTIN A. BARRY, *Defendants*.	22-CV-0068 (LEK)

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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Attorneys for Defendants

Dated: February 4, 2022

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The State of New York – Unified Court System (the "UCS"), Nancy J. Barry and Justin A. Barry respectfully submit this memorandum of law in opposition to plaintiffs' motion, dated January 27, 2022, for a temporary restraining order and preliminary injunction.

PRELIMINARY STATEMENT

For nearly two years, the COVID-19 pandemic has threatened the UCS's ability to keep its courthouse doors open and maintain full operational capacity. To further its constitutional mandate and core mission to provide an accessible and safe forum for the public to secure justice, and in accordance with overwhelming public health guidance, the UCS has implemented numerous measures, including requiring masks, social distancing and testing, to protect the health and safety of its workforce and court users. Given the rise in infections and deaths from the Delta variant, starting in summer 2021 the UCS implemented a mandatory vaccine policy (the "Vaccination Policy") for all non-judicial UCS employees. Over the past several months, a majority of the UCS's employees have been vaccinated, aiding in the UCS's efforts to manage the risk posed by highly contagious variants like Delta and Omicron and maintain in-person operations that are critical to the criminal and civil justice systems.

The Vaccination Policy includes a robust exemption process for UCS employees for whom vaccination is medically contraindicated or whose sincerely held religious beliefs prohibit vaccination. Pursuant to that process, any employee who seeks an exemption on medical and/or religious grounds can do so through the confidential submission of any materials that the employee deems relevant. Many UCS employees have availed themselves of the exemption process, including hundreds seeking religious exemptions. A committee comprised of UCS employees with diverse backgrounds and expertise (the "Committee"), advised by legal counsel, engaged in a multilevel review of each exemption request, with identifying information for each applicant redacted to ensure anonymity. Relevant to religious exemption requests, in particular,

the Committee's work included an interactive process pursuant to which the Committee requested supplemental information from virtually all applicants. Almost 60% of all religious exemption requests the Committee ruled upon have been granted. No request was denied without at least three levels of review.

Plaintiffs—five UCS court reporters—have now brought what they describe as a constitutional challenge under 42 U.S.C. § 1983 against the UCS and two Committee members, Justin Barry and Nancy Barry (no relation), claiming that the Vaccination Policy and the UCS's handling and denial of their religious exemption requests violate plaintiffs' First Amendment right to the free exercise of religion. In their current application, plaintiffs appear to seek to enjoin the UCS from enforcing its Vaccination Policy, both in general and as applied to them specifically. But plaintiffs have not established any of the elements necessary to obtain the extraordinary and drastic remedy of a temporary restraining order or preliminary injunction. Their motion therefore should be denied.

First, plaintiffs cannot, as a matter of law, show that they will suffer irreparable harm absent injunctive relief. The law is well settled that adverse employment consequences, including the loss of employment, pay, or benefits—precisely the harm plaintiffs allege here—do not justify injunctive relief because those things are fully compensable by reinstatement and money damages. Moreover, the alleged harm plaintiffs describe is remote and speculative—four of the five plaintiffs continue to work at the UCS today, and the fifth plaintiff continues to be paid by the UCS while on leave. Contrary to plaintiffs' arguments, no presumption of constitutional irreparable harm applies here, where there has been no direct limitation on plaintiffs' First Amendment rights. Plaintiffs are free to practice their religion and can choose—indeed, they have chosen—to refuse the COVID-19 vaccine.

Second, plaintiffs cannot show a likelihood of success on the merits, much less the "clear showing" required to obtain injunctive relief. As an initial matter, the UCS is immune from a Section 1983 suit under the Eleventh Amendment. The individual defendants are likewise immune from suit in their individual capacities, whether injunctive or monetary relief is sought from them, because they are not empowered to provide the injunctive relief plaintiffs have asked for and are immune from monetary damages under qualified immunity principles. The individual defendants should also be dismissed in their official capacities because plaintiffs offer no evidence that the individual defendants have the independent power to enforce or to refrain from enforcing the Vaccination Policy, which is required for injunctive relief, and because they are protected by the Eleventh Amendment for monetary claims. And plaintiff Altobelli has no standing to assert a Section 1983 claim because she has been granted a medical exemption enabling her to continue working at the UCS.

Nor can any of the plaintiffs show they are likely to prove a First Amendment violation based on a facial attack on the UCS's Vaccination Policy in any event. For over a century, the U.S. Supreme Court and Second Circuit courts have upheld neutral and generally applicable vaccination requirements as constitutional, rejecting First Amendment challenges as long as the vaccination requirement satisfies rational basis review, which it surely does here. The Vaccination Policy is—on its face—neutral and generally applicable, applying to all UCS employees, regardless of their religious or non-religious objections to vaccination. Further, the Vaccination Policy, which is directly related to the UCS's constitutional mandate and core mission to ensure safe access to justice and to the goal of protecting public health, easily satisfies rational basis review (and even, although not applicable here, strict scrutiny). Protecting litigants and other court users from a highly transmissible and deadly disease is "unquestionably a compelling

interest," *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 141 S. Ct. 63, 67 (2020), as is promoting the constitutional right to access to justice. Moreover, the Vaccination Policy achieves those compelling interests because it is consistent with the overwhelming public health guidance that vaccination is the most effective way to reduce the spread of COVID-19 and provides exemptions for employees who are medically unable to be vaccinated or who have a sincerely held religious objection to vaccination.

Plaintiffs' challenge to the application of the Vaccination Policy as specifically applied to them in this case fares no better. As explained above, the Vaccination Policy is constitutionally valid on its face. Accordingly, the mere fact that plaintiffs' religious exemption requests were handled in accordance with that policy and ultimately denied does not raise a constitutional issue. Nor is plaintiffs' bare assertion that their religious exemption requests were denied while others were granted sufficient to state—much less show—a likelihood of success on a First Amendment challenge. Plaintiffs offer no factual allegations, much less evidence, to support their claim that either the UCS's handling or its denial of their religious exemption requests demonstrates a violation of their constitutional rights by favoring one religion over another.

Nor could they. Supreme Court and Second Circuit precedent confirm that, in considering a religious exemption request, an inquiry as to the religious nature and the sincerity of the professed beliefs is permitted. Here, the Committee reviewed plaintiffs' requests in accordance with the process the UCS has applied to all religious exemption requests, and asked plaintiffs to provide the same supplemental information hundreds of other UCS employees—across religious practices and faiths—were asked to, and did, provide. And, to date, the UCS has, for completed applications, granted numerous religious exemption requests asserting similar objections as plaintiffs. Significantly, four of these five plaintiffs flatly refused to even provide the supplemental

information requested by the UCS, and their requests for religious exemptions were denied as a result. And, the fifth plaintiff lacks standing to sue as she was granted a medical exemption and thus cannot show any present injury in fact. There is therefore no evidence presented that could support a claim that plaintiffs were discriminated against or prejudiced based on their religion.

Third, the balance of equities and the public interest both weigh heavily against an injunction. Granting the injunction would undermine the UCS's compelling interest in providing safe and healthy venues for seeking justice around the state, and threaten the health of court users and other UCS employees, some of whom have underlying health conditions, are medically ineligible for vaccination, or have close contact with members of the community in those circumstances. In contrast, denying the injunction would do no more than require plaintiffs to prove their claims at trial before obtaining the right to be released from the vaccination requirement based on a professed religious belief that they failed to adequately support.

STATEMENT OF FACTS[1]

A. The UCS Instituted Various Health and Safety Regulations to Prevent the Spread of COVID-19 in Its Facilities.

The UCS adjudicates nearly four million cases each year. It is a large, diverse organization with employees in offices, courtrooms and court agencies at more than 300 separate sites in every county in the State. (Declaration of Justin A. Barry ("Barry Decl."), Ex. 1 at ¶¶ 5–6.) It currently employs over 14,400 non-judicial employees who work to ensure the successful operation of the courts and serve the public in one of the busiest court systems in the world. (*Id.* at ¶ 6.) Non-judicial employees are critical to the UCS's constitutional mission of guaranteeing an accessible and safe forum for securing justice for all litigants and others who interact with the

[1] Plaintiffs' Opening Brief is cited as "Pl. Br." Exhibits to the Declaration of Justin Barry are cited as "Barry Ex."

court system. (*Id.* at ¶¶ 7, 14.)

During the COVID-19 public health emergency, the UCS has taken several carefully considered steps designed to protect the health and safety of its workforce and the public. (*Id.* at ¶¶ 15–36.) These measures have included the use of virtual courts, curtailing non-essential proceedings, updates to the physical infrastructure of UCS facilities, masking rules, testing of employees, and physical distancing among those present in courthouses and offices. (*Id.*) Such health and safety precautions presented extraordinary difficulties for the UCS as it sought to successfully operate in the face of diminished in-person accessibility. (*Id.* at ¶ 21.) Nevertheless, at each stage of the pandemic, the UCS has followed the guidance of federal and state health authorities, including the CDC and the New York State Department of Health, with the goal of achieving safe, in-person operations pursuant to its constitutional mission. (*Id.* at ¶¶ 26, 31, 33.)

B. The UCS Developed a Robust Religious Exemption Process for Its COVID-19 Vaccination Policy in Accordance with Applicable Law.

In response to rising COVID-19 cases, hospitalizations and deaths as a result of the Delta variant in the summer and fall of 2021, the UCS implemented its mandatory Vaccination Policy for all employees to ensure the health and safety of its workforce, litigants and the public, following final approval of the Pfizer-BioNTech vaccine on August 23, 2021. (*Id.* at ¶¶ 35–36.) Shortly thereafter, in a September 10, 2021 memorandum circulated to all employees, the UCS explained its Vaccination Policy in detail, including that all non-judicial personnel would need to be fully vaccinated against COVID-19 by September 27, 2021. (*Id.* at ¶ 38.) The memorandum also included information regarding medical and religious exemption requests and instructions on how employees could make such requests. (*Id.*)

In total, the UCS received nearly 1,200 medical and religious exemption requests. (Barry Decl. at ¶¶ 10–12.) Approximately 1,000 of those requests claimed religious objections to

the vaccine. (*Id.* at ¶ 11.) In order to review this large volume of requests, the UCS implemented a robust process, including requests for supplemental information as necessary, an independent review Committee consisting of a diverse array of UCS administrators and employment law experts, and blind and confidential review of all requests. (*Id.* at ¶¶ 8, 18, 20–23.) Ultimately, the UCS approved over 500 religious exemption requests—almost 60% of the religious exemption requests upon which the Committee ruled. (*Id.* at ¶ 11.)

The UCS required all employees who sought religious exemptions to submit a form explaining the specific reasons for the exemption request. (*Id.* at ¶¶ 13–15.) This initial request was reviewed by one of two working groups, made up of members of the full exemption review Committee. (*Id.* at ¶ 20.) If the exemption request was granted at this stage, the employee and the employee's supervisor were notified of the exemption approval, and the employee was required to submit proof of weekly COVID-19 tests. (*Id.* at ¶ 21.) If the working group determined that more information was necessary to assess the request, as was the case in the majority of requests, the employee was provided with a form to submit supplemental information to facilitate the Committee's review. (*Id.* at ¶¶ 16–18.) The UCS developed two standard forms for supplemental information in response to the commonality of certain exemption requests. (*Id.* at ¶ 18.) One form included questions regarding the use of fetal cell lines in the development of the COVID-19 vaccines and other prescription and over-the-counter medications. (*Id.*) A second form included questions regarding the employee's past use of injectable substances and medications. (*Id.*)

The supplemental forms sought to elicit information where it was unclear from the employee's original submission that the employee's opposition to being vaccinated was based on a belief that was sincerely held and religiously, rather than secularly, based. (*Id.* at ¶¶ 17–19.) The UCS did not, at any stage of its review process, attempt to assess the validity of the employee's

religious beliefs. (*Id.* at ¶ 23.) The same working group that reviewed the initial religious exemption request reviewed the responses to the supplemental form. (*Id.* at ¶¶ 20–23.) If a majority of the working group determined that the request should be denied, the request was then reviewed yet again by a quorum or at least five members of the full Committee. (*Id.* at ¶ 21.) Exemption request denials were finalized only following review and vote by a quorum of the full Committee. (*Id.* at ¶¶ 21, 23.)

Employees whose requests were denied were notified by email and instructed to receive a first dose of the COVID-19 vaccine within 10 days. (*Id.* at ¶ 24.) If an employee who is denied an exemption fails to receive a first dose of the vaccine by the deadline provided, the employee's manager notifies the employee that he or she must submit proof of vaccination by the close of business the following day. (*Id.* at ¶ 25.) If the employee still does not comply, the UCS declares the employee "unfit for service," which means the employee cannot report for work until he or she shows proof of vaccination. (*Id.*) The employee must then stay home and charge the time against his or her accrued compensatory time and annual leave until those days run out. (*Id.*) After that, the employee is placed on unpaid "lost time" during which he or she continues to receive benefits until notified by the New York State Civil Service Commission. (*Id.*) To date, no employees, including plaintiffs, have been terminated on this basis. (*Id.*)

At no point did the UCS exemption review Committee know the identity of employees requesting exemptions, question such employees, or publicize their stated beliefs. (*Id.* at ¶¶ 22–23.) For employees who completed the exemption application process, the UCS granted numerous applications for religious exemption that, like plaintiffs, raised concerns based on fetal cell lines and/or a belief in the sanctity of the body. (*Id.* at ¶ 32.)

C. Plaintiffs Refused to Fully Participate in the Religious Exemption Process.

Each of the five plaintiffs in this lawsuit submitted initial applications for religious exemptions on or around October 18, 2021. (*See* Pl. Br. at 1.) In response to the UCS's request for supplemental information, four of the five plaintiffs—Eileen Creighton, Cheryl Ferrelli, Linda Rukavina, and Jeanmarie Trojan—refused to complete the questionnaire and returned the incomplete form to the UCS, including a letter from their attorney objecting to the exemption process. (ECF 4-16, 4-24, 4-33, 4-41.) As a result, on January 6, 2022, the four plaintiffs who completely refused to provide supplemental information were informed that their respective requests for religious exemptions had been denied. (ECF 4-17, 4-25, 4-34, 4-42.)

Plaintiff Josette Altobelli returned a partially completed supplemental information form to the UCS on December 2, 2021. (ECF 4-8.) Ms. Altobelli's request was denied following review of the request by the exemption Committee, which determined that her responses to the supplemental form did not support her claim that her refusal to receiving the COVID-19 vaccine was based on a sincerely held religious belief. (Barry Decl. ¶ 31.) Ms. Altobelli was notified on December 29, 2021. (ECF 4-9.) Ms. Altobelli was subsequently granted a medical exemption and continues to remain employed at the UCS, with proof of weekly testing. (*Id.* at ¶ 28.)

ARGUMENT

I. PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF SHOULD BE DENIED

A preliminary injunction is an "extraordinary and drastic remedy" that should rarely be granted. *E.g., Med. Soc'y of State of N.Y.* v. *Toia*, 560 F.2d 535, 538 (2d Cir. 1977). The same standard applies for a temporary restraining order. *E.g., Adecco USA, Inc.* v. *Staffworks, Inc.*, 2020 WL 4040341, at *1 (N.D.N.Y. July 17, 2020). To demonstrate that they are entitled to such exceptional relief, plaintiffs must make a "clear showing" of each of these elements: a "likelihood of irreparable harm"; a "likelihood of success on the merits"; "that the balance of hardships tips in

[plaintiffs'] favor regardless of the likelihood of success"; and "that an injunction is in the public interest." *E.g., Speckman* v. *Fabrizio*, 2021 WL 2793053, at *3 (N.D.N.Y. July 6, 2021).

A. Plaintiffs Do Not and Cannot Show Irreparable Harm.

Plaintiffs' request for injunctive relief should be rejected because they cannot establish that they will suffer irreparable harm, which is "[p]erhaps the single most important prerequisite for the issuance of a preliminary injunction." *Kamerling* v. *Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (per curiam) (alteration in original).

None of the alleged harms plaintiffs are complaining about—potentially lost wages and benefits and, ultimately, employment—qualifies as "irreparable" under longstanding law. To the contrary, it is well settled that termination and the associated loss of wages and benefits are not irreparable because "reinstatement and money damages [can] make [a plaintiff] whole for any loss suffered during th[e] period" of unemployment. *Savage* v. *Gorski*, 850 F.2d 64, 67–68 (2d Cir. 1988). In fact, the Second Circuit reaffirmed this principle just last year in denying a preliminary injunction request in a vaccine mandate case, holding that "adverse employment consequences are not the type of harm that usually warrants injunctive relief because economic harm resulting from employment actions is typically compensable with money damages." *We the Patriots USA, Inc.* v. *Hochul* (*We the Patriots I*), 17 F.4th 266, 294 (2d Cir. 2021), *reaff'd by We the Patriots USA, Inc.* v. *Hochul* (*We the Patriots II*), 17 F.4th 368 (2d Cir. 2021). Other courts in this Circuit have reached the same result. *See Kane* v. *de Blasio*, 2021 WL 5909134, at *4 (S.D.N.Y. Dec. 14, 2021) ("Plaintiffs are not required to perform or abstain from any action that violates their religious beliefs. Because Plaintiffs have refused to get vaccinated, they are on leave without pay. The resulting loss of income undoubtedly harms Plaintiffs, but that harm is not irreparable."); *Garland* v. *N.Y.C. Fire Dep't*, 2021 WL 5771687, at *8–10 (E.D.N.Y. Dec. 6, 2021) (denying preliminary injunction because loss of employment and pay for non-compliance with a COVID-19 vaccination

mandate was not irreparable harm). This established principle precludes injunctive relief.

Plaintiffs nonetheless attempt to show an entitlement to injunctive relief by arguing that their supposed "loss of First Amendment freedoms" automatically constitutes irreparable harm. (Pl. Br. at 5–6.) That argument does not work. The Vaccination Policy does not force UCS employees to be vaccinated against their will or violate their religious beliefs. (Barry Ex. 1 at ¶ 40.) Plaintiffs can choose not to be vaccinated in accordance with their beliefs, in which case any potential harm—change in employment status, lost wages, and benefits—does not and cannot constitute irreparable injury under the law. *See Kane*, 2021 WL 5909134, at *4. Moreover, "merely asserting a constitutional injury is insufficient to automatically trigger a finding of irreparable harm." *KM Enters., Inc.* v. *McDonald*, 2012 WL 540955, at *3 (E.D.N.Y. Feb. 16, 2012) (quoting *Donohue* v. *Paterson*, 715 F. Supp. 2d 306, 315 (N.D.N.Y 2010)). And, in fact, as the Supreme Court held less than two years ago in one of its first COVID-19 decisions, the law authorizes First Amendment restrictions, even in places of worship, designed to limit the spread of COVID-19. *See, e.g., S. Bay United Pentecostal Church* v. *Newsom*, 140 S. Ct. 1613, 1613 (2020) (upholding denial of injunctive relief for numerical restrictions on public places that also applied to places of worship as "consistent with the Free Exercise Clause of the First Amendment") (Roberts, J., concurring). Accordingly, the Second Circuit last year in *We the Patriots I* denied a preliminary injunction request where, like here, the plaintiffs challenged a COVID-19 vaccination policy based on "an impairment of their Free Exercise right." 17 F.4th at 294. Notably, the Second Circuit found plaintiffs' "asserted harm [was] not of a constitutional dimension" and "fail[ed] to meet the irreparable harm element" even though the policy, unlike the UCS's, lacked a religious exemption process. *Id.* These precedents foreclose plaintiffs' effort to show irreparable harm by alleging an infringement of their First Amendment rights based on the Vaccination Policy.

Plaintiffs also argue that a "crisis of conscience imposed by [a vaccination policy]" is itself an irreparable harm. (Pl. Br. at 6.) That precise argument, however, was rejected just this week by another federal district court in a materially similar vaccine mandate case. *See O'Hailpin* v. *Hawaiian Airlines, Inc.*, Civil No. 22-CV-00007-JAO-KJM, Order at 18–19 (D. Haw. Feb. 2, 2022) (rejecting plaintiffs' "crisis of conscience" argument that vaccine mandate forced plaintiffs to choose between vaccination "at the expense of their conscience and health, or give up their livelihood"). In any event, in an attempt to support their contrary view, plaintiffs rely on an interlocutory order issued last month by a federal district court in Texas that is currently on appeal to the Fifth Circuit, *U.S. Navy SEALs* v. *Biden*, 2022 WL 34443 (N.D. Tex. Jan. 3, 2022), which, of course, is not binding on this Court. That reliance is misplaced. In stark contrast to the UCS's Vaccination Policy, under the *U.S. Navy SEALs* policy, "[r]eligious exemptions to the vaccine requirement [were] virtually non-existent," and the policy treated people who requested or received religious versus medical exemptions differently by making those with pending or granted religious exemption requests "permanently nondeployable." 2022 WL 34443, at *2. Thus, the *U.S. Navy SEALs* court found irreparable harm there because the religious exemption requests were uniformly denied, and anyone who had requested or received an exemption, would, at best, be "accord[ed] second-class status in a peerless community." *Id.* at *1, *6, *12–13. The situation here is the virtual opposite: the Vaccination Policy includes a robust religious exemptions review process, through which the Committee has granted hundreds of religious exemption requests to date. (Barry Decl. at ¶¶ 11, 16–23.) The UCS provides precisely the same treatment—exemption from the vaccine requirement and continued employment—for recipients of religious and medical

exemptions. (Barry Decl. at ¶¶ 11–12, 21, 25.) For these reasons, *U.S. Navy SEALs* is inapposite, and plaintiffs' attempt to show irreparable harm fails.[2]

B. Plaintiffs Are Unlikely to Succeed on Their Section 1983 Claim.

Plaintiffs have failed to show a likelihood of success on the merits of their claims:

1. The UCS Should Be Dismissed as a Defendant Because It Is Not a Proper Section 1983 Defendant.

To begin with, the UCS, as an arm of New York State, is immune from Section 1983 claims under the Eleventh Amendment. *E.g., McCluskey* v. *N.Y. State Unified Ct. Sys.*, 442 F. App'x 586, 588 (2d Cir. 2011) (affirming dismissal of Section 1983 claim against the UCS as "barred by the Eleventh Amendment since it is an arm of the State of New York"); *Brown* v. *N.Y. State Unified Ct. Sys.*, 261 F. App'x 307, 307–08 (2d Cir. 2008) (affirming dismissal of plaintiff's Section 1983 claim against the UCS because the UCS is not a "person" within the meaning of Section 1983). Under these binding precedents, the UCS should be dismissed.

2. Plaintiffs' Section 1983 Claim Also Should Be Dismissed as to the Individual Defendants.

To the extent plaintiffs are suing the individual defendants in their *official* capacities for money damages, the individual defendants are protected under the Eleventh

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[2] It also bears noting that plaintiffs cannot show that, absent immediate injunctive relief, they will suffer "actual and imminent" harm. *Kamerling*, 295 F.3d at 214; *see also Cayuga Indian Nation of N.Y.* v. *Vill. of Union Springs*, 317 F. Supp. 2d 128, 150 (N.D.N.Y. 2004) (denying preliminary injunction where harm alleged was speculative and not clearly "sufficiently imminent"). Plaintiffs allege that if they do not comply with the Vaccination Policy, they will be placed on leave without pay, lose wages or health benefits, and ultimately face termination. At this stage, however, none of that is imminent; to the contrary, it is merely speculative. No plaintiff has been placed on unpaid leave or lost his or her job. In fact, four of the five plaintiffs continue to work at the UCS as of today: two plaintiffs remain within the grace period provided following denied medical exemptions, one plaintiff is still engaged in the medical exemption process, and one plaintiff has been granted a temporary medical exemption. (Barry Decl. at ¶34.) The remaining plaintiff is currently on paid leave. (*Id.*) These circumstances likewise disfavor injunctive relief pending trial. *See Faiveley Transp. Malmo AB* v. *Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (reversing grant of preliminary injunction where plaintiffs failed to show an "actual and imminent" injury "that cannot be remedied if a court waits until the end of trial to resolve the harm") (internal quotations omitted); *Garland*, 2021 WL 5771687, at *8–*9 (denying preliminary injunction because harm alleged was speculative where it was uncertain whether plaintiffs would remain on involuntary leave status).

Amendment. *See Kentucky* v. *Graham,* 473 U.S. 159, 169 (1985). If plaintiffs have sued them in their official capacities for injunctive relief, plaintiffs must show that the individual defendants have "both a particular duty to enforce the [UCS's Vaccination Policy]" and "a demonstrated willingness to exercise that duty." *Roberson* v. *Cuomo*, 524 F. Supp. 3d 196, 223 (S.D.N.Y. 2021) (internal quotations omitted). Plaintiffs have not done so. Instead, all they say is that the individual defendants "informed" them of the Vaccination Policy, (Pl. Br. at 1), and "made and/or approved and ratified" the decision to not provide plaintiffs with work assignments absent proof of vaccination, (Compl. at ¶¶ 22, 32, 42, 52, 62). Critically, plaintiffs offer no evidence to support their conclusory statement or to show that the individual defendants had or have any independent power to enforce the Vaccination Policy or to cause the UCS to refrain from doing so. And, as Mr. Barry has stated in his declaration, the opposite is true. (Barry Decl. at ¶ 35.)

To the extent plaintiffs purport to sue the individual defendants in their *individual* capacities for injunctive relief, their Section 1983 claim should be dismissed because individuals have no ability to provide such relief in their individual capacities. *See Nassau & Suffolk Cnty Taxi Owners Ass'n, Inc.* v. *State*, 336 F. Supp. 3d 50, 69–70 (E.D.N.Y. 2018) (dismissing individual-capacity Section 1983 claim for injunctive relief as "improper" because defendants could provide the relief sought by the plaintiffs only in their official capacities). For monetary relief, plaintiffs' claims are barred by qualified immunity unless they can show that "the unlawfulness of [the individual defendants'] conduct was clearly established at the time." *Liberian Cmty. Ass'n of Conn.* v. *Lamont*, 970 F.3d 174, 186–87 (2d Cir. 2020) (internal quotations omitted). Unlawfulness is "clearly established" if "at the time of the [official]'s conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *Id.* (internal quotations omitted). Here, no binding precedent of the Supreme Court or

the Second Circuit held that the Vaccination Policy was unlawful. To the contrary, similar policies have been upheld all over the country.[3] Qualified immunity thus bars plaintiffs' claims.[4]

3. *Plaintiff Altobelli's Claim Should Be Dismissed Because She Lacks Standing to Assert It.*

Plaintiff Altobelli cannot succeed on her claim for the independent reason that she has no standing to assert it. To have standing, she would have to show she suffered an injury in fact that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Port Wash. Teachers' Ass'n* v. *Bd. of Educ. of Port Wash. Union Free Sch. Dist.*, 478 F.3d 494, 498 (2d Cir. 2007) (internal quotations omitted). Ms. Altobelli has suffered no such injury. She has been granted a medical exemption to the Vaccination Policy and thus remains a UCS employee. (Barry Decl. at ¶ 28.) The denial of her religious exemption request therefore has resulted in no injury to her and, as such, she lacks standing to bring this claim.

4. *Plaintiffs Cannot Show That the UCS's Vaccination Policy Violated Their First Amendment Rights.*

In addition to these impediments to plaintiffs' Section 1983 claim, they are unlikely to succeed on the merits. To succeed on such a claim, plaintiffs have to show a "depriv[ation]" of a constitutional or federally protected right by a "person" who "acted under color of state or territorial law"—here, that their First Amendment rights were violated. *Gomez* v. *Toledo*, 446 U.S. 635, 640 (1980); *see generally Ram* v. *Lal*, 906 F. Supp. 2d 59, 70–71, 75–76 (E.D.N.Y.

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[3] *See, e.g.*, *Does* v. *Bd. of Regents of Univ. of Colo.*, 2022 WL 252320, at *6 (D. Colo. Jan. 27, 2022); *Troogstad* v. *City of Chicago*, 2021 WL 5505542, at *14 (N.D. Ill. Nov. 24, 2021); *Church* v. *Biden*, 2021 WL 5179215, at *19 (D.D.C. Nov. 8, 2021); *Bauer* v. *Summey*, 2021 WL 4900922, at *20 (D. S.C. Oct. 21, 2021); *Williams* v. *Brown*, 2021 WL 4894264, at *11 (D. Ore. Oct. 19, 2021); *Johnson* v. *Brown*, 2021 WL 4846060, at *27 (D. Ore. Oct. 18, 2021); *Does 1-6* v. *Mills*, 2021 WL 4783626, at *17–18 (D. Me. Oct. 13, 2021), *aff'd*, (1st Cir. Oct. 19, 2021); *Harris* v. *Univ. of Mass., Lowell*, 2021 WL 3848012, at *8 (D. Mass. Aug. 27, 2021).

[4] Given the multiple fatal deficiencies, plaintiffs cannot save this action from dismissal by substituting other persons for the named individual defendants. Such amendments in and of themselves would be futile.

2012). To that end, plaintiffs must show, with a "better than fifty percent" probability of success, that the UCS's Vaccination Policy is neither neutral nor generally applicable, not entitled to rational basis review, and would fail strict scrutiny review. *See Ass'n of Jewish Camp Operators* v. *Cuomo*, 470 F. Supp. 3d 197, 209 (N.D.N.Y. 2020). They cannot do so.

Plaintiffs' Facial Attack Fails. The UCS's Vaccination Policy is facially neutral and generally applicable because it does not specify or target particular religions or religious practices, "impose[s] identical burdens on religious and non-religious conduct," and "does not impose special burdens on religion alone." *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d 358, 402 (S.D.N.Y. 2021). Rather, it applies to all UCS employees who have not received a medical or religious exemption—whether they are "eager to be vaccinated" or "reluctan[t] . . . due to philosophical or political objections to vaccine requirements, concerns about the vaccine's efficacy or potential side effects, or religious beliefs," and it "does not single out employees who decline vaccination on religious grounds." *We The Patriots I*, 17 F.4th at 281–82. As such, it is neutral and generally applicable. *See Phillips* v. *City of New York*, 775 F.3d 538, 540, 543 (2d Cir. 2015) (finding school vaccination mandate with medical and religious exemption process with "multiple layers of review" was neutral and generally applicable where it applied to all public school students, particularly "during an outbreak of a vaccine preventable disease"); *Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 218–19 (finding COVID-19 restriction was neutral because it applied broadly and plaintiffs failed to show it was enacted "because of, not merely in spite of, [plaintiffs'] religious practice"); *Dixon* v. *de Blasio*, 2021 WL 4750187, at *7 (S.D.N.Y. Oct. 12, 2021) (denying injunction where COVID-19 vaccine requirements were "facially neutral because they are not directed against a specific religious practice and there is no evidence of animus," and

did not "expressly carve out a category for religious conduct and subject that category to more severe restrictions than any other").

Plaintiffs nevertheless seek to manufacture a First Amendment claim by arguing that the UCS's Vaccination Policy "pick[s] and choose[s] which expressions of a religious belief system it would permit to receive exemptions" and that it shows "favoritism for certain religious views." (Pl. Br. at 8–9.) That allegation, however, is unsupported by any evidence; instead, it is merely a lawyer's unsupported assertion that is "not evidence" and thus cannot support injunctive relief. *Ocasio* v. *Barr*, 829 F. App'x 558, 561 (2d Cir. 2020). Further, it is flatly contradicted by actual evidence. The UCS has granted hundreds of religious exemptions to employees of many different faiths and religious views—including employees with beliefs similar to plaintiffs'—without favoring or disfavoring any of them. (Barry Decl. at ¶¶ 10–12, 19, 23, 32.) Plaintiffs' applications were not rejected because their beliefs were disfavored, but because they either refused to comply with the review process or failed to adequately support their application. (Barry Decl. at ¶¶ 30–31.) *See, e.g.*, *Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 218–19 (finding plaintiffs' assertion that COVID-19 restrictions targeted Jewish overnight camps was factually unsupported and restrictions were facially and substantively neutral); *Kane*, 2021 WL 5909134, at *5 (finding plaintiffs failed to show that COVID-19 vaccination requirement was not neutral or generally applicable).

Plaintiffs' reliance on *Fulton* v. *City of Philadelphia*, 141 S. Ct. 1868 (2021), to show that the Vaccination Policy is not neutral is unavailing. There, the Supreme Court ruled that a nondiscrimination clause in the City's agreements with foster-care agencies—requiring the provision of certification services to all prospective parents—was not of general applicability because it provided individualized exemptions to the agencies for secular but not religious reasons

and only at the "sole discretion" of a city official. *Id.* at 1878–79. In contrast, the UCS's Vaccination Policy *expressly* provides for a religious exemptions process through a multilayered review, and the Committee has in fact granted approximately 60% of the requests it ruled upon. (Barry Decl. at ¶¶ 11, 20–23.) That policy is thus the opposite of what was at issue in *Fulton*. *Id.* at 1877. *See also We the Patriots I*, 17 F.4th at 288–89 ("The mere existence of an exemption procedure, absent any showing that secularly motivated conduct could be impermissibly favored over religiously motivated conduct, is not enough to render a law not generally applicable and subject to strict scrutiny.") (internal quotations omitted).

Where, as here, the policy at issue is a neutral and of general applicability, rational basis review—not heightened scrutiny—applies, even if enforcement of the law incidentally burdens religious practices. *Emp. Div., Dep't of Human Res. of Ore.* v. *Smith*, 494 U.S. 872, 879 (1990); *Kane*, 2021 WL 5909134, at *5 (finding rational basis review applies to COVID-19 vaccination mandate where plaintiffs failed to demonstrate the exemption review process was not neutral or generally applicable). That is because "[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." *Phillips*, 775 F.3d at 543; *see also, e.g.*, *We the Patriots I*, 17 F.4th at 288; *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 405.

Rational basis review requires a showing that the policy at issue is "a means for addressing a legitimate goal that is rationally related to achieving that goal." *We the Patriots I*, 17 F.4th at 290. The UCS's Vaccination Policy easily meets that standard because it is, as Mr. Barry has affirmed, (Barry Ex. 1 at ¶¶ 32–35), directly related to protecting and promoting public health. *See We The Patriots I*, 17 F.4th at 290 (holding that COVID-19 vaccination requirement in the face of a deadly disease that had devastated New York was "a reasonable exercise of the State's

power to enact rules to protect the public health"); *see also, e.g.*, *Kane* v. *De Blasio*, 19 F.4th 152, 166 (2d Cir. 2021) (COVID-19 vaccination mandate "plainly satisfies" rational basis review).

Plaintiffs nonetheless argue that strict scrutiny, not rational basis review, should govern. They are wrong for the reasons set out above. But even if, contrary to fact, strict scrutiny applied, the UCS's Vaccination Policy would pass review as it promotes a compelling state interest and is narrowly tailored. In fact, while courts in this Circuit have generally applied rational basis review when evaluating vaccination requirements and COVID-19-related restrictions, several have reasoned that the challenged regulations would *also* survive strict scrutiny. *See Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 224–25 (holding COVID-19 restriction would survive even if strict scrutiny applied where alternative rules were not feasible due to reliance on voluntary compliance); *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 408–09 (holding vaccination requirement would survive strict scrutiny because it was the least restrictive measure available and noting that prior restrictions did not stem outbreak); *C.F.* v. *N.Y.C. Dep't of Health & Mental Hygiene*, 191 A.D.3d 52, 72–73, 78 (2d Dep't 2020) (finding city vaccination requirement would survive strict scrutiny because it was supported by a compelling state interest and was narrowly tailored).

The same is true here. The Vaccination Policy focuses on "[s]temming the spread of COVID–19," which the Supreme Court has held "is unquestionably a compelling interest." *Roman Cath. Diocese of Brooklyn*, 141 S. Ct. at 67. The Vaccination Policy is also narrowly tailored to serve that interest. The UCS implemented various measures since the start of the global public health pandemic but found that they were insufficient to achieve public safety. (*Supra* pp. 5–6; Barry Ex. 1.) Contrary to plaintiffs' assertions, indefinite remote working alternatives or relying solely on a mandatory testing program were impracticable given, among other things, the rapid spread of the variants, the length of time between testing and results, and the operational

needs of the court system. (Barry Decl. at ¶ 33.) The Vaccination Policy is the least restrictive measure the UCS could have taken to meet the compelling interest of reducing the spread of COVID-19 in the court system because it applies only to the UCS's judges and employees, rather than to all court users. *See, e.g.*, *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 408 (finding disease outbreak was "undoubtedly compelling" and vaccination mandate was "narrowly tailored because it was the least restrictive measure available to reach that objective in light of [d]efendants' previous unsuccessful efforts, the medical data and their limited resources"); *Ass'n of Jewish Camp Operators*, 470 F. Supp. 3d at 224–25 (finding COVID-19 restriction was sufficiently narrowly tailored to serve compelling state interest of limiting the spread of COVID-19).

Plaintiffs' As-Applied Challenge Fails. To prevail on an as-applied challenge, plaintiffs need to show "the manner in which [the UCS's Vaccination Policy] was applied to [plaintiffs] in [the] particular circumstances violated the Constitution." *Almengor* v. *Schmidt*, 692 F. Supp. 2d 396, 397 (S.D.N.Y. 2010), *aff'd sub nom. Schain* v. *Schmidt*, 396 F. App'x 713 (2d. Cir. 2010). They do not and cannot do so here.

Plaintiffs primarily appear to contend that the mere fact that their religious exemption requests were denied while other religious exemption requests were granted itself raises a constitutional violation. (Pl. Br. at 8–9.) This does not follow. To begin with, courts all across the country have repeatedly upheld vaccination policies even where, unlike the UCS's Vaccination Policy, they offer *no* religious exemptions process at all. *See, e.g.*, *W.D.* v. *Rockland Cnty.*, 521 F. Supp. 3d at 405 (upholding vaccine mandate without religious exemptions under the First Amendment because it was "not the Court's place to discard this emergency measure meant to protect the community"); *F.F.* v. *New York*, 194 A.D.3d 80, 88 (3d Dep't 2021) (holding repeal of religious exemptions did not violate the Free Exercise Clause because vaccine requirements were

"generally applicable to the public at large in order to achieve herd immunity"); *C.F.* v. *N.Y.C. Dep't of Health & Mental Hygiene*, 191 A.D.3d at 76–79 (upholding city vaccination requirement with only medical exemption and finding requirement was neutral and of general applicability even if it incidentally burdened particular religious practices).[5] It does not follow that merely because the UCS has provided a religious exemption procedure that it was not constitutionally required to have in the first place, the failure to grant *every* request itself becomes a constitutional violation. *See, e.g., Phillips*, 775 F.3d at 543 (upholding as "clearly constitutional" denial of religious exemption and enforcement of state vaccination requirement during "outbreak of a vaccine-preventable disease," noting policy's provision of religious exemption went "beyond what the Constitution requires"). Indeed, under plaintiffs' apparent worldview, *any* denial of a religious exemption request would give rise to a constitutional violation, thereby rendering any religious exemptions review process meaningless.

Plaintiffs' as-applied challenge to the Vaccination Policy also fails for lack of proof. Beyond inadmissible and conclusory lawyer assertions that the UCS "cherry pick[ed] which religious beliefs they choose to recognize," (Pl. Br. at 7), plaintiffs have presented *no evidence* even suggesting, much less showing, that the UCS's exemption review process is constitutionally impermissible or that the UCS rejected their exemption requests for some constitutionally impermissible reason. They have identified no facts as to how, why, or when the UCS's religious exemptions process treated each of the plaintiffs differently as compared to any other religious exemption applicant. Plaintiffs' mere conjecture that a denial was unlawful is plainly insufficient to warrant injunctive relief. *See, e.g.*, *Sibley* v. *Watches*, 501 F. Supp. 3d 210, 225 (W.D.N.Y.

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[5] *See also, e.g., Nikolao* v. *Lyon*, 875 F.3d 310, 316 (6th Cir. 2017); *Mills*, 2021 WL 4783626, at *12, *15, *18; *Harris*, 2021 WL 3848012, at *7.

2020) (dismissing plaintiff's as-applied First Amendment challenge and denying preliminary injunction motion absent evidence the denial was based on "ideas and viewpoints").

The fact that the UCS has *granted* hundreds of religious exemptions requests, (Barry Decl. at ¶¶ 11), shows that the Vaccination Policy is not impeding employees' free exercise of religion. Where applicants completed the exemptions application process and provided requested supplemental information, *the UCS repeatedly has granted religious exemption requests based on precisely the same fetal cell lines and/or sanctity of the body objections that plaintiffs have invoked here.* (Barry Decl. at ¶ 32). Where, as here, an employer follows an appropriate process to review religious exemptions, courts will not second-guess or evaluate the accuracy of the individual exemption determinations. *See, e.g.*, *Turner* v. *Liverpool Cent. Sch.*, 186 F. Supp. 2d 187, 189, 192 (N.D.N.Y. 2002) (upholding rejection of a religious exemption request from vaccination requirement where a school district validly evaluated whether objection to vaccination was based on "genuine and sincere religious belief"); *Nikolao*, 875 F.3d at 316 (denying Free Exercise challenge where vaccination mandate and religious exemptions process were constitutional without reviewing individual determinations); *Burns* v. *Warwick Valley Cent. Sch. Dist.*, 166 F. Supp. 2d 881, 890–91 (S.D.N.Y. 2001) (upholding denial of religious exemption from leave policy after determining that review process was constitutionally valid).

What plaintiffs really seem to be saying is that the UCS should be prohibited from asking them questions about their religious beliefs as part of the exemption application review process because merely asking the question violates their First Amendment rights. That is not the law, nor could it be. Under prevailing Supreme Court and Second Circuit case law, the UCS is legally entitled to probe whether an employee's beliefs are sincerely held and religiously based. *See, e.g.*, *United States* v. *Seeger*, 380 U.S. 163, 185 (1965) (holding that in assessing draft

exemptions on religious grounds, the reviewing body can "decide whether the beliefs professed by [an applicant] are sincerely held and whether they are, in his own scheme of things, religious"); *Jackson* v. *Mann*, 196 F.3d 316, 320–21 (2d Cir. 1999) (finding district court erred because state officials and court could question whether beliefs are "sincerely held"); *Philbrook* v. *Ansonia Bd. of Educ.*, 757 F.2d 476, 481 (2d Cir. 1985) ("[A] sincerity analysis is necessary in order to differentiat[e] between those beliefs that are held as a matter of conscience and those that are animated by [other] motives"); *Turner*, 186 F. Supp. 2d at 189, 193 (upholding as constitutional a religious exemption denial for a vaccination requirement where the administrator determined plaintiff's beliefs "were sincere" but "founded upon a personal philosophy" instead of "religion").

In any case, plaintiffs have no basis to challenge the UCS's religious exemption process or determination when they deliberately refused to even participate in the process mandated by the policy. Four of the five plaintiffs refused to provide the supplemental information the UCS requested to process their exemption applications. (Barry Decl. at ¶ 27.) Plaintiffs' refusal to submit the requested information during the exemption review process in no way renders the Vaccination Policy unconstitutional as applied to plaintiffs. *See Friedman* v. *Clarkstown Cent. Sch. Dist.*, 75 F. App'x 815, 819–20 (2d Cir. 2003) (finding denial of religious exemption from vaccination mandate did not violate Free Exercise rights where plaintiff did not submit requested documentation or forthrightly answer inquiries about the basis for her objections); *Troogstad*, 2021 WL 5505542, at *11 (denying TRO because denials of religious exemptions for failure to comply with the employer's religious exemption process "do not raise free exercise concerns").

C. The Balance of the Equities and the Public Interest Both Strongly Disfavor Injunctive Relief Here.

The Second Circuit and numerous other courts in this Circuit and elsewhere have held that the public interest weighs decisively in favor of COVID-19 vaccination mandates and

against injunctions barring their implementation. *See We the Patriots I*, 17 F.4th at 296 (holding that enjoining COVID-19 vaccination mandate was not in the public interest); *Clementine Co. LLC* v. *de Blasio*, 2021 WL 5756398, at *16 (S.D.N.Y. Dec. 3, 2021) (denying preliminary injunction where COVID-19 vaccination requirement was "clearly the interest of the public health"); *Maniscalco* v. *N.Y.C. Dep't of Educ.*, 2021 WL 4344267, at *4 (E.D.N.Y. Sept. 23, 2021) (finding public interest weighed against enjoining a COVID-19 vaccination mandate); *Garcia* v. *N.Y.C. Dep't of Health & Mental Hygiene*, 106 N.E.3d 1187, 1196 (N.Y. 2018) (reversing grant of injunction because state agency's vaccination requirements "do not relate merely to a personal choice about an individual's own health but, rather, seek to ensure increased public safety and health for the citizenry by reducing the prevalence and spread of a contagious infectious disease").[6]

The Second Circuit and other courts have similarly held that the balance of the equities favors COVID-19 vaccination policies. *See, e.g.*, *We the Patriots I*, 17 F.4th at 295 ("Although Plaintiffs undoubtedly face a difficult choice if their employers deny religious accommodations—whether to be vaccinated despite their religious beliefs or whether to risk termination of their jobs—such hardships are outweighed by the State's interest in maintaining the safety within [employment] facilities during the pandemic."); *Broecker* v. *N.Y.C. Dep't of Educ.*, 2021 WL 5514656, at *9–10 (E.D.N.Y. Nov. 24, 2021) (denying injunction of COVID-19 vaccine mandate based on "the equities at stake" and to "safeguard[] the public health and safety").[7]

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[6] *See also, e.g.*, *Troogstad*, 2021 WL 5505542, at *13; *Church*, 2021 WL 5179215, at *18; *Bauer*, 2021 WL 4900922, at *19; *Williams*, 2021 WL 4894264, at *10–11; *Johnson*, 2021 WL 4846060, at *26; *Mills*, 2021 WL 4783626, at *17; *Harsman* v. *Cincinnati Children's Hosp. Med. Ctr.*, 2021 WL 4504245, at *4 (S.D. Ohio Sept. 30, 2021); *Beckerich* v. *St. Elizabeth Med. Ctr.*, 2021 WL 4398027, at *7 (E.D. Ky. Sept. 24, 2021); *Harris*, 2021 WL 3848012, at *7–8; *Am.'s Frontline Drs.* v. *Wilcox*, 2021 WL 4546923, at *8 (C.D. Cal. July 30, 2021); *Tigges* v. *Northam*, 473 F. Supp. 3d 559, 574 (E.D. Va. July 21, 2021).

[7] *See also Troogstad*, 2021 WL 5505542, at *13; *Church*, 2021 WL 5179215, at *18; *Bauer*, 2021 WL 4900922, at *19; *Williams*, 2021 WL 4894264, at *10–11; *Johnson*, 2021 WL 4846060, at *26; *Mills*, 2021 WL 4783626, at *17; *Harris*, 2021 WL 3848012, at *8.

The reasoning of these decisions, arising under materially indistinguishable circumstances, applies equally in this case. The UCS's Vaccination Policy was conceived of and implemented to ensure a safe and accessible court system for the public. (Barry Ex. 1 at ¶ 42.) That is a compelling public interest under the precedents set out above. Barring the UCS from implementing the policy in favor of a handful of plaintiffs—all but one of whom refused to even participate in the process—would impose incalculable harm on the UCS and the public. The Vaccination Policy, which has been uniformly in place for months and complied with by a vast majority of the UCS employees, is the most critical element of the UCS's strategy to stem the spread of COVID-19 in the court system. (Barry Ex. 1 at ¶¶ 34–35.) The Vaccination Policy is enabling the UCS to return to and maintain full in-person operations, which is necessary to provide the public with safe and free access to the courts. (*Id.* at ¶ 42.) Court operations are also harmed when employees who serve important functions, including court reporters like plaintiffs, are unable to attend proceedings in the courtrooms to perform their duties. (Barry Decl. at ¶ 33.) An injunction precluding any inquiry into stated religious objections would be subject to extreme abuse and would undermine the integrity of the UCS's religious exemptions process.

An injunction also would disrupt the UCS's approach to tackling the global health pandemic by increasing the risk of transmission in the court system, exposing vulnerable populations to a potentially deadly disease, and hindering the UCS's ability to remain operational. This harm flows directly to the public; without a safe and operational court system, the public's fundamental right to access the courts is impeded. As such, plaintiffs—a literal handful of UCS employees—cannot "clearly show[]" that the balance of equities favor such a sweeping and harmful result. *Litwin* v. *OceanFreight, Inc.*, 865 F. Supp. 2d 385, 401 (S.D.N.Y. 2011).

CONCLUSION

The Court should deny plaintiffs' motion.

Dated: February 4, 2022

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: */s/ Gregory F. Laufer*

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Attorneys for Defendants
New York State Unified Court System, Nancy J. Barry, and Justin A. Barry



Comm. Ex. 3:
Audio Recording of 911 call between Stacey Koch
and 911 Dispatcher: December 28, 2021
(1:17)



Comm. Ex. 4:
Audio Recording of call between Stacey Koch and Town of Poughkeepsie Police Dispatcher: December 28, 2021
(2:45)



Comm. Ex. 4A:
Portion of Audio Recording of call between Stacey Koch
and Town of Poughkeepsie Police Dispatcher: December 28, 2021
(9 seconds)



Comm. Ex. 4B:
Portion of Audio Recording of call between Stacey Koch and Town of Poughkeepsie Police Dispatcher: December 28, 2021
(5 seconds)

Comm. Ex. 4C:
Portion of Audio Recording of call between Stacey Koch and Town of Poughkeepsie Police Dispatcher: December 28, 2021
(22 seconds)

COMMISSION EXHIBIT 5

Fw: Mask exemption

From: Frank Mora [redacted]@yahoo.com)

To: [redacted]@seetaeye.com

Date: Tuesday, December 28, 2021, 03:56 PM EST

----- Forwarded Message -----
From: G[redacted] <[redacted]@optonline.net>
To: Frank Mora <[redacted]@yahoo.com>
Sent: Tuesday, December 28, 2021, 03:53:54 PM EST
Subject: Mask exemption

M[redacted] Chiropractic
[redacted]

December 28, 2021

To Whom It May Concern:

Frank Mora is currently under my care. Due to his current health condition, he is medically unable to wear a mask.

Sincerely,

G[redacted] M[redacted], DC

COMMISSION EXHIBIT 6

[redacted]

Friday August 19, 2022

Patient : Frank M Mora #671
Itemized Statement: 01/01/2020 - 08/19/2022
DOB : [redacted]
Onset date :

Mail to:
Frank M Mora
[redacted]

Date	Description	Amount
01/15/20	[redacted]	[redacted]
01/29/20		
02/05/20		
02/12/20		
04/17/20		
04/21/20		
05/05/20		
06/02/20		
07/01/20		
07/08/20		
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11/24/21		
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03/07/22		
03/16/22		
04/20/22		
05/11/22		
05/18/22		
05/25/22		
06/01/22		
07/20/22		
08/09/22		

COMMISSION EXHIBIT 7

Michael Brown
[redacted]

June 13, 2022

Dear Sir or Madam:

I am employee of Seeta Eye Center in Poughkeepsie. I have worked here for 1 year, as a technician. I found out that Stacey Koch, the manager of Seeta, who is my boss, filed a complaint against Judge Mora for an incident that happened on December 28, 2021. Prior to this date, I had never met Judge Mora. I found it hard to believe that she filed a complaint. After reading the complaint, I was even more dismayed. I am writing this letter because I feel Judge Mora did not do anything to warrant the police being called on him, or a complaint being filed against him.

I recall that day very vividly as I was asked to come out to the waiting area. Judge Mora was there with his son, who was scheduled for an eye exam. From the moment Stacey addressed Judge Mora, she was very hostile, demanding that he wear a mask. Judge Mora tried to explain that he did not medically tolerate a mask (he was wearing a face shield), but Stacey would not let him speak. She kept cutting him off. Unlike what Stacey wrote in her complaint, Judge Mora did not taunt her. He was calm and a complete gentleman during the entire ordeal. Judge Mora did not create a scene. It was actually Stacey who created a scene. She told Judge Mora that he was upsetting the other patients. An elderly lady actually stood up and said she was upset, but not with Judge Mora, but that she was waiting for over a half hour and had not been seen yet. That comment made me laugh.

What Stacey did not write in her complaint was that she actually called the police a second time. She did this after telling Judge Mora to stop talking, as he was spreading germs on her. I found her statement very bizarre. Judge Mora had a face shield on, and was about 10 feet away from her. After telling Judge Mora to stop talking, she called the police, and told them it was an emergency because Judge Mora was wearing a face shield, would not stop talking, and was spreading germs on her. While still on the phone with the police, Judge Mora said he would leave and try to get medical documentation for her, and she told the police they did not have to come. Judge Mora then left. About an hour later Judge Mora came back with his son and I escorted them into the exam room. There were no other issues the second time. I'm not sure why Stacey did not handle it this way the first time. Judge Mora has been back twice since December, and both times he wore his face shield, and there were no issues.

Thank you.

Sincerely,

Michael Brown

COMMISSION EXHIBIT 8

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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ADAM B. KAHAN
STAFF ATTORNEYS

ALAN W. FRIEDBERG
SPECIAL COUNSEL

CONFIDENTIAL

April 12, 2022

Via USPS Priority Mail & Email: [redacted]@nycourts.gov

Hon. Frank M. Mora
Poughkeepsie City Court Judge
62 Civic Center Plaza
Poughkeepsie, New York 12601

Re: File Nos. 2021/N-0723 and 2021/N-1120

Dear Judge Mora:

Pursuant to Article 2-A of the Judiciary Law, the Commission on Judicial Conduct has authorized investigation into two complaints alleging that you have refused to wear a face mask in public areas of the courthouse and in a private business, in violation of the COVID-19 safety protocols of the Unified Court System ("UCS") and New York State's mask mandate.[1]

Copies of the above-referenced complaints are enclosed as Exhibit A and Exhibit B. Also enclosed are UCS Memoranda dated May 29, 2020 (Exhibit C), March 30, 2021 (Exhibit D), June 14, 2021 (Exhibit E) and August 12, 2021 (Exhibit F), Chief Administrative Judge Lawrence K. Marks' Administrative Order 275/2021 (Exhibit G), and a Law360 article

[1] These complaints are in addition to the matter addressed in the Commission's letter to you dated March 30, 2022, regarding file number 2021/N-1176.

dated January 20, 2022, (Exhibit H). For your reference, the Rules Governing Judicial Conduct, the Commission's Operating Procedures and Rules, the Commission's Policy Manual and other documents are available on the Commission's website.[2]

The Commission requests your written reply to the allegations. In your reply, please include answers to the questions below and number your responses to correspond to the questions. We prefer that you respond in the form of a letter attached to a reply email to the Commission at [redacted]@cjc.ny.gov. However, we will accept a reply typed into an email message, faxed to (518) 299-1757, or sent by US mail, UPS or other carrier.

Please note that, pursuant to Section 2.6(D)(3) of the Commission's Policy Manual, if your written reply is submitted by counsel, you must co-sign or submit a separate statement indicating that you have read and adopt it.

Refusal to Comply with OCA Safety Protocols (File No. 2021/N-0723)

1. Are you familiar with Exhibits C, D, E, F, and G, which require, *inter alia,* that all unvaccinated judges and non-judicial personnel who are permitted to enter a UCS courthouse wear face masks in most areas of the courthouse? If so, please indicate when and how you became aware of this requirement.

2. Do you consider that the UCS mask mandate applies to you? If, at any point, you considered that it did not apply to you, please explain the legal or other basis for your belief.

3. Did you consider at any point after May 29, 2020, that you were exempt from UCS's face mask requirement? If so, please explain the basis for that belief.

[2] http://www.cjc.ny.gov/Legal.Authorities/legal.authorities.htm

4. Since May 29, 2020, have you physically appeared in any area of the Poughkeepsie City Court courthouse outside of your private office, or in the presence of another person, without wearing a mask? If so, please indicate all the dates on which you appeared in the courthouse without a mask, describe where in the courthouse you went unmasked on each of those dates, and as to each such occasion, please explain your reason for being without a mask.

5. At any point since May 29, 2020, did you express your disagreement with the UCS mask mandate to any UCS employee or in any written or oral statement to members of the general public? If so, please state the dates on which you did so, indicate with whom you communicated and the substance of your communication. If any such communication was in writing, including email or other electronic communication, please provide a copy with your response.

6. Please review the article attached as Exhibit H and answer the following questions regarding the allegations in the article.

A. Did you physically appear in the Poughkeepsie City Court in or around January 2022? If so, please indicate all of the dates on which you physically appeared at the courthouse.

B. Did you physically appear in the Poughkeepsie City Court, notwithstanding Chief Administrative Judge Lawrence K. Marks' Administrative Order 275/2021 barring unvaccinated judges who have not obtained exemptions from entering or working at courthouses or other court facilities (Exhibit G)? If so, please explain why.

C. As to each date that you that appeared in the Poughkeepsie City Court Courthouse, please indicate whether you wore a mask while inside the courthouse As to any such occasion in which you did not wear a mask, please explain your reason.

D. As to each date you that appeared in the Poughkeepsie City Court Courthouse, please indicate whether you wore a face shield instead of a mask while inside the courthouse. If so, please explain why and answer the following related questions.

i. Do you believe that wearing a face shield complies with the UCS face mask requirement as set forth in Exhibits C, D, E, F, and G? If so, please state the basis for that belief and provide copies of any relevant documentation.

ii. Did you ask your Supervising Judge or any other UCS official whether wearing a face shield complies with the UCS face mask requirement? If so, please indicate with whom you communicated, the date of the communication and the substance of the communication. If any such communication was in writing, including email or other electronic communication, please provide a copy with your response. If you did not inquire whether wearing a face shield complies with the UCS's face mask policy, please explain why not.

iii. Has your Supervising Judge or any other UCS official told you that wearing a face shield does not comply with the UCS's mask policy? If so, please indicate with whom you communicated, the date of the communication and the substance of the communication. If any such communication was in writing, including email or other electronic communication, please provide a copy with your response.

Failure to Comply with NYS Mask Mandate (2021/N-1120)

7. Are you aware that on December 13, 2021, New York State Governor Kathy Hochul issued a mandate requiring that masks be worn at all indoor public places, which includes private businesses?

8. Directing your attention to Exhibit B, in or around December 2021, did you visit the Seeta Eye Center ("Seeta") in Poughkeepsie, New York? If so, please answer the following questions.

A. What was the purpose of your visit to Seeta?

B. Who, if anyone, accompanied you to the visit?

C. Did you see a sign posted at the entrance to Seeta stating that face masks are required for entry?

D. Did you enter Seeta wearing only a face shield, rather than a face mask? If so, please answer the following questions.

i. After you entered Seeta, did an employee request that you put on a mask or leave the premise? If so, did you comply with the request? If you did not comply, please explain why not.

ii. Did Stacey Koch, an optician and office manager at Seeta, ask that you put on a mask? If so, did you comply with her request? If you did not comply, please explain why not.

iii. Please describe your behavior after Ms. Koch asked you to put on a mask. Include as much detail as possible, such as what you said, your tone of voice, any facial expressions or physical gestures you may have made, etc.

iv. Did you tell Ms. Koch, in words or substance, that you had a medical condition that prevented you from

wearing a mask? If so, please describe in detail what you said, including whether you identified your professed medical condition to Ms. Koch, and if so, what medical condition did you tell her you had.

v. Did Ms. Koch ask you to leave the premises because you declined to wear a mask? If so, did you comply with her request? If you did not comply, please explain why not.

vi. Did Ms. Koch tell you that she was calling the police? If so, how did you respond? Specifically, did you tell Ms. Koch, the "police wouldn't come?" Please recount what you said to Ms. Koch on this topic, describe the tone and volume of your voice when you said it, and explain your reason for saying what you did.

vii. Please describe your demeanor during your interaction with Ms. Koch.

viii. Did you leave the premises before the police arrived? If so, please explain why.

ix. Did you consider that by refusing to leave the premises after being asked by Ms. Koch, you may have been committing the offense of criminal trespass? Please explain your answer.

9. Did your chiropractor submit a letter on your behalf to Seeta Eye Center stating that you suffer from a medical condition that prevents you from wearing a mask? If so, please provide a copy of the letter from your chiropractor and answer the following questions.

A. Why was such a letter submitted on your behalf?

B. What medical condition did your chiropractor identify as preventing you from wearing a mask?

C. Why did you seek a medical exemption note from a chiropractor, as opposed to a medical professional who treats respiratory conditions?

D. Have you sought to be excused from the UCS masking requirement on medical grounds? If yes, please state the date on which you sought to be excused, provide a copy of all documentation you sent or received pertaining to your request to be excused on medical grounds and indicate the current status or outcome. If not, please explain why you did not request to be excused on medical grounds, notwithstanding the note from your chiropractor submitted on your behalf to Seeta Eye Center.

10. Apart from your chiropractor, have any physicians advised you that you suffer from a medical condition that exempts you from wearing a mask? If so:

A. Please identify each physician that gave you such advice; and

B. Please provide with your response to this inquiry a letter from each physician that gave you such advice, including when they gave you such advice and the medical basis for their advice.

11. Do you consider that your conduct in failing to comply with the mask mandates of the Unified Court System and New York State is consistent with Section 100.1 of the Rules Governing Judicial Conduct ("Rules"), which requires a judge to maintain and observe high standards of conduct so that the integrity of the judiciary is preserved? Please explain your answer.

12. Do you consider that your conduct in failing to comply with the above mask mandates is consistent with Section 100.2(A) of the Rules, which requires a judge to respect and comply with the law and act at all

times in a manner that promotes public confidence in the integrity of the judiciary? Please explain your answer.

13. Do you consider that your conduct in failing to comply with the UCS's mask mandate is consistent with Section 100.3(C)(1) of the Rules, which requires a judge to cooperate with other judges and court officials in the administration of court business? Please explain your answer.

14. Do you consider that your conduct during the encounter in the Seeta Eye Center was consistent with Section 100.4(A)(2) of the Rules, which requires that a judge conduct his extra-judicial activities so that they do not detract from the dignity of judicial office? Please explain your answer.

Please feel free to include any relevant information or material that you wish the Commission to consider in connection with this matter.

Please respond in writing to this inquiry by April 29, 2022. Thank you for your prompt attention to this matter.

Very truly yours,

Mark Levine
Deputy Administrator

Enclosures

cc: Melissa DiPalo
Senior Attorney

Tracking #: 9402809202121597614608

EXHIBIT A

ADMINISTRATOR'S COMPLAINT

In the Matter of: Frank M. Mora
Poughkeepsie City Court Judge
Dutchess County

Complaint # 2021/N-0723

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Based upon the attached anonymous complaint, it is alleged that Judge Mora has refused to comply with the COVID-19 safety protocols of the Unified Court System, which require *inter alia* that judges and non-judicial staff wear a mask or face covering in public areas of the court or facility, or whenever physical distancing is not possible.

Robert H. Tembeckjian

New York, New York — **Robert H. Tembeckjian, Administrator**

Date Signed: February 11, 2022 — Authorized on February 3, 2022

August 20, 2021

Dear ~~Judge St. George~~: Commission

It has come to everyone's attention that Judge Mora, of the City Of Poughkeepsie City Court, refuses to wear any type of protective mask, thereby endangering everyone who works and appears in that court. Apparently, Judge Mora believes he is making a stand, a la Rosa Parks and/or Martin Luther King, Jr. And I am serious about that. Just ask him.

This is obviously a very serious situation. I know that swift disciplinary action would be taken against any civil service employee who refused to wear a mask. Why isn't Judge Mora being disciplined, or suspended without pay ?

Judge Mora sets a very poor example given his position. Why should any City Of Poughkeepsie Court employee wear a mask if the top judicial official doesn't, and is not disciplined for the outrageous disregard of court rules. It is equally disturbing that he compares his refusal to keep court employees and the court-using public safe to the protests of the greatest civil rights icons of our time.

Thank you for your attention to this matter.

A Concerned Court Employee...

I cant sign my name for fear of reprisals.

RECEIVED
AUG 23 2021
NYS COMMISSION ON JUDICIAL CONDUCT
NYS - LEGAL

EXHIBIT B

SCJC- Legal Email 12/29/2021

From: no-reply@weebly.com
To: SCJC
Subject: New Form Entry: Complaint Form
Date: Wednesday, December 29, 2021 2:05:13 PM

You've just received a new submission to your Complaint Form.
Mark as Spam

Submitted Information:

Title
Mrs.

Name
Stacey Koch

M.I.

Phone Number 1
18454541025

Phone Number 2

Email
[redacted]@seetaeye.com

Address Line 1
27 Davis Avenue

Address line 2

City
Poughkeepsie

State

New York

Zip
12603

Are you or were you represented by a lawyer?
No

Lawyer's Name

Lawyer's Phone Number

Lawyer's Address

Lawyer's City

Lawyer's State
New York

Lawyer's Zip

Judge's Name
Frank Mora

Judge's Court
City of Poughkeepsie Court

Judge's County
Dutchess

Date(s) of Incidents(s)
12/28/21

Name of Case (if applicable)

Index Number of Case (if applicable)

In the space below, please describe the alleged misconduct. Include as much detailed information as possible, such as what happened, where and when; the names of witnesses; who said what to whom, and in what tone of voice; etc.
Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police where on their way to our practice. He then had a letter created from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [redacted] year old boy. After receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora.

Today's Date
12/29/21

Judiciary Law § 44 requires that all complaints be signed and in writing. I understand that by clicking “I agree” below I am electronically signing this complaint, which has the same legal effect as my handwritten signature
I agree

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

EXHIBIT C

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

May 29, 2020

To: All Judges and Nonjudicial Personnel of the Unified Court System

From: John W. McConnell
Nancy Barry

Re: Coronavirus – Additional Safety and Operational Protocols

==========

As we continue to address the health and safety concerns created by the COVID-19 pandemic, the following additional safety and operational protocols shall apply to all Unified Court System (UCS) locations for the safety of all judges, nonjudicial personnel and court users. alcohol.[1]

A. Protective Equipment and Hand Sanitizer

1. Face Masks. All judges and nonjudicial personnel working in open workspaces, cubicles, or in areas that are not otherwise partitioned/separated from others, must wear face masks any time they are within six feet of another person. Face masks may be removed in private offices but must be worn whenever those offices are occupied by more than one person, even briefly. All judges and nonjudicial personnel must also wear face masks when in transit around the workplace, in common areas, when dealing directly with the public or when distancing of at least six feet is not otherwise possible. e.g., elevators, hallways, locker rooms, restrooms, etc.

2. UCS-issued Face Masks. All judges and nonjudicial personnel will be provided with a face mask for their use during work hours at no cost. Because the court system's supply

[1] For more information on the protocols addressed in this memorandum and Exh. A, see the New York State Coronavirus (COVID-19) website (https://coronavirus.health.ny.gov/) and the United States Centers for Disease Control and Prevention Coronavirus (COVID-19) website (https://www.cdc.gov/coronavirus/2019-ncov/index.htm).

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of face masks is limited and does not allow for new masks to be issued daily, judges and nonjudicial personnel using UCS-issued face masks are expected to take proper care to allow for reuse of their mask to the fullest extent possible. Generally speaking, face masks should be cleaned or replaced when damaged or soiled, should not be shared, should be properly stored when not in use, and should be safely discarded (in a general trash receptacle) when no longer usable. (See Exh. A, "Mask Guidance," for recommended steps for use and reuse of face masks.)

3. Personal Face Masks. Judges and nonjudicial personnel are permitted to furnish and wear their own face masks, so long as such masks are professional in appearance. (For example, scarves or bandana-type face coverings should not be used.)

4. Gloves and Hand Hygiene. The UCS will maintain a supply of gloves for use by judges and nonjudicial personnel. While all employees are entitled to use gloves, gloves must be worn when opening mail and/or sharing materials such as court files (especially with the public). Frequent hand washing and/or use of hand sanitizer that contains at least 60% alcohol is strongly encouraged. Hand sanitizer meeting this requirement will be available in dispensers throughout the workplace.

5. Removing Gloves: Because the outside of gloves can be contaminated, they must be removed with care by: (1) using a gloved hand, grasping the palm area of the other gloved hand and peel off the first glove; (2) holding the removed glove in the gloved hand; (3) sliding fingers of the ungloved hand under the remaining glove at the wrist; (4) peeling off the second glove over the first glove.

   Judges and nonjudicial personnel should be sure not to touch eyes, nose or mouth while or immediately after removing gloves, and should finish the removal process by washing hands thoroughly with soap and water or, where hand washing stations are not close in proximity, using hand sanitizer that contains at least 60% alcohol.

6. Disposing of Masks and Gloves: Following use (or, in the case of masks, final reuse), masks, gloves and disinfectant wipes should be placed in the trash or household garbage.

B. Physical Distancing

1. Judges and nonjudicial personnel are to make every effort to ensure that a distance of at least six feet is maintained from work colleagues and the public at all times. Where this is not possible, (e.g. while moving prisoners or moving and lifting equipment, or at locations lacking six feet of space for social distancing), face masks must be worn.

2. Employees must not congregate in locker rooms, break rooms, lunchrooms/cafeterias or other confined areas used by multiple people. Crowded elevators should similarly be avoided.

3. Judges and nonjudicial personnel are encouraged to take their lunch break in open outside areas wherever possible.

C. Movement and Commerce

1. To the extent possible, locations for pick-up and delivery of mail, packages, and other items should be designated that minimize foot traffic in the workplace by non-UCS personnel.

2. Public or common areas (e.g. lines, parking areas, conference rooms) should be arranged to maximize social distance among clients and minimize interaction with others in the area.

3. Like all unnecessary court traffic, visitors to court personnel in the workplace for reasons other than necessary in-person court business are strongly discouraged.

4. UCS staff travel will be limited to essential travel only.

D. Hygiene and Cleaning

1. Hand hygiene stations -- including handwashing facilities with soap, water, and disposable paper towels, and/or hand sanitizer containing 60% or more alcohol (for areas where handwashing facilities may not be available or practical) – will be provided for both public and personnel use in all court facilities and should be located in high-traffic areas (elevator locations, central staff locations, etc.).

2. Use of water fountains in UCS facilities is prohibited. Water coolers in the workplace may be used only with clean drinking containers or fresh paper cup.

3. Work locations will be provided with appropriate locally-obtained cleaning/disinfection supplies for use in wiping down frequently touched surfaces in court facilities, e.g. water cooler handles, telephones, chair handles, etc. Judges and nonjudicial personnel (and where appropriate, the public) are encouraged to use these supplies liberally.

4. Regular daily cleaning and disinfection of facilities will continue. More frequent cleaning and disinfection should be performed on high use areas and frequently touched surfaces.

5. In the event of exposure of an area to a person testing positive to COVID-19, such cleaning will include, at a minimum, all heavy transit areas and high-touch surfaces (e.g. vending machines, handrails, bathrooms, doorknobs).

E. Signage and Safety Precautions for Facilities

Appropriate signage will be posted on and throughout UCS facilities memorializing safety concerns and protocols, such as the need to wear face masks, practice social distancing and engage in frequent hand hygiene. Additional safety precautions utilized in UCS facilities may include installation of plexiglass barriers, floor and other markings to denote proper social distancing, reconfiguration of common areas such as conference rooms or workspaces to ensure adequate spacing, and similar steps. All Judges and nonjudicial personnel are asked to adhere to

local guidance and/or safety protocols provided in any of our facilities – for example, signage indicating the maximum number of people that may be in certain areas at a time, floor markings denoting proper distancing, and the like.

F. Testing

While the court system has no independent COVID-19 testing capacity, we highly recommend that court personnel make use of the testing facilities of State, county, and municipal agencies. See, e.g., https://coronavirus.health.ny.gov/covid-19-testing (State); https://www.nychealthandhospitals.org/covid-19-testing-sites/ (New York City); https://www2.monroecounty.gov/health-COVID-19 (Monroe County); https://www.wkbw.com/news/coronavirus/coronavirus-testing-where-to-get-a-covid-19-test-in-western-new-york (Western New York); etc. An internet search should disclose the best available local testing options.

******

The health and safety of our workforce and of the public remain the top UCS priorities as we return to courthouse and office settings around the State in coming days and weeks. If you have any questions about these protocols, please contact the Division of Human Resources. And as always, thank you for your dedication and cooperation in this effort.

c: County Clerks

EXHIBIT A

Mask Guidance

Pursuant to gubernatorial Executive Orders and UCS policy, face masks must be worn by all members of the public in court facilities, as well as by judges and nonjudicial court personnel who are in direct contact with members of the public or are unable to maintain social distancing (six feet) from other court personnel.

A. Rationale for Mask Guidance

This Guidance is designed to provide judges and nonjudicial personnel with the necessary information on proper mask use and reuse, to ensure maximum protection of court personnel and the public, and to ensure optimal use of the Court System's supply of masks.

B. Distribution, Use and Reuse of Masks

The Department of Public Safety will regularly supply each District or court with the appropriate supply of face masks based upon estimated staffing and in accordance with operational needs. Masks will be securely stored at each worksite/location and shall be issued to employees by a uniformed supervisor.

Because the UCS supply of masks is limited, we ask that all UCS judges and nonjudicial personnel make every effort to store and reuse those masks whenever possible – that is, whenever a worn mask has not become visibly soiled, damp or damaged through extensive use during the day. However, soiled, damp or damaged masks should <u>always</u> be replaced by making a request to a uniformed supervisor.

Masks should not be diverted to persons outside the UCS, unless specifically authorized by a uniformed supervisor or otherwise in accordance with established protocols/procedures.

Face masks that are no longer useable should always be discarded in an appropriate receptable, e.g., any garbage can or waste basket, but never the hallway or sidewalk.

Questions about this guidance or mask distribution/use, generally, should be directed to the UCS Department of Public Safety.

C. Removal and Re-Use of Mask

<u>To remove a mask with intent to reuse</u>:

1. **Perform hand hygiene**

2. **Remove mask**
   - Ear-Loop Mask Style: remove mask by holding the ear loops. Because the mask front may be contaminated, remove slowly and carefully.
   - Tie Back: remove mask by untying lower ties FIRST; untie upper ties last. Because the mask front may be contaminated, remove slowly and carefully. Ensure ties do not fall into clean interior side of mask.

3. After removing mask, **visually inspect** for stains, contaminants, tears, or distortion in shape/form. If soiled, torn, or saturated, the mask should be discarded.

4. If the mask is NOT visibly soiled, torn, or saturated, **carefully store in a brown paper (lunch) bag**, or if a bag is not available, a paper envelope labeled clearly with the following information: "face mask", date, your name, and "front" and "back" on the two sides. Insert your mask so that the front of the mask faces the side of the bag/envelope labeled "front."

5. **Perform hand hygiene.**

To re-apply used mask:

1. **Perform hand hygiene**

2. **Grasp mask**
   Pinch mask at the ear loops or grasp upper ties

3. **Place mask over face**
   For ear-loop style mask: secure ear loops behind the ears; secure mask. For tie back style mask: secure upper ties first, behind head; then secure lower ties behind head.

4. **Perform hand hygiene**

****A single mask can be safely worn during several workdays or shifts when these procedures are followed.****

While adherence to these guidelines is expected for UCS-issued masks, employees that are not in direct and/or frequent contact with the public who elect to wear their own mask, including cloth masks, may also find this guidance helpful. Note: personal cloth masks that will be reused by an employee should be laundered at home between each use.

Frequently Asked Questions

Will N95 respirators be provided to UCS personnel?

The UCS supply of N95 respirators is currently out of stock, but we anticipate receiving an additional supply in June. However, N95 respirators are difficult to wear for long periods of time and are impractical for generalized use. Also, because our supply of N95 respirators is anticipated to be much smaller than our supply of surgical and/or cloth masks, a***ny supply of N95 respirators will be reserved for employees with an elevated risk of coming into contact with the virus. (Guidance about the use of N95 respirators will be provided to such employees upon distribution.)***

Should court visitors be wearing face masks?

Yes. Pursuant to the Governor's Executive Order, all visitors must have a face mask/covering in order to enter our courts, offices and/or facilities. Please refer to the *revised* Courthouse Protocols issued on May 15, 2020, for more detailed information and guidance about members of the public and face masks.

How can I eat/drink when I am supposed to wear a mask?

Proceed to an appropriate location where social distancing can be accomplished and you are able to wash your hands or use hand sanitizer. Perform hand hygiene, remove the mask, eat or drink, and then replace your mask following the above guidelines.

May I use my UCS mask for personal use, including commuting to and from work?

UCS-issued masks are intended for use only for court purposes during business hours.

EXHIBIT D

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

March 30, 2021

To: All Judges and Nonjudicial Personnel of the Unified Court System

From: John W. McConnell
Nancy Barry

Subject: Coronavirus – Updated Safety and Operational Protocols

==========

Two recent developments – (1) the extensive COVID-related vaccination program in New York State and around the nation, and (2) the recent change in New York State's quarantine policy for interstate travelers – have necessitated amendment of several Unified Court System protocols addressing access to court facilities by UCS personnel and the public. Part I of this memorandum will briefly summarize those changes; Part II will restate our updated safety and operational protocols in greater detail. This memorandum supersedes the memorandum of May 15, 2020.

I. Recent COVID-Related Developments

A. Vaccinations and Recovery from Prior COVID Infection[1]

New York's vaccination program continues its remarkable progress.[2] To date, close to 3 million New Yorkers are fully vaccinated, and an additional 2.5 million have received the first of a 2-dose injection; effective today, all persons aged 30 years or older, and many others in a range of special categories (including all UCS judicial and nonjudicial personnel), are eligible to receive the vaccine. Notwithstanding this progress, the vaccination program is still in an early stage; the impact of the pandemic upon court operations remains severe; and at present, the practical consequence of vaccination in allowing access to court facilities is limited.

Recently, however, the CDC announced that (1) fully vaccinated persons and (2) persons who have themselves recovered from a COVID infection in the last 3 months will no longer be required to quarantine following a close contact exposure to someone with COVID. As a result, court personnel and court visitors who can demonstrate that they fall under one of these two

[1] *See* March 30, 2021 Memorandum from Division of Human Resources for detailed information regarding the exemptions from quarantine for fully vaccinated individuals and those who have recovered from a previous COVID infection.

[2] That progress may be monitored at https://covid19vaccine.health.ny.gov/covid-19-vaccine-tracker.

exceptions will be permitted to enter court facilities notwithstanding a recent close contact exposure.

B. Travel

1. Travel to U.S. States and Territories: Commencing April 1, 2021, New York State will no longer impose a quarantine upon persons returning to the state following travel to another state or U.S. territory.[3] As a result, domestic travel will no longer pose a basis for restricting access to UCS court facilities.

2. International Travel: Federal and state health authorities continue to impose quarantine requirements upon persons returning to New York from foreign nations (see section II(E) below).

II. Updated Coronavirus - Courthouse Procedures

Effective April 1, 2021, the following procedures shall apply to individuals seeking entry into UCS courts and facilities. Signage reflecting these amended policies and practices will shortly be distributed for posting in court facilities throughout the State. Of course, these practices may be further amended as the public health situation evolves.

A. Persons at Risk Shall be Prohibited from Entering Court Facilities

1. A "Person at Risk" is any individual that:

- has been diagnosed with COVID-19 and has not obtained medical clearance to appear in public; or
- has had close contact with anyone diagnosed with COVID-19 within the last 14 days, and (a) is not exempt from quarantine (as set forth in par. D below) or (b) has not obtained medical clearance to appear in public; or
- has been directed to quarantine, isolate and/or self-monitor due to COVID-19 by any doctor, hospital or public health official/agency and has not obtained medical clearance to appear in public; or
- has traveled internationally in the last 10 days and has not tested-out of quarantine (as set forth in par. E below) or otherwise obtained medical clearance to appear in public; or
- has any COVID-19 symptoms, e.g. cough, sore throat, temperature of 100.0° or higher, shortness of breath.

2. No Person at Risk should enter any UCS court or facility.

[3] The following are U.S. territories: District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. *See* March 17, 2021 Memorandum from the Division of Human Resources for more information regarding travel.

3. Persons at Risk having business before the court should contact the court by telephone or email and follow instructions on how to proceed.

4. Uniformed court personnel may inquire to ensure that court visitors understand and are in compliance with this directive.

B. Persons at Risk Entering Court Facilities (non-UCS Employees)

If a court visitor who self-identifies as a Person at Risk as described in par. A enters a court facility, court personnel shall take the following steps:

1. court uniformed personnel shall be notified; and

2. uniformed personnel shall notify the visitor of the procedure described in par. A, and request that the visitor leave the court facility immediately and call the contact number for further information.

3. If the visitor declines to leave the building, a uniformed supervisor shall assess the situation and take appropriate steps (including contacting local medical assistance).

4. at earliest opportunity, court personnel shall direct appropriate cleaning of areas contacted by the visitor.

C. Persons at Risk (UCS Employees)

1. If a court employee self-identifies as a Person at Risk as described in par. A, **prior to their work shift** the employee:

   a. shall not come to work;

   b. shall notify a work supervisor of the circumstances; and

   c. shall contact a health care provider, and follow the recommendations of that health care professional, e.g. quarantine, testing, return to work.

2. If a court employee self-identifies as a Person at Risk as described in par. A when they are **present at work**:

   a. the employee shall immediately notify a work supervisor of the circumstances and shall go home, contact a health care provider, and follow the recommendations of that health care professional e.g. quarantine, testing, return to work

   b. the supervisor shall immediately notify uniformed court personnel;

   c. at earliest opportunity, court personnel shall direct appropriate cleaning of areas contacted by the employee; and

   d. uniformed personnel shall apprise other appropriate supervisory personnel of steps as directed by health authorities.

3. Leave for Quarantine[4]: Any UCS employee that is experiencing COVID-19 symptoms and seeking a diagnosis from a health care provider; is infected

[4] *See* March 30, 2021 Memorandum from Division of Human Resources.

with COVID-19; or is otherwise required to isolate and/or quarantine by a health care provider or public health official out of concern that he/she is infected with COVID-19, is entitled to have (substantiated) absences covered by paid leave, i.e. *Leave for Quarantine*.
Questions regarding this leave benefit should be referred to the Division of Human Resources at HR-FFCRA@nycourts.gov

D. Exemption to Quarantine–COVID-19 Close Contact: Individuals that have been in close contact with someone that has COVID-19 but can show they are fully vaccinated or that they previously tested positive for COVID-19 but have recovered within the last 3 months are permitted to enter UCS courts and facilities (so long as the fully vaccinated or recovered individual has no COVID-19 symptoms).

- A photocopy or photo of a vaccination card will suffice to demonstrate an individual's full vaccination status.
- A record from a health care provider will demonstrate recent recovery from COVID.
- In either case, personal identification sufficient to substantiate that the vaccination and/or medical record corresponds to the presenting party will be necessary.

E. Testing Out of Quarantine Following International Travel: Individuals that have returned from international travel within the last 10 days but can show that they tested negative on a viral test given between 3 and 5 days from when they returned to the U.S. are permitted to enter UCS courts and facilities (so long as at least 7 days have passed since they returned to the U.S. and they have no COVID-19 symptoms).[5]

- Any hard copy or electronic documentation showing dates of travel as well as the negative test result on either a rapid antigen or PCR test will suffice to show that the individual has tested-out of quarantine.

F. Receipt of Notification of a Confirmed Coronavirus Diagnosis: In the event that the court receives notice that a courthouse visitor or employee has been diagnosed with the coronavirus:

1. Senior uniformed personnel on site shall inform uniformed command outside the courthouse, and shall prepare an Unusual Occurrence Report/Aided Report (UOR) that includes the name of the diagnosed person. Court managerial personnel shall contact the diagnosed person, inquire whether that person consents to the disclosure of his or her identity as part of follow-up health and safety notifications to UCS judges and staff, and note in the UOR whether such consent has been received.

[5] Persons who reside in Canada but work in UCS court facilities may cross the Canadian/U.S. borders daily by land without restriction (https://ca.usembassy.gov/travel-restrictions-fact-sheet/), and may enter court facilities without proof of quarantine.

2. Court personnel shall review records of any court locations contacted by the diagnosed person, and the duration and nature of such contacts over the prior two weeks.

3. Judges and court staff within these contact areas shall be notified immediately about the diagnosis and the contact. If the diagnosed person has given permission for disclosure of his or her identity, that name may be disclosed in the course of such notification. If not, as required by current law, that identity shall not be disclosed: instead, the diagnosed person shall be described in a general fashion (e.g., "an attorney," "a court employee working in_," etc.). In either case, judges and staff shall be provided with all available details about the scope of the diagnosed person's presence, time and whereabouts in the courthouse, instructed to contact their personal physicians to receive medical advice, provided excused leave to seek medical advice if they choose, and directed to notify the court of any further developments or medical directives.

4. Best efforts shall be made immediately to notify all attorneys and other members of the public who were in the contact areas during the relevant periods, while keeping the name of the diagnosed person confidential.

5. Local administrators shall inform other UCS personnel in the courthouse of the incident at earliest opportunity, while keeping the name of the diagnosed person confidential unless granted permission to disclose it (as described in pars. 1 and 4).

6. At earliest opportunity, court personnel shall direct appropriate cleaning of areas contacted by the person diagnosed.

7. A public statement describing the incident, without disclosing the identity of the diagnosed person, shall be posted on the UCS internal and public websites.

In all instances described above, court uniformed personnel shall be notified and an Unusual Occurrence Report/Aided Report shall be prepared. The report shall describe all courthouse areas visited by the Person at Risk, and time of such visits. Copies of court calendars in such visited areas shall be maintained, in the event that court visitors must be notified of the incident. Appropriate public notice shall issue whenever a Person at Risk is determined to be a high or medium risk for coronavirus contagion according to CDC standards. The Department of Public Safety will follow up with reports of suspected diagnosed courthouse visitor cases as circumstances dictate.

G. Other Health and Safety Protocols

All coronavirus health and safety procedures should continue to be closely followed by all individuals in UCS courts and facilities, regardless of vaccination status or recovery from a prior COVID-19 infection.

As a reminder, all judicial and nonjudicial personnel should continue to start each day with temperature check and self-assessment;[6] wear masks in all locations outside of

[6] *See* March 30, 2021 Memorandum from Division of Human Resources.

private offices (and in those offices when more than one person is present); maintain social distancing from colleagues at all times (including during lunch and other informal moments); avoid meetings in pantries, watercoolers, or other pre-COVID favorite gathering sites; avoid close contact (within 6 feet for a total of 15 or more minutes per day) with any work colleague or visitor; and continue to wash hands frequently.[7]

Requests for personal protective equipment (PPE) should be submitted to each court or facility's PPE Coordinator. Noncompliance with any UCS Coronavirus health, safety and/or operational protocols should be reported immediately to the local uniformed command.

* * *

As always, thank you for your assistance in addressing this ongoing public emergency. No doubt, the prospects for ending this crisis have never been brighter since it began more than a year ago. But it remains imperative that we maintain vigilance and resolve in following these protocols for the health and safety of the public and our colleagues, families and friends.

Stay well and stay safe.

[7] See May 29, 2020 Memorandum Re: *Coronavirus – Additional Safety and Operational Protocols*, for detailed information regarding the use of Personal Protective Equipment; Physical Distancing; Movement and Commerce; and Hygiene and Cleaning, a copy of which is attached (Exh. A).

EXHIBIT A

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

May 29, 2020

To: All Judges and Nonjudicial Personnel of the Unified Court System

From: John W. McConnell
Nancy Barry

Re: Coronavirus – Additional Safety and Operational Protocols

==========

As we continue to address the health and safety concerns created by the COVID-19 pandemic, the following additional safety and operational protocols shall apply to all Unified Court System (UCS) locations for the safety of all judges, nonjudicial personnel and court users. alcohol.[1]

A. Protective Equipment and Hand Sanitizer

1. Face Masks. All judges and nonjudicial personnel working in open workspaces, cubicles, or in areas that are not otherwise partitioned/separated from others, must wear face masks any time they are within six feet of another person. Face masks may be removed in private offices but must be worn whenever those offices are occupied by more than one person, even briefly. All judges and nonjudicial personnel must also wear face masks when in transit around the workplace, in common areas, when dealing directly with the public or when distancing of at least six feet is not otherwise possible. e.g., elevators, hallways, locker rooms, restrooms, etc.

2. UCS-issued Face Masks. All judges and nonjudicial personnel will be provided with a face mask for their use during work hours at no cost. Because the court system's supply

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of face masks is limited and does not allow for new masks to be issued daily, judges and nonjudicial personnel using UCS-issued face masks are expected to take proper care to allow for reuse of their mask to the fullest extent possible. Generally speaking, face masks should be cleaned or replaced when damaged or soiled, should not be shared, should be properly stored when not in use, and should be safely discarded (in a general trash receptacle) when no longer usable. (See Exh. A, "Mask Guidance," for recommended steps for use and reuse of face masks.)

3. Personal Face Masks. Judges and nonjudicial personnel are permitted to furnish and wear their own face masks, so long as such masks are professional in appearance. (For example, scarves or bandana-type face coverings should not be used.)

4. Gloves and Hand Hygiene. The UCS will maintain a supply of gloves for use by judges and nonjudicial personnel. While all employees are entitled to use gloves, gloves must be worn when opening mail and/or sharing materials such as court files (especially with the public). Frequent hand washing and/or use of hand sanitizer that contains at least 60% alcohol is strongly encouraged. Hand sanitizer meeting this requirement will be available in dispensers throughout the workplace.

5. Removing Gloves: Because the outside of gloves can be contaminated, they must be removed with care by: (1) using a gloved hand, grasping the palm area of the other gloved hand and peel off the first glove; (2) holding the removed glove in the gloved hand; (3) sliding fingers of the ungloved hand under the remaining glove at the wrist; (4) peeling off the second glove over the first glove.

   Judges and nonjudicial personnel should be sure not to touch eyes, nose or mouth while or immediately after removing gloves, and should finish the removal process by washing hands thoroughly with soap and water or, where hand washing stations are not close in proximity, using hand sanitizer that contains at least 60% alcohol.

6. Disposing of Masks and Gloves: Following use (or, in the case of masks, final reuse), masks, gloves and disinfectant wipes should be placed in the trash or household garbage.

B. Physical Distancing

1. Judges and nonjudicial personnel are to make every effort to ensure that a distance of at least six feet is maintained from work colleagues and the public at all times. Where this is not possible, (e.g. while moving prisoners or moving and lifting equipment, or at locations lacking six feet of space for social distancing), face masks must be worn.

2. Employees must not congregate in locker rooms, break rooms, lunchrooms/cafeterias or other confined areas used by multiple people. Crowded elevators should similarly be avoided.

3. Judges and nonjudicial personnel are encouraged to take their lunch break in open outside areas wherever possible.

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1. To the extent possible, locations for pick-up and delivery of mail, packages, and other items should be designated that minimize foot traffic in the workplace by non-UCS personnel.

2. Public or common areas (e.g. lines, parking areas, conference rooms) should be arranged to maximize social distance among clients and minimize interaction with others in the area.

3. Like all unnecessary court traffic, visitors to court personnel in the workplace for reasons other than necessary in-person court business are strongly discouraged.

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2. Use of water fountains in UCS facilities is prohibited. Water coolers in the workplace may be used only with clean drinking containers or fresh paper cup.

3. Work locations will be provided with appropriate locally-obtained cleaning/disinfection supplies for use in wiping down frequently touched surfaces in court facilities, e.g. water cooler handles, telephones, chair handles, etc. Judges and nonjudicial personnel (and where appropriate, the public) are encouraged to use these supplies liberally.

4. Regular daily cleaning and disinfection of facilities will continue. More frequent cleaning and disinfection should be performed on high use areas and frequently touched surfaces.

5. In the event of exposure of an area to a person testing positive to COVID-19, such cleaning will include, at a minimum, all heavy transit areas and high-touch surfaces (e.g. vending machines, handrails, bathrooms, doorknobs).

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Appropriate signage will be posted on and throughout UCS facilities memorializing safety concerns and protocols, such as the need to wear face masks, practice social distancing and engage in frequent hand hygiene. Additional safety precautions utilized in UCS facilities may include installation of plexiglass barriers, floor and other markings to denote proper social distancing, reconfiguration of common areas such as conference rooms or workspaces to ensure adequate spacing, and similar steps. All Judges and nonjudicial personnel are asked to adhere to

local guidance and/or safety protocols provided in any of our facilities – for example, signage indicating the maximum number of people that may be in certain areas at a time, floor markings denoting proper distancing, and the like.

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The health and safety of our workforce and of the public remain the top UCS priorities as we return to courthouse and office settings around the State in coming days and weeks. If you have any questions about these protocols, please contact the Division of Human Resources. And as always, thank you for your dedication and cooperation in this effort.

c: County Clerks

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The Department of Public Safety will regularly supply each District or court with the appropriate supply of face masks based upon estimated staffing and in accordance with operational needs. Masks will be securely stored at each worksite/location and shall be issued to employees by a uniformed supervisor.

Because the UCS supply of masks is limited, we ask that all UCS judges and nonjudicial personnel make every effort to store and reuse those masks whenever possible – that is, whenever a worn mask has not become visibly soiled, damp or damaged through extensive use during the day. However, soiled, damp or damaged masks should <u>always</u> be replaced by making a request to a uniformed supervisor.

Masks should not be diverted to persons outside the UCS, unless specifically authorized by a uniformed supervisor or otherwise in accordance with established protocols/procedures.

Face masks that are no longer useable should always be discarded in an appropriate receptable, e.g., any garbage can or waste basket, but never the hallway or sidewalk.

Questions about this guidance or mask distribution/use, generally, should be directed to the UCS Department of Public Safety.

C. Removal and Re-Use of Mask

<u>To remove a mask with intent to reuse</u>:

1. **Perform hand hygiene**

2. **Remove mask**
   - Ear-Loop Mask Style: remove mask by holding the ear loops. Because the mask front may be contaminated, remove slowly and carefully.
   - Tie Back: remove mask by untying lower ties FIRST; untie upper ties last. Because the mask front may be contaminated, remove slowly and carefully. Ensure ties do not fall into clean interior side of mask.

3. After removing mask, **visually inspect** for stains, contaminants, tears, or distortion in shape/form. If soiled, torn, or saturated, the mask should be discarded.

4. If the mask is NOT visibly soiled, torn, or saturated, **carefully store in a brown paper (lunch) bag**, or if a bag is not available, a paper envelope labeled clearly with the following information: "face mask", date, your name, and "front" and "back" on the two sides. Insert your mask so that the front of the mask faces the side of the bag/envelope labeled "front."

5. **Perform hand hygiene.**

To re-apply used mask:

1. **Perform hand hygiene**

2. **Grasp mask**
   Pinch mask at the ear loops or grasp upper ties

3. **Place mask over face**
   For ear-loop style mask: secure ear loops behind the ears; secure mask. For tie back style mask: secure upper ties first, behind head; then secure lower ties behind head.

4. **Perform hand hygiene**

****A single mask can be safely worn during several workdays or shifts when these procedures are followed.****

While adherence to these guidelines is expected for UCS-issued masks, employees that are not in direct and/or frequent contact with the public who elect to wear their own mask, including cloth masks, may also find this guidance helpful. Note: personal cloth masks that will be reused by an employee should be laundered at home between each use.

Frequently Asked Questions

Will N95 respirators be provided to UCS personnel?

The UCS supply of N95 respirators is currently out of stock, but we anticipate receiving an additional supply in June. However, N95 respirators are difficult to wear for long periods of time and are impractical for generalized use. Also, because our supply of N95 respirators is anticipated to be much smaller than our supply of surgical and/or cloth masks, a***ny supply of N95 respirators will be reserved for employees with an elevated risk of coming into contact with the virus. (Guidance about the use of N95 respirators will be provided to such employees upon distribution.)***

Should court visitors be wearing face masks?

Yes. Pursuant to the Governor's Executive Order, all visitors must have a face mask/covering in order to enter our courts, offices and/or facilities. Please refer to the *revised* Courthouse Protocols issued on May 15, 2020, for more detailed information and guidance about members of the public and face masks.

How can I eat/drink when I am supposed to wear a mask?

Proceed to an appropriate location where social distancing can be accomplished and you are able to wash your hands or use hand sanitizer. Perform hand hygiene, remove the mask, eat or drink, and then replace your mask following the above guidelines.

May I use my UCS mask for personal use, including commuting to and from work?

UCS-issued masks are intended for use only for court purposes during business hours.

EXHIBIT E

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

To: All UCS Judges and Personnel

From: Nancy J. Barry

Date: June 14, 2021

Re: Revised Mask Policy Program

In keeping with Center for Disease Control and Prevention and New York State guidance relaxing mask and physical distancing requirements for individuals fully vaccinated against COVID-19, the Unified Court System will implement a voluntary Revised Mask Policy Program ("Program") for fully vaccinated judges and non-judicial personnel in certain areas of our court facilities. The program will start the enrollment process today.

Eligibility

All fully vaccinated judges and non-judicial personnel are eligible to enroll in the Program. Individuals are considered fully vaccinated for COVID-19:

- Two weeks after their second dose of a two-dose series, such as the Pfizer or Moderna vaccines; or
- Two weeks after a single-dose vaccine, such as the Johnson and Johnson vaccine.

Enrollment

Enrollment in the Program is strictly voluntary. Declining to enroll or participate in the Program will have no impact on an individual's assignment or any other employment decision.

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Starting today, interested and eligible judges and non-judicial personnel may enroll from a computer connected to the UCS network using the Program's share point site (https://nycourts.sharepoint.com/sites/COVID-19/CPV), where they will be asked to enter the date of their last COVID-19 vaccine shot and upload an image of the front and back of their COVID-19 vaccination card or, in the alternative, a screenshot of a "COVID-19 Vaccination" Excelsior Pass from their smartphone.[1]

The information submitted on the share point site will be strictly confidential; maintained separate and apart from personnel records; and used solely to authorize and issue a Program identification card. These records will be maintained and accessed only by authorized Office of Court Administration staff tasked with issuing the Program identification card, monitoring program compliance and maintaining the share point site.

Program Identification Card

Upon approval of the share point application, Department of Public Safety (DPS) staff will issue an orange Program identification card which will contain the UCS Seal, a picture of the judge or employee ("participant"), the participant's name and the Program expiration date for that participant (the last day of the month/year in which the efficacy of the vaccine is set to expire – currently one year).[2] No other information will be placed on the Program identification card.

DPS will send each participant's identification card to the appropriate District Executive, Chief Clerk (NYC Supreme Court), Borough Chief Clerk or Clerk of Court (NYC Citywide Courts) or Office of Court Administration Director with a signature sheet. The manager will distribute the card to the participant, obtain a signature from the participant and return the signature list to DPS.

This identification card will identify the wearer as someone who may remove their mask pursuant to the rules listed below and must be worn on the outermost garment of every participant, including all uniformed personnel, during work hours at any time when their mask has been removed.

Participants must receive, sign for and wear the identification card before they may participate in the Program.

Program

Once enrolled and wearing a Program identification card, participants will be permitted to enter and remain in non-public spaces in UCS courthouses and other facilities without wearing a mask

[1] The screenshot must show an Excelsior "COVID-19 Vaccination" pass with the judge or employee's name and vaccine expiration date. Screenshots of an Excelsior "COVID-19 Test" pass will not be accepted.
[2] The current picture on file for the judge's or employee's official UCS identification card will be used on the Program identification card, so there will be no need to take or submit another picture.

or other face covering when non-UCS court users are not present in those areas. These non-public spaces include:

- Back offices not accessible to court users[3] (Back offices where employees interact with court users only at a window unit that has glass or plexiglass covering the entire length of the window, with only a paper slot and/or "speak-thru" talking hole, are considered "not accessible to court users");
- Chambers;
- Robing rooms;
- Private hallways/corridors, i.e., those not normally accessible to court users;
- Private restrooms;
- Locker rooms;
- Conference rooms not accessible to court users; and
- Any other room not generally accessible to court users.

Participants will continue to be required to wear masks in public spaces in UCS courthouse and other facilities, including:

- Open courtrooms (when a courtroom is locked, e.g., before or after a session, and not accessible to court users, participants may remove their masks);
- Back offices regularly accessible to court users, including those back offices with a window unit without a full-length glass or plexiglass covering;
- Public hallways/corridors/lobbies;
- Holding areas; and
- Any room or location in which a court user is present.

In buildings shared by UCS judges and employees and other agencies, participants may remove their masks on floors or spaces normally frequented only by UCS staff. In shared locations of the building, such as a lobby, public bathroom or elevator, UCS staff must continue to wear a mask. If a court user comes into space normally frequented only by UCS staff, all UCS staff that come in contact with that court user must wear a mask for the duration the court user's stay in that space.

Additional Information

Judges and non-judicial personnel choosing not to participate must continue to wear masks in UCS courthouses and other facilities in compliance with the May 29, 2020 Memorandum – *Additional Safety and Operational Protocols* and the March 30, 2021 Memorandum – *Coronavirus – Updated Safety and Operational Protocols.*

All non-UCS court users, regardless of vaccination status, will continue to be required to wear a mask while in a UCS courthouse or other facility

[3] For the purpose of the Program, "court user" means any person other than a UCS judge or employee.

Participants must continue to follow all other safety and operational protocols.

The science and safety procedures surrounding the coronavirus continue to evolve, sometimes quite rapidly. As the Court System receives additional or modified guidance from the CDC and New York State, the rules of the Program may be modified.

EXHIBIT F

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

August 12, 2021

To: Administrative Judges

From: Nancy J. Barry
Justin A. Barry

Re: Updates to the Revised Mask Policy

As Hon. Lawrence Marks indicated today in his message to all judges and staff, the Centers for Disease Control and Prevention (CDC) recently revised its COVID-19 mask guidance in response to localized increases in coronavirus transmission. Under this new guidance, the CDC recommends that even fully vaccinated individuals wear a mask or face-covering indoors in public in areas of substantial or high transmission, based on a scale of low, moderate, substantial or high. As of today, the majority of New York State is currently listed as an area of substantial or high transmission.

In order to further our ongoing efforts to ensure the health and safety of all employees and court users and in keeping with our commitment to follow the most up to date guidance promulgated by public health authorities, effective Friday, August 13, 2021 and until further notice, the Unified Court System will temporarily suspend the green attorney/agency pass and white visitor pass program and require all court users, regardless of vaccination status, to wear a mask or face covering at all times while present in any of our court facilities. In addition, the orange card program for fully vaccinated judges and non-judicial staff will be modified to require that such card holders wear a mask or face covering in all public areas of the court or facility, as well as any areas and/or situations where physical distancing is not possible. Orange card holders will continue to be able to enter and remain in non-public areas of court facilities without wearing a mask/face covering, being mindful of physical distancing requirements.[1]

Uniformed staff will take steps to ensure any signage reflecting exemptions to mask requirements for fully vaccinated individuals is removed or otherwise not visible, as well as begin enforcing the suspension of the attorney/agency and visitor passes, i.e., masks/face coverings must be worn by court users at all times regardless of vaccination status.

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[1] Please see Nancy J. Barry's "Revised Mask Policy Program," dated June 14, 2021, for guidance on what constitutes a non-public area of a court facility.

Judges and non-judicial staff with orange cards may continue to enter courts/facilities without having to undergo a temperature screening and continue to be exempt from the daily COVID Self-Assessment. All other court users, including green card holders, must have their temperature taken and undergo the COVID screening before entry. All judges, nonjudicial staff and court users are reminded that they should not report to work or enter any court or facility if they are a "Person at Risk" as set forth in the "Coronavirus – International Travel and Updated Safety and Operational Protocols" memorandum, dated May 5, 2021.

As always, thank you for your patience, assistance and cooperation in addressing this ongoing public emergency. We have seen a great deal of successes in dealing with this crisis in the past months. The upswing in variant cases has led to updated CDC guidance and this response, seemingly on the heels of our general loosening of masking requirements. We continue to follow the latest public health guidance for the health and safety of the public and our colleagues, families and friends.

Stay well and stay safe.

cc: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Edwina G. Mendelson
Linda Dunlap-Miller
Scott Murphy
NYC Chief Clerks
District Executives
Chief Michael Magliano
Chief Howard Metzdorff
Lucian Chalfen
Jennifer DiLallo
Chief Sean Egan
Chief Michael Senese

EXHIBIT G

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Unvaxxed NY Judge Defies Courthouse Ban As Others Ousted

By **Frank G. Runyeon**

Law360 (January 20, 2022, 2:30 PM EST) -- An unvaccinated New York state judge barred from his courthouse over COVID-19 concerns has been violating court administrators' orders this month by repeatedly returning maskless while also conducting criminal arraignments by video.



Judge Frank M. Mora is seen in the Poughkeepsie City Court on Tuesday without a mask in violation of the state court's COVID-19 mandates.

The actions of Poughkeepsie City Court Judge Frank M. Mora underscore what critics deem a double standard favoring judges in the enforcement of COVID-19 rules. Even as state officials are poised to fire more than 320 unvaccinated court employees, they say they cannot formally discipline Judge Mora any more than they can Court of Appeals Judge Jenny Rivera, who has continued **handling cases remotely** despite flouting the vaccine mandate.

After refusing to be inoculated and failing to win an exemption this month, Judge Mora was ordered to stay home and preside over his cases remotely. But he returned to the courthouse on an almost daily basis, donning only a face shield, according to two people who work in the building and an attorney who saw him.

State court policy is that masks are mandatory in courthouses. Face shields do little to protect against COVID-19, according to the U.S. Centers for Disease Control and Prevention.

"It's a violation of our policy. You're not supposed to be there," said state courts spokesman Lucian Chalfen, speaking broadly about the policy for unvaccinated judges denied an exemption. "They are

not allowed into the courthouse, into their chambers, or any other nonpublic area."

And while certain criminal matters can be handled remotely by those judges, arraignments cannot be for constitutional and policy reasons, Chalfen said.

The judge directed Law360's inquiries to Chalfen, who declined to comment specifically on Judge Mora's behavior.

On Tuesday morning in Judge Mora's courtroom, he appeared via video link to arraign a young woman dressed in pink scrubs and yellow croc sandals on a single count of criminal mischief. He was later seen inside the courthouse, according to a source and a photograph of the judge taken after the hearing. The photograph shows the judge in the court's back offices not wearing a mask, holding a face shield in one hand and a stack of files in the other, which Mora later said were personal medical files.

It was one of at least four arraignments Judge Mora conducted by video this month, according to court records.

The Dutchess County Public Defender's Office first raised concerns about whether the judge had the authority to hear criminal cases remotely. In a Jan. 7 email to the supervising judge of the city court, the chief public defender for criminal cases said her office had "concerns regarding whether Judge Mora has express permission and authorization to do this."

The supervising judge replied that Judge Mora received special permission to preside over his cases virtually from home, according to the email chain obtained by Law360. But the supervisor did not respond to the public defender's question about whether Judge Mora was authorized to hear pleas.

It is unclear what consequences, if any, await Judge Mora for his actions. Only the New York State Commission on Judicial Conduct is empowered to discipline a state judge, and its investigations usually take more than a year while judges remain on the bench, often drawing six-figure salaries. State records show Judge Mora collected a nearly $190,000 salary in 2021.

Chalfen said "there are repercussions" for judges who flout the administration's orders, "which may well include a referral to the State Commission on Judicial Conduct."

Meanwhile, many nonjudicial employees who sought exemptions are now facing termination. One of them is a court officer who works in the same small courthouse as Judge Mora.

Jermaine Dublin is among 111 court officers statewide who are poised to lose their jobs after failing to get an exemption as of Jan. 13, a court system tally shows.

"The fact that our essential court officer could potentially lose his job over being denied an exemption from the vaccine, while there is no consequence for the judge for requesting the same exemption, exposes a major fallacy in the state's vaccine mandate policy," said Patrick Cullen, president of the New York State Supreme Court Officers Association. "There should not be one standard for judges and another standard for court employees."

Dublin did not respond to a request for comment.

Systemwide, 1,125 employees had requested medical or religious vaccine exemptions as of last week. Of the exemption requests that have been ruled on, about 38% have been denied. Nonjudicial employees have 10 days to comply before they are forced out of the workplace with their vacation days docked until they are terminated.

Unvaccinated employees with an approved exemption can continue working with mandated weekly testing.

Of the 19 judges who requested exemptions from the vaccine requirements, four have requests pending, 10 had exemptions granted, and five had them denied — including Judge Mora.

In the courthouse Tuesday, Judge Mora was told that the local jail remained on lockdown, with

inmates unable to make their mandatory in-person appearances because so many inside had contracted the virus. But the judge appeared to make light of the pandemic.

After the public defender indicated a defendant had tested positive and could not physically appear in the courtroom that day, Judge Mora joked, "Isn't it nowadays that everyone has COVID?"

As of that Tuesday, 35 people had died of COVID-19 in Dutchess County in January, according to county data compiled by The New York Times. Nine more died the next day.

A short while later, Judge Mora was photographed in the office without a mask.

--Editing by Alex Hubbard.

Update: This article has been updated to clarify when the judge was seen following the video arraignment and to include Judge Mora's description of the nature of the files he was seen holding.

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EXHIBIT H

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me and with the approval of the Chief Judge, to protect the health and safety of all judicial and non-judicial personnel, all court users, and the general public from the ongoing COVID-19 pandemic, I hereby direct that all judicial and non-judicial personnel of the Unified Court System comply with the Testing and Mandatory Vaccination Requirements detailed in the memoranda attached hereto as Attachments 1 through 5.

Chief Administrative Judge of the Courts

Dated: September 23, 2021

AO/275/2021

ATTACHMENT

1

State of New York
Unified Court System

Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

August 18, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: COVID-19 Testing Program

As was previously announced, the Unified Court System will be implementing a mandatory weekly COVID-19 testing program for judges and court employees. This new program is fully consistent with the steps that public and private organizations have been taking in New York and across the country.

The mandatory testing program will begin on September 7, 2021. The following are the key elements of the program:

- All judges who are fully vaccinated and who have enrolled in the court system's mask policy program and been issued an orange card are exempt from the mandatory testing program. Fully vaccinated judges who have not enrolled in the program may do so at any time, but to be exempt from the program on the date of implementation (September 7) they must do so by September 3, 2021. Click on the following link for instructions on enrolling in the mask policy program https://nycourts.sharepoint.com/sites/COVID-19/CPV

- Judges not enrolled in the mask policy program must submit proof each week that they have received a COVID-19 test.

- Judges may obtain their COVID-19 test at any licensed facility and should request a proof of test. Locations, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Judges will find a variety of

community testing resources in their areas that are widely available and frequently free of charge.[1] Tests may be either rapid or PCR. At-home tests may not be used.

- Proof of the test conducted by the medical health provider must be uploaded to the UCS Mandatory Testing Program SharePoint site on the day the test was taken. Instructions on accessing and uploading proof of testing will be provided in a separate memorandum that will be distributed prior to the start of the mandatory testing program.

- Judges who work any portion of a workweek must submit proof of testing. Judges on leave for one week or longer are not required to submit proof of testing.

- Judges who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace (e.g., they are likely to test positive because of a recent infection but are no longer contagious) must submit to their Administrative Judge a letter from the medical health provider stating the reason for the determination and how long the restriction is expected to continue.

- While judges are not required to report the results of their test each week, they must continue to follow current UCS protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19. Please note that judges who have COVID-19 symptoms (cough, sore throat, shortness of breath or temperature of 100° or higher) should remain at home even if they receive a negative result from a COVID-19 test.

As circumstances and conditions relating to the coronavirus pandemic continue to evolve, it may be necessary to modify these policies. In the meantime, thank you for your cooperation with our guidance and protocols. This has greatly contributed to keeping judges, their colleagues and all who work and conduct business in our facilities safe and healthy.

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

ATTACHMENT

2

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

August 18, 2021

To: All Non-Judicial Staff

From: Nancy J. Barry
Justin a. Barry

Re: Mandatory Testing Program

In order to maintain the safest environment for everyone who works and conducts business in our court facilities, as previously announced, the Unified Court System will implement a mandatory weekly COVID-19 testing program. Because the Centers for Disease Control and Prevention (CDC) continues to advise that COVID-19 vaccinations protect people from getting sick or severely ill and may also protect people around them, all fully vaccinated judges and non-judicial employees, who have enrolled in the Revised Mask Policy Program and submitted proof of vaccination, will be exempt from this testing program.

This mandatory testing program will commence on September 7, 2021.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Exemption

All non-judicial personnel who have provided proof of vaccination in order to receive an orange card by enrolling in the Unified Court System's (UCS) Revised Mask Policy Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021 for eligibility, enrollment and program description) are exempt from this weekly testing mandate.

Employees may enroll in the orange card program at any time but in order to be exempt from the testing mandate on the date of implementation, they must submit proof of full vaccination by

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September 3, 2021. (Note: Employees will shortly be able to submit proof of vaccination and opt not to receive an orange card).

Mandatory Testing Procedure

Employees must submit proof each week that they have received a COVID-19 test. Personnel will coordinate with their supervisor to schedule a one-hour period during their regularly scheduled workweek in which they will be granted excused leave so that the employee may get a rapid or PCR test. Employees may have the test administered after work hours, but they will not be granted leave or compensatory time, if they choose this option.

Personnel may obtain their test at any licensed medical facility and should ask for a proof of test with the date the test was administered (result is not required). Location, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Employees may find a variety of community testing resources at these websites in their areas, which are widely available and many free of charge.[1] Please note that some testing facilities require appointments, and it is the responsibility of the employee to find appointments during their scheduled weekly testing hour or, if unavailable, coordinate an alternate time during the workweek with their supervisor. Use of at-home tests are not permitted for the purposes of UCS' testing requirement.

Proof of the test provided by the medical health provider administering the procedure should be uploaded to the UCS Mandatory Testing Program Share Point site the same day the test was taken but no later than the next business day. Employees who have not been issued individual desktop or laptop computers may upload the proof of test to the Share Point site using a personal mobile device using their CourtNet identification and password or will be given access to do so on a court-issued computer.[2]

Every morning, the Office of Court Administration's Division of Technology will provide each Kronos supervisor and/or a designated court manager with lists of their employees to compare with their employees' scheduled test hours. These lists will permit the supervisors to review and approve submitted testing documentation.

Those employees who do not submit proof of test to the Share Point site and who have not coordinated an alternate testing date/time within that same week will be designated as unfit for service and will not be permitted to report to work. Employees designated as unfit for service may

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

[2] Instructions on accessing and uploading proof of testing to the UCS Mandatory Testing Program Share Point site will be sent under a separate memorandum.

charge annual or compensatory leave accruals. Employees without annual or compensatory leave will have their pay docked.[3]

Personnel who work any portion of a workweek must submit proof of testing. Individuals on extended leave are not required to submit proof of test until they return to work. (Extended leave is defined, in this context, as any leave in which an employee does not report to work during all of a particular workweek).

Exceptions

Those employees, who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace, e.g., they are likely to test positive because of a recent infection but they are no longer contagious, must submit a letter from that medical health provider to their chief clerk or human resources professional indicating the reason for that determination and how long that restriction is expected to extend. Upon review and approval, that employee will not be required to submit proof of testing for the period prescribed by the medical health provider.

Positive Tests

While personnel are not required to report the results of their test each week, they must continue to follow the most current protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19 (See Nancy Barry's memorandum, "Coronavirus – Updated Safety and Operational Protocols Related to International Travel, dated May 11, 2021). Please note that all employees who have COVID-19 symptoms (cough, sore throat, shortness of breath, or temperature of 100.0 or higher) should remain at home even if they have received a negative result on a COVID-19 test.

Additional Information

Non-judicial personnel are reminded that compensatory time is available to any employee who submits proof of vaccination appointment(s).

Non-judicial personnel must continue to follow all other safety and operational protocols.

The science and safety procedures surrounding the coronavirus continue to evolve, sometimes quite rapidly. As the Court System receives additional or modified guidance from the CDC and New York State, these policies may be modified.

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[3] If an employee experiences technical difficulty uploading proof of test to the Share Point site, they should notify their supervisor and submit the proof of testing in person either by the end of their shift or on the next day they report to work.

We are deeply grateful to staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves, their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. Vito Caruso
Hon. George Silver
Hon. Edwina Mendelson
Administrative Judges
Linda Dunlap-Miller
Scott Murphy
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT

3

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 1, 2021

To: All Judges and Non-Judicial Staff

From: Nancy J. Barry
Justin Barry

Re: Mandatory Testing Program – Supplemental Information

As announced last month, the Unified Court System will begin its mandatory COVID-19 testing program on September 7, 2021. Fully vaccinated judges and nonjudicial employees, who have submitted proof of vaccination *via* the Revised Mask Policy ("Orange Card") Program will be exempt from this testing program.

As promised, this memorandum will offer detailed information on how judges and employees will submit proof of testing and supplemental information on other aspects of the program.

A copy of the August 18, 2021 memorandum is attached for your information.

Mandatory Testing Procedure

1. Exemption

   To be exempt from weekly testing, judges and nonjudicial employees must submit proof of full vaccination using the UCS share point site – https://nycourts.sharepoint.com/sites/COVID-19/CPV. Individuals uploading proof of vaccination may now select whether they wish to be issued an orange card. The share point site will email confirmation to the applicant when the proof of vaccination is submitted and when it has been approved. Judges and nonjudicial employees must submit proof of fully vaccinated status by the close of business on September 3, 2021. Any judge or nonjudicial employee who has not received an email confirming that their proof of vaccination has been approved by the close of business on September 7, 2021 will be required to begin weekly COVID-19 testing the week of September 13, 2021, as explained further below.

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Nonjudicial employees that received paid leave and/or Compensatory Time ("CT") for attending vaccination appointments are still required to upload proof of fully vaccinated status through the share point site in order to be exempt from weekly testing. Under no circumstances will employees who received paid leave and/or CT for attending vaccination appointments be granted paid leave for purposes of weekly testing.

2. Start of Testing Program

The weekly testing program starts on September 7, 2021. On September 7, 2021 every Kronos supervisor, Administrative Judge and Supervising Judge ("supervisor") will receive an email with a link to the UCS Employee Web Portal ("Portal") which will contain a list of all of the judges or employees ("participants") under their supervision who must submit weekly proof of COVID tests. (Again, judges and nonjudicial employees who have submitted an approved proof of vaccination will be excluded from this list).

While participants will not be required to submit proof of testing during the week of September 7, 2021, they should use this time to coordinate a time with their supervisor to be tested during their regular work hours in the workweek that follows, i.e. the week starting September 13, 2021. Nonjudicial employees will be provided with one (1) hour of paid leave without charge to accruals each week for purposes of undergoing this testing.

Participants must upload proof of testing within one workday from the day they were tested. Supervisors will need to check the Portal each workday to ensure each participant has timely submitted proof of testing.

3. Supervisor Scheduling

Supervisors will be responsible for ensuring that all participants on their September 7, 2021 "Portal" list have coordinated/scheduled a date and time to undergo testing during the week that follows.

To the extent practicable, and subject to the operational needs of the court and the availability of testing appointments, the supervisor and participant may want to coordinate/schedule a set day and time each week for the participant to undergo testing, i.e., establish a recurring testing hour each week. Supervisors should be flexible, where possible, to accommodate a participant's scheduled or unscheduled leave or available testing appointments.

Nonjudicial employees are entitled to one (1) hour of excused leave per week which will be granted upon substantiating that testing was conducted on the date the employee was released from work for their test. Supervisors will make every effort to coordinate/ schedule release time at a mutually convenient time, taking into consideration that some

employees may wish to be tested at a location near their home while others may find it easier to be tested near their workplace.

In order to ensure adequate release time, participants should make every effort to schedule and/or request their one-hour of excused leave with their supervisor by the Wednesday preceding each testing week, e.g., by Wednesday, September 8, 2021 for testing the following week. Supervisors should note and/or keep track of each participant's scheduled hour (by calendar or some other method) that will allow them to confirm that the participant is released for testing and that proof of testing is timely uploaded thereafter.

Nonjudicial employees that are overtime eligible, i.e., required to swipe in/out at the beginning and end of their shift should follow the normal rules for appointments during the workday. That is, only if the employee is not expected to return to work following their test are they required to swipe out, e.g., an overtime eligible employee with regular hours of 9:00 AM to 5:00 PM that is scheduled for a 4:00 PM test is not expected to return to work and therefore, must swipe out when leaving for their test/appointment.

4. Submitting Proof of Test

Upon completion of the test, each participant should be sure to obtain an electronic confirmation (pdf or jpeg) or paper document from the testing facility indicating that they took the test with the date, time, location and facility information. The participant must upload a copy of that confirmation using the Portal, which is accessible anywhere from any device using the following URL - https://portal.nycourts.gov/ucsmtp/.

Upon clicking the Portal URL, the participant will be asked for their UCS user id and password (same user id and password used for Kronos and Outlook) and the date and time of their test for that week. At the bottom of the Portal page, the participant will upload a digital image of their proof of test which must include the location, date, time and type of test.[1]

Instructions for using the Portal in every operating system are contained on the Portal upload page. Nonjudicial employees that do not have regular access to a UCS computer and do not wish to use their personal mobile device to upload proof of testing may request access to a computer at their worksite from their supervisor.

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[1] Acceptable tests include PCR, RT-PCR, ddPCR, Rapid PCR (Polymerase Chain Reaction), NAA / NAAT (Nucleic Acid Amplification), AMP PRB (Amplified Probe), LAMP (Loop-mediated Isothermal Amplification), TMA (Transcription-mediated Amplification), Molecular test brands, such as, but not limited to: Abbott ID NOW, Quidel Lyra PCR, Abbott Realtime PCR, Cobas Qualitative PCR, FTD PCR, Xpert Xpress and Simplexa Direct PCR.

Unacceptable tests include all Antigen (Ag) tests (including Quidel Sophia, Abbott BinaxNOW and Rapid Antigen Tests), all Antibody tests (such as IgG, IgA, IgM and Rapid Antibody Tests), all blood tests (such as fingerstick, venipuncture), all plasma tests, all serum tests and all lateral flow tests.

5. Supervisor Review

Each morning at 10:00 AM, supervisors will receive a combined COVID Self-Assessment and COVID Test Advisory email with a link. The link will take the supervisor to the Portal which will indicate which participants have completed their daily self-assessment and which participants uploaded their proof of test on the previous day.

The supervisor should then compare their participants' schedule of tests for that week to ensure the participants have completed the test as scheduled.

If a participant does not submit a proof of test within one workday of the scheduled hour for that week but reports a valid reason why he/she was unable to submit his/her proof of testing (e.g., the pharmacy canceled their appointment, there was technical trouble uploading the proof, they were sick on the day of the appointment), the supervisor should exercise reasonable discretion in permitting the participant an additional opportunity to be tested and/or upload proof of testing during that workweek.

If the employee does not present mitigating circumstances and/or refuses to comply, the matter must be referred to the District Executive or NYC Chief Clerk, who should exclude the employee from the workplace for their failure to comply with the testing program. As is the case with employees who do not comply with UCS screening and/or self-assessment protocols, employees that are excluded from the workplace for failure to comply with the testing program may be considered absent without authorization for which approval to charge accruals may be denied.

6. Additional Information

Participants can find locations, times and descriptions of testing sites at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Testing sites are widely available and many are free of charge. It is the responsibility of each participant to find a location near their home or workplace and schedule their testing time with their supervisor.

As the testing program is rolled out in September, employees should bring any concerns or difficulties that they face regarding testing to their supervisor, who will in turn forward them to the appropriate District Executive or NYC Chief Clerk. The District Executive and NYC Chief Clerks will collect any concerns or difficulties experienced in their District or Court and refer them to the appropriate Deputy Chief Administrative Judge ("DCAJ"). The DCAJ should forward all such concerns or difficulties to OCA Human Resources for further review/consideration.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT
4

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

September 10, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: Mandatory COVID-19 Vaccination Program

As previously announced, the Unified Court System will require all judges and employees to obtain and submit proof of COVID-19 vaccination by **September 27, 2021** or submit and obtain an approval for a medical or sincerely-held religious exemption.

The program is outlined in this memorandum.

Vaccinations

- All judges must submit proof that they are fully vaccinated for COVID-19. Full vaccination is defined as:

  - Two weeks after a second dose of a two-dose series, such as the Pfizer or Moderna vaccines; or
  - Two weeks after a single-dose vaccine, such as the Johnson and Johnson vaccine.

- Judges must provide proof of vaccination by enrolling in the UCS Revised Mask Policy ("Orange Card') Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021). This proof should be submitted through the UCS SharePoint site at https://nycourts.sharepoint.com/sites/COVID-19/CPV

- Judges must submit proof of at least one dose of a COVID-19 vaccine by September 27, 2021. Those judges who received a vaccine with a two-dose series will be expected to receive and submit proof of the second shot within the medically recommended timeframe.

- Judges who have submitted proof of vaccination by September 27, 2021 but are not yet fully-vaccinated because they must receive a second dose and/or they have to wait an

additional two weeks after their last dose, must continue to submit proof of weekly COVID-19 testing until they are fully-vaccinated.

Exemptions

- Exemptions to the mandatory vaccination requirement will be considered for judges with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and judges with sincerely-held religious beliefs and practices that prohibit them from being vaccinated.

- Judges must apply for an exemption by September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). Completed exemption forms must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading the exemption requests are contained on the portal which will "go live" on September 20, 2021.

- Applications for medical exemptions must be accompanied by documentation from the judge's medical health professional.

- Applications for religious exemption must contain the judge's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination.

- Judges submitting an exemption application will be notified of the decision as soon as practicable. In the alternative, the judge may be notified that more information may be required to process the exemption application.

- Judges whose requests for medical or religious exemption are granted will receive a notification that includes the expiration date of the exemption and notice that they will have to submit weekly proof of testing.

- Those judges whose requests for medical or religious exemption are denied will receive a notification and will have ten business days from the date of the notification to submit proof of their first vaccination. They must subsequently show proof of full vaccination within the medically recommended timeframe.

Weekly Testing

- Judges who fall into the following categories must provide weekly proof of COVID-19 testing:

- Judges who are waiting to receive a second dose of vaccine or are waiting for two weeks after the final shot in a vaccine series;
- Judges who have received an approved religious or medical exemption; or
- Judges who have submitted a request for medical or religious exemption but have not yet received approval.

As circumstances and conditions relating to the pandemic continue to evolve it may be necessary to modify these policies. Thank you for your cooperation with these and other policies. Please be reminded that they are designed to maintain a safe environment for all who work, practice, visit or are otherwise required to enter our facilities.

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR MEDICAL EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting qualified individuals with underlying medical conditions. Upon request, UCS will grant a medical exemption for individuals with underlying medical conditions that makes receiving the COVID-19 vaccine unsafe for them. To request a medical exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form; have a licensed health care provider, not related to the applicant, whose specialty is appropriate to the associated medical condition, prepare the **Certification of Licensed Health Care Provider** form; and return the form, along with any such additional documentation as may be necessary to support the request, to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Medical exemptions are intended for those with underlying medical conditions that render the COVID-19 vaccine unsafe for them.

For the current year, requests for medical exemptions must be received by September 27, 2021. The expiration of the exemption will be based upon the Certification of the Licensed Health Care Provider, which date will be noted in the UCS Approval, but shall be no longer than one year. Individuals may request to renew exemptions upon the expiration of such Approval, but annually no later than October 1 for each year.

Individuals who have timely submitted a request for a medical exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for medical exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals whose requests are denied are permitted to reapply if new documentation and information is later available in support of a new application for medical exemption.

If a judge or employee refuses to provide the information necessary for UCS to review and consider the request for medical exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Medical exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the **Verification and Accuracy** statement;
- Have your Licensed Health Care Provider complete the **Certification of Licensed Health Care Provider** form;
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

In some cases, UCS will need to obtain additional information and/or documentation about your medical condition in support of the request for medical exemption.

STATEMENT OF MEDICAL CONDITION
FOR EXEMPTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I sincerely certify that my medical condition makes it unsafe for me to receive a COVID-19 vaccination, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I certify that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my current medical condition.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.
	I authorize my licensed health care provider to provide UCS with personal health information about my medical condition related to this request for exemption from COVID-19 vaccination and to provide UCS with a Certification of Licensed Health Care Provider. I acknowledge that I may be required to provide additional medical documentation in support of my request for medical exemption.

Verification and Accuracy

I verify that the information I am submitting in support of my request for a medical exemption to the COVID-19 vaccination is true, accurate, and complete to the best of my knowledge. I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Name: _____

Primary Email: _____

Phone: _____

Signature: _____

Date: _____

New York State Unified Court System

Certification of Licensed Health Care Provider

For Request for Medical Exemption from COVID-19 Vaccine

The New York State Unified Court System (UCS) requires all employees to be fully vaccinated for COVID-19.

My patient, _____, is submitting a request for a medical exemption from this COVID-19 vaccination requirement.

In support of that medical exemption, my patient voluntarily requests and authorizes me to prepare this Form, and to provide UCS with personal health information about the patient's medical condition(s) related to this request, including supporting documentation regarding the medical reason that vaccination is contraindicated to the patient's medical condition(s) that render the vaccine unsafe for the patient at this time.

Option 1 - Allergy

☐ A documented history of a severe allergic reaction to any component of a COVID-19 vaccine or to a substance that is cross-reactive with a component. Please specify the allergic components of **ALL** the following vaccines.

NOTE: since egg-free vaccine is available, history of an egg allergy will not be accepted as an allergic reaction to a COVID component.

- Moderna - List the allergic component(s):
- Pfizer - List the allergic component(s):
- Janssen/Johnson & Johnson - List the allergic component(s):

☐ A documented history of a severe allergic reaction after a previous dose of the COVID-19 vaccine. Please indicate to which vaccine the patient had a reaction, the date of the vaccine, and the severe reaction:

- Moderna - Date of Vaccine & Reaction:
- Pfizer - Date of Vaccine & Reaction:
- Janssen/Johnson & Johnson - Date of Vaccine & Reaction:

Option 2 - Physical Condition/Medical Circumstance

☐ The physical condition or medical circumstances of the patient that render vaccination unsafe or contraindicate COVID-19 vaccination are as follows:

Probable time the physical condition or medical circumstances is expected to render vaccination unsafe or contraindicated to COVID-19 vaccination is: _____

Health Care Provider Certification

I certify that the information contained herein is true, accurate, and complete and I support the patient's request for a medical exemption from the COVID-19 vaccine requirement of UCS.

Health Care Provider Name: _____

Practice/Specialty: _____

License Number: _____

Address: _____

Telephone Number: _____

Email: _____

Signature: _____

Date: _____

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting religious beliefs and practices. Upon request, UCS will grant a religious exemption for sincerely held religious beliefs and practices which prohibit a judge or employee from receiving a COVID-19 vaccine. To request a religious exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form and return it, along with the "Affidavit of Religious Objection to COVID-19 Vaccination", "Personal Statement Form" and such additional documentation as may be necessary/appropriate to support the request to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

For the current year, requests for religious exemptions must be received by September 27, 2021. If approved, the exemption will remain in effect through September 30, 2022. Individuals with approved exemptions may request to renew exemptions annually no later than October 1 for each year.

Individuals who have timely submitted a request for a religious exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for religious exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

If a judge or employee refuses to provide the information necessary for UCS to review and consider their request for religious exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Religious exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete the **Affidavit of Religious Objection to COVID-19 Vaccination;**
- Complete the **Personal Statement Form;**
- Sign before a Notary Public;
- Attach such additional documentation about your faith/beliefs which are contrary to vaccination, including but not limited to the COVID-19 vaccination, as necessary/appropriate to support your request; and
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

Your request must be accompanied by the signed and notarized "**Affidavit of Religious Objection to COVID-19 Vaccination**" **and** "**Personal Statement Form**" (attached below). In some cases, UCS will need to obtain additional information and/or documentation about your sincerely held religious practice(s) or belief(s). UCS may need to discuss the nature of your religious belief(s)/practice(s) with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exemption.

(Proceed to Following Pages for Affidavit of Religious Objection to COVID-19 Vaccination and Personal Statement)

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I swear or affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I swear or affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

I swear or affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: _____

Print Name: _____

Email: _____

Phone: _____

Sworn and subscribed before me

This _____ day of_____, 2021

_____

Notary Public

My commission expires: _____

ATTACHMENT
5

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 10, 2021

To: All Non-Judicial Personnel

From: Nancy J. Barry
Justin Barry

Re: Mandatory Vaccination Requirement

As previously announced, the Unified Court System will require all judges and non-judicial personnel to be vaccinated by September 27, 2021, unless otherwise approved for an exemption due to medical reasons or sincerely held religious beliefs, as explained more fully below.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Proof of Vaccination

All non-judicial personnel must be fully vaccinated against COVID-19 by September 27, 2021, or as soon thereafter as medically practicable provided they have received at least one dose of a COVID-19 vaccine by such date.[1]

To this end, no later than September 27, 2021, all non-judicial personnel must either submit proof that they: (1) are fully vaccinated; or (2) have received at least one dose of any COVID-19 vaccine. This proof must be submitted through the UCS SharePoint site https://nycourts.sharepoint.com/sites/COVID-19/CPV as outlined in Section (1) of our September 1, 2021 Memorandum (Mandatory Testing Program – Supplemental Information).

[1] Fully vaccinated is defined as: two weeks after receiving a second dose of a two-dose vaccine, such as the Pfizer or Moderna vaccines; or two weeks after receiving a single-dose vaccine, such as the Johnson and Johnson vaccine.

Acceptable proof of having received at least one dose of a COVID-19 vaccine is a copy of the front **and** back of the employee's vaccination card. For fully vaccinated employees, a screenshot of the employee's Excelsior Pass is also acceptable. Those employees, who submit proof of having received their first dose of a two-dose vaccine, will be required to submit proof of having received the second dose within the medically recommended timeframe, i.e., typically 3 weeks from the first dose, using the same UCS SharePoint site referenced above.

Employees, who have submitted proof of vaccination by September 27, 2021 but are not yet fully vaccinated because they must receive a second dose and/or they must wait an additional two weeks after their last dose, will be subject to the Mandatory Testing Program until such time as they are fully vaccinated.

Exemptions

Exemptions to the mandatory vaccination requirement will be considered for employees with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and employees with sincerely held religious beliefs and practices that prohibit them from receiving a COVID-19 vaccine.

Employees seeking a medical or religious exemption to vaccination must submit their request by 5:00 p.m. on September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). The completed Exemption Request Form must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading these Forms will be available on the Portal, which will "go live" on September 20, 2021.

No exemption requests will be considered unless they are fully completed on the appropriate form and filed through the Portal.

Applications for medical exemptions must be accompanied by documentation from the employee's medical health professional. Applications for religious exemption must contain the employee's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination. Employees submitting an exemption application will be notified, in writing, of the decision [which, if granted, will include the expiration date of the exemption] or, that more information is needed in order to consider the employee's request for an exemption, as soon as practicable after their request is filed.

Employees who timely file a request for exemption will be subject to the Mandatory Testing Program while their request is being reviewed. Those employees who are granted a medical or religious exemption to vaccination will be subject to the Mandatory Testing Program during the specified exemption period.

An employee who receives written notice that their request for medical or religious exemption was denied will have ten workdays from the date of the notification to submit proof of having received

at least one dose of a COVID-19 vaccine and must otherwise comply with the provisions set forth in "Proof of Vaccination" above.

Non-Compliance

Employees who fail to comply with the provisions of this Policy are prohibited from reporting to work and may be considered absent without authorization for which approval to charge accruals may be denied, until they have taken steps to remedy their non-compliance. Continued failure to comply may result in disciplinary action, up to and including termination.

Additional Information

Non-judicial personnel are reminded that they are eligible for Excused Leave and/or Compensatory Time for becoming vaccinated (up to 3.5 hours per appointment upon submission of the requisite proof of same).

Non-judicial personnel must continue to follow all other safety and operational protocols.

We are deeply grateful to our staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves, their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

EXHIBIT A

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR MEDICAL EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting qualified individuals with underlying medical conditions. Upon request, UCS will grant a medical exemption for individuals with underlying medical conditions that makes receiving the COVID-19 vaccine unsafe for them. To request a medical exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form; have a licensed health care provider, not related to the applicant, whose specialty is appropriate to the associated medical condition, prepare the **Certification of Licensed Health Care Provider** form; and return the form, along with any such additional documentation as may be necessary to support the request, to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Medical exemptions are intended for those with underlying medical conditions that render the COVID-19 vaccine unsafe for them.

For the current year, requests for medical exemptions must be received by September 27, 2021. The expiration of the exemption will be based upon the Certification of the Licensed Health Care Provider, which date will be noted in the UCS Approval, but shall be no longer than one year. Individuals may request to renew exemptions upon the expiration of such Approval, but annually no later than October 1 for each year.

Individuals who have timely submitted a request for a medical exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for medical exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals whose requests are denied are permitted to reapply if new documentation and information is later available in support of a new application for medical exemption.

If a judge or employee refuses to provide the information necessary for UCS to review and consider the request for medical exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Medical exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the **Verification and Accuracy** statement;
- Have your Licensed Health Care Provider complete the **Certification of Licensed Health Care Provider** form;
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

In some cases, UCS will need to obtain additional information and/or documentation about your medical condition in support of the request for medical exemption.

STATEMENT OF MEDICAL CONDITION
FOR EXEMPTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I sincerely certify that my medical condition makes it unsafe for me to receive a COVID-19 vaccination, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I certify that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my current medical condition.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.
	I authorize my licensed health care provider to provide UCS with personal health information about my medical condition related to this request for exemption from COVID-19 vaccination and to provide UCS with a Certification of Licensed Health Care Provider. I acknowledge that I may be required to provide additional medical documentation in support of my request for medical exemption.

Verification and Accuracy

I verify that the information I am submitting in support of my request for a medical exemption to the COVID-19 vaccination is true, accurate, and complete to the best of my knowledge. I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Name: _____

Primary Email: _____

Phone: _____

Signature: _____

Date: _____

New York State Unified Court System

Certification of Licensed Health Care Provider

For Request for Medical Exemption from COVID-19 Vaccine

The New York State Unified Court System (UCS) requires all employees to be fully vaccinated for COVID-19.

My patient, _____, is submitting a request for a medical exemption from this COVID-19 vaccination requirement.

In support of that medical exemption, my patient voluntarily requests and authorizes me to prepare this Form, and to provide UCS with personal health information about the patient's medical condition(s) related to this request, including supporting documentation regarding the medical reason that vaccination is contraindicated to the patient's medical condition(s) that render the vaccine unsafe for the patient at this time.

Option 1 - Allergy

☐ A documented history of a severe allergic reaction to any component of a COVID-19 vaccine or to a substance that is cross-reactive with a component. Please specify the allergic components of **ALL** the following vaccines.

NOTE: since egg-free vaccine is available, history of an egg allergy will not be accepted as an allergic reaction to a COVID component.

- Moderna - List the allergic component(s):
- Pfizer - List the allergic component(s):
- Janssen/Johnson & Johnson - List the allergic component(s):

☐ A documented history of a severe allergic reaction after a previous dose of the COVID-19 vaccine. Please indicate to which vaccine the patient had a reaction, the date of the vaccine, and the severe reaction:

- Moderna - Date of Vaccine & Reaction:
- Pfizer - Date of Vaccine & Reaction:
- Janssen/Johnson & Johnson - Date of Vaccine & Reaction:

Option 2 - Physical Condition/Medical Circumstance

☐ The physical condition or medical circumstances of the patient that render vaccination unsafe or contraindicate COVID-19 vaccination are as follows:

Probable time the physical condition or medical circumstances is expected to render vaccination unsafe or contraindicated to COVID-19 vaccination is: _____

Health Care Provider Certification

I certify that the information contained herein is true, accurate, and complete and I support the patient's request for a medical exemption from the COVID-19 vaccine requirement of UCS.

Health Care Provider Name: _____

Practice/Specialty: _____

License Number: _____

Address: _____

Telephone Number: _____

Email: _____

Signature: _____

Date: _____

EXHIBIT B

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting religious beliefs and practices. Upon request, UCS will grant a religious exemption for sincerely held religious beliefs and practices which prohibit a judge or employee from receiving a COVID-19 vaccine. To request a religious exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form and return it, along with the "Affidavit of Religious Objection to COVID-19 Vaccination", "Personal Statement Form" and such additional documentation as may be necessary/appropriate to support the request to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

For the current year, requests for religious exemptions must be received by September 27, 2021. If approved, the exemption will remain in effect through September 30, 2022. Individuals with approved exemptions may request to renew exemptions annually no later than October 1 for each year.

Individuals who have timely submitted a request for a religious exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for religious exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

If a judge or employee refuses to provide the information necessary for UCS to review and consider their request for religious exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Religious exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete the **Affidavit of Religious Objection to COVID-19 Vaccination;**
- Complete the **Personal Statement Form;**
- Sign before a Notary Public;
- Attach such additional documentation about your faith/beliefs which are contrary to vaccination, including but not limited to the COVID-19 vaccination, as necessary/appropriate to support your request; and
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

Your request must be accompanied by the signed and notarized "**Affidavit of Religious Objection to COVID-19 Vaccination**" and "**Personal Statement Form**" (attached below). In some cases, UCS will need to obtain additional information and/or documentation about your sincerely held religious practice(s) or belief(s). UCS may need to discuss the nature of your religious belief(s)/practice(s) with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exemption.

(Proceed to Following Pages for Affidavit of Religious Objection to COVID-19 Vaccination and Personal Statement)

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I swear or affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I swear or affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

I swear or affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: _____

Print Name: _____

Email: _____

Phone: _____

Sworn and subscribed before me

This ____ day of_____, 2021

_____

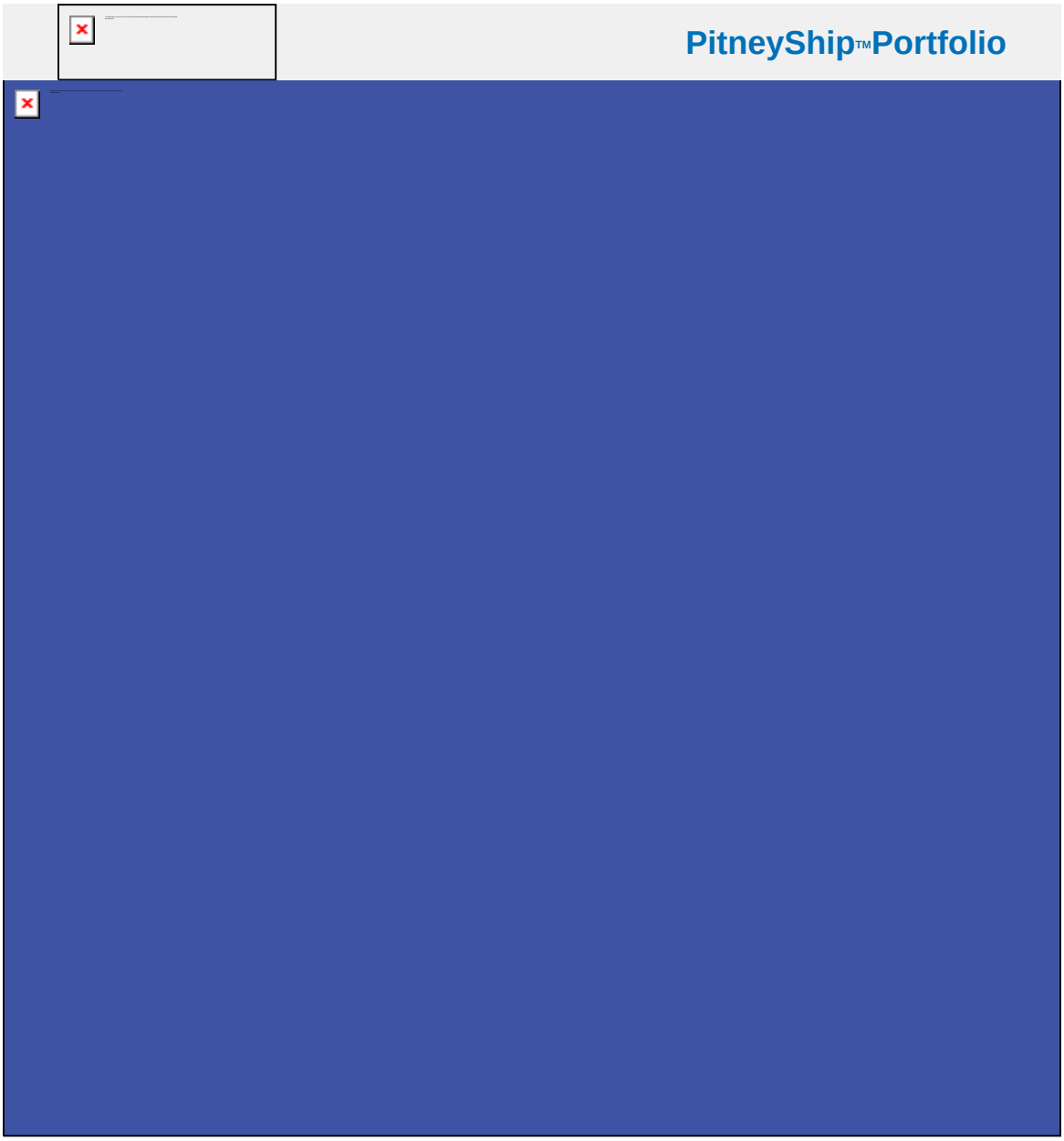
Notary Public

My commission expires: _____

Laura Soto

From: no-reply@sendpro360.pitneybowes.com
Sent: Tuesday, April 19, 2022 7:38 AM
To: Laura Soto; Laura Soto; Laura Soto
Subject: Shipment Delivered

Follow Up Flag: Follow up
Flag Status: Flagged



Shipment Delivered - USPS111146763198977

This shipment has been sent using PitneyShip™Portfolio

TRACKING NUMBER	DELIVERED ON
USPS 9402809202121597614608	2022-04-13

Delivered on	2022-04-13
Delivery Location	62 Civic Center Plz Poughkeepsie NY 12601-2411 US
Shipped on	2022-04-12
Carrier	USPS
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COMMISSION EXHIBIT 9

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff(s),

-against-

STACEY KOCH

Defendant(s).

Index No. [type in Index No]

Summons

Date Index No. Purchased:

To the above named Defendant(s)

Stacey Koch
27 Davis Avenue
Poughkeepsie, NY 12603

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the County of Dutchess
which is where Plaintiff and Defendant reside

Dated: Goshen, NY
December 21, 2022

Sussman & Associates
by
Michael H. Sussman
Attorneys for Plaintiff
Frank Mora
Sussman & Associates
1 Railroad Ave - Suite 3
PO Box 1005
Goshen, NY 10924

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Index No.

----------x

FRANK MORA,

Plaintiff,

vs.

STACEY KOCH,

Defendant.

VERIFIED COMPLAINT

----------x

PRELIMINARY STATEMENT

This is a defamation claim arising from the false and damaging statements written by defendant concerning plaintiff, a sitting Judge, to the New York State Commission on Judicial Conduct. Through her false and libelous statements, defendant intentionally sought to imperil and jeopardize plaintiff's ability to practice his profession and has caused plaintiff substantial emotion distress and humiliation.

PARTIES

1. Plaintiff Frank Mora is a resident of the City of Poughkeepsie, County of Dutchess and is a person of legal age who may sue and be sued.

2. Defendant Stacey Koch is a person of legal age who lives in the City of Poughkeepsie, works in the County of Dutchess, is of legal age and may sue and be sued.

JURISDICTION

3. The events giving rise to this Verified Complaint arose in the County of Dutchess as and between residents of this County and the sum in controversy is in excess of the jurisdiction of any inferior court. Accordingly, this Honorable Court has jurisdiction over this matter.

AS AND FOR A FIRST CAUSE OF ACTION

4. On December 28, 2021, within the last year, plaintiff brought one of his sons to Seeta Eye, an ophthalmology office in the County of Dutchess.

5. Defendant Koch was the office manager of Seeta Eye at the time and was at work when plaintiff entered the business with his son.

6. Plaintiff had a patient/provider relationship with Seeta Eye and known defendant Koch for more than twenty years.

7. Earlier in 2021, when visiting Seeta Eye, plaintiff explained that he did not medically tolerate face masks and wore a shield.

8. He was then permitted to enter the waiting room/reception area with his face shield to pay for medical services which one of his sons received.

9. On December 28, 2021, plaintiff again attended to the reception area wearing a face shield with another son.

10. A receptionist asked him to put on a mask and plaintiff advised he could not do so.

11. The receptionist asked plaintiff to speak with Ms. Koch, the office manager, and she then called Ms. Koch.

12. Upon her arrival, Ms. Koch demanded that plaintiff don a mask even though earlier in 2021, he had explained to her that he was unable medically to tolerate a mask; when he began to again explain why he could not do so, Koch began yelling at plaintiff in a rude and disrespectful manner.

13. Koch demanded that plaintiff provide medical documentation of his incapacity to wear a mask.

14. Such a demand of a patient was unlawful [under Interim Guidance provided by the Governor's office on April 17, 2020].

15. After Ms. Koch continued yelling and screaming at plaintiff, she called the police.

16. After calling the police, defendant claimed that it was plaintiff who was upsetting other patients.

17. After demanding that plaintiff stop talking, defendant again called the police, this time reporting she was facing an emergency.

18. During defendant's second phone call to the police, plaintiff decided to try to further defuse the situation by obtaining and providing a doctor's note attesting to his inability to wear a mask.

19. He advised defendant Koch he was going to seek such a note and left the medical office with his son.

20. Plaintiff reached his chiropractor who emailed a note which plaintiff forwarded to defendant Koch.

21. Koch received this note and allowed plaintiff and his son to return that afternoon to the eye doctor's office.

22. The visit occurred without further incident.

23. Thereafter and on the following day, Koch wrote statements about the incidents which are false, professionally damaging to the plaintiff as a jurist and calculated to subject him to personal ridicule and shame.

24. Specifically, on December 29, 2021, defendant wrote the following false and libelous statements on a complaint form provided by the New York State Office of Judicial Conduct:

a) "Mr. Mora *created a huge scene* in our waiting room..."

(b) "He *taunted me in front of a waiting room of @20 people*..."

(c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice*."

(d) "He *then had a letter created* from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask."

(e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice."* See Exhibit 1 which is attached.

25. Each statement is materially false in that: [a] plaintiff did not cause a scene, let alone a "huge scene" in the waiting room; defendant Koch lost her temper and began screaming and yelling as plaintiff sought to explain the situation; [b] plaintiff did not taunt Koch at any time; [c] plaintiff has abiding respect for the police and would never intimate or state the belief that, if called, police would not attend to a situation and plaintiff had no information as to what the police conveyed to defendant about their intent to come, or not to come, to the medical office; [d] plaintiff would never "have a letter created," which intimates to a reasonable reader the exercise of some authority he did not wield over a medical provider to make misrepresentations

concerning his medical condition and [e] at all times, plaintiff acted in a professional manner and the contrary claim is without any factual basis and diminishes plaintiff's reputation and his capacity to properly discharge his duties and responsibilities as a City Judge, his profession.

26. The account provided by Koch is further refuted by one eyewitness, an employee of Seeta, who, at great personal risk, attested to plaintiff's professional behavior during the December 28, 2021 incident with Koch.

27. Defendant's conduct has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct.

28. By libeling plaintiff and avowedly and intentionally seeking to interfere thereby with his capacity to perform the duties of his profession, defendant engaged in defamation per se.

WHEREFORE, plaintiff requests that this Honorable Court accept jurisdiction over this matter, empanel a jury to hear and decide this matter and enter judgment including compensatory damages of $250,000 and punitive damages of $175,000 against defendant and in favor of plaintiff, and order defendant to pay the costs and disbursements arising from this matter and enter any other order the interests of law and equity require.

Dated: December 16, 2022

Yours, etc.

MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES
1 Railroad Avenue, Ste 6
Goshen, NY 10924
[redacted]

Counsel for Plaintiff

VERIFICATION

STATE OF NEW YORK)
)ss:s.
COUNTY OF ORANGE)

MICHAEL H. SUSSMAN, an attorney licensed to practice law in the State of New York and in good standing to do so, hereby affirms and verifies as following:

1. I am counsel for plaintiff in this matter.
2. Plaintiff is a resident of Dutchess County.
3. My principal law office is in Goshen within Orange County.
4. I have discussed the contents of the annexed Verified Complaint with my client and reviewed relevant documents and things.
5. I hereby verify that, to my knowledge and information, the facts set forth in the annexed Verified Complaint are true and accurate.
6. I make this Verification under the authority of CPLR section 3020(d)(3).

MICHAEL H. SUSSMAN 12/16/22

Exhibit 1

Index Number of Case (if applicable)

In the space below, please describe the alleged misconduct. Include as much detailed information as possible, such as what happened, where and when; the names of witnesses; who said what to whom, and in what tone of voice; etc.

Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police where on their way to our practice. He then had a letter created from Chiropractor [redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [redacted] year old boy. After receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora.

Today's Date
12/29/21

Judiciary Law § 44 requires that all complaints be signed and in writing. I understand that by clicking "I agree" below I am electronically signing this complaint, which has the same legal effect as my handwritten signature
I agree

Affidavit of Service
(Please print)

State of New York, County of Dutchess SUPREME City Court

FRANK MORA Plaintiff/Petitioner Index No. 2022-54141
VS.
Court Date
STACEY Koch Defendant/Respondent

Vlad M Kurit being duly sworn, deposes and says that deponent is over the age of eighteen years and is not a party in this proceeding. Deponent served a true copy of SUMMONS & VERIFIED COMPLAINT
In the above entitled proceeding, such service having been made in the following manner stated herein; and said person being the proper and authorized person to be served in this proceeding, the name of said person, complete address, time and date is as follows:
ON TUESDAY JANUARY 3, 2023 at 27 DAVIS AVE. POUGHKEEPSIE N.Y. I SERVED STACEY KOCH at 1230 PM by

☒ By delivering to and leaving personally with Stacey Koch, known to the deponent to be the same person mentioned and described in the above named proceeding as the person to be served.

☐ By delivering to and leaving personally with _____, on the person to be served and associated with him/her and after conversing with him/her, deponent believes him/her to be a person of such suitable age and discretion; and by mailing a copy of the proceeding herein to said authorized person to the address and at the time stated above, which is his/her last known address or actual place of business mailed in a post paid envelope marked "personal and confidential."

☐ By delivering to and leaving with _____, the agent, for service an the person in this proceeding an designated under Rule 318 of the CPLR. Service having been made to such person at the place, time, and date stated above.

☐ By affixing a true copy of the same to the door of the actual place of business, dwelling place, or usual place of abode as stated above; and by mailing a copy of the proceeding herein to said person to the address and on the date and time as stated above. Service was made in the manner stated in this paragraph because deponent was unable, with due diligence, to find the proper or authorized person to be served; or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode as stated above, having called there at the following times and dates:

_____

☐ By delivering to and leaving with the person named above at said address, upon information and belief, the person served is an officer of the domestic corporation _____ named in this proceeding authorized to be served herein.

Deponent further states upon information and belief that said person so served is not in the Military Service of the State of Now York or of the United States as the term is defined in either the State or Federal statutes.
Deponent further states that he/she describes the person actually served as follows:

Gender	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)	Other Features:
☐ Male	☒ White	☐ Light	60	5'4	150	
☒ Female	☐ Black	☐ Medium				
☐ Other	Other: _____	☒ Dark				
		☐ White/Gray				

Sworn to before me this 4th day of January, 20 23

Notary Public

Server's Signature

Print Name

MICHAEL HOWARD SUSSMAN
Notary Public, State of New York
No. 02SU6332584
Qualified in Orange County
Commission Expires Nov. 09, 20___

COMMISSION EXHIBIT 10

Judge suing office manager for defamation after argument over mask policy at doctor's office

January 3, 2023(https://midhudsonnews.com/2023/01/03/) 4:24 am

Facebook Twitter LinkedIn Email Print



Dutchess County Courthouse. MHNN file photo.



Poughkeepsie City Court Judge Frank Mora. Photo provided.

POUGHKEEPSIE – City Court Judge Frank Mora, involved in a federal lawsuit because he was denied a religious exemption to the COVID vaccine, is now suing the office manager of an eye doctor's office for defamation. Mora claims that Stacey Koch made "false and damaging" statements to the New York State Commission on Judicial Conduct after an argument over mask requirements at the Seeta Eye Center. Judge Mora says that Ms. Koch demanded that he wear a mask during a visit to the office with his son in December 2021. Mora is seeking $250,000 in compensatory damages as well as $175,000 in punitive damages, according to the lawsuit filed on December 29, 2022.

Mora is suing the New York State Unified Court System in federal court for denying his religious exemption to the COVID vaccine (https://midhudsonnews.com/2022/12/12/city-court-judge-sues-over-denied-religious-exemption-to-covid-vaccine/).

Koch, the office manager for the medical practice allegedly humiliated Mora publicly by yelling at him in a disrespectful manner in the lobby of the office in December 2021. Koch had demanded that Mora wear a mask and an argument ensued. He advised that he is medically unable to tolerate a mask, and instead uses a face shield. Koch demanded that Mora provide medical documentation of his incapacity to wear a mask, which was required in the doctor's office. Mora said the demand was illegal under "Interim Guidance from the Governor's Office on April 17, 2020". The argument escalated, with Koch eventually calling the police. Mora says he left the office to secure a note from his doctor to avoid wearing a mask.

Judge Mora secured a note from his chiropractor's office, M[redacted] Chiropractic Health, indicating that the judge has a medical condition that prevents him from wearing a mask. Mora provided the note to Koch, who then allowed he and his son to return to the office that afternoon for his son's treatment.

Mora says that after the appointment, Koch provided a statement to the New York State Commission on Judicial Conduct. He claims, through his attorney, Michael Sussman, that the following excerpts are false and libelous:



(https://www.cenhud.com/en/customer-service/customer-information-changes/?gclid=Cj0KCQiA67CrBhC1ARIsACKAa8SCbC0enoxHe3a1r0_jRuADHEk-yYxcaAnl2EALw_wcB)

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- “Mr. Mora created a huge scene in our waiting room…”
- “He taunted me in front of a waiting room of @20 people…”
- “[he] stat[ed] the police won’t come. The police said they would come and he left once the police were on the way to our practice.”
- “He then had a letter created from Chiropractor G[redacted] i M[redacted] stating Mr. Mora has a “medical condition” that prevents him from wearing a mask.”
- “This man should not be allowed any decision making for others when he can not act professionally in this medical practice.”

Mora denies all of Koch’s allegations and says the statements “diminishes plaintiff’s reputation and his properly discharge his duties and responsibilities as a city judge, his profession.” Mora said the “Defendant’s conduct has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct,” as the basis for seeking damages from Ms. Koch.

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COMMISSION EXHIBIT 11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 **ORAL ARGUMENT REQUESTED**

NOTICE OF MOTION TO DISMISS COMPLAINT

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, the Affirmation of Victor A. Kovner, dated February 2, 2023, and the exhibits annexed thereto, and all pleadings and proceedings hereto and herein, Defendant Stacey Koch will move before this Court, at an I.A.S. Motion Term, at the Courthouse located at 10 Market Street, Poughkeepsie, New York, on February 28, 2023, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order dismissing the Complaint with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, awarding her attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1, and granting such other and further relief as this Court deems appropriate.

PLEASE TAKE FURTHER NOTICE that, pursuant to N.Y. C.P.L.R. 2214(b), Plaintiff Frank Mora's answering papers shall be served upon the undersigned at least seven (7) days before the date on which this motion is noticed to be heard.

This is an action for defamation.

Dated: February 2, 2023

Respectfully submitted,

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SUPREME COURT OF THE STATE OF NEW YORK
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FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001 **ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW IN SUPPORT OF KOCH'S MOTION TO DISMISS COMPLAINT

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Defendant Stacey Koch ("Koch") respectfully submits this memorandum of law in support of her motion to dismiss the Verified Complaint of Plaintiff Frank Mora ("Mora") with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, and for attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1.[1]

I. PRELIMINARY STATEMENT

In December 2021, at the height of the Omicron surge of the COVID-19 pandemic, Mora caused a disturbance at the medical practice where Koch is employed. Mora repeatedly refused to abide by the practice's rules that required masks pursuant to CDC guidelines. The disagreement resulted in the police being called to the practice.

Upon learning that Mora was a sitting judge, Koch felt that it was her civic duty to notify the appropriate authorities of the unprofessional behavior by a government official that she had witnessed. Koch filed a confidential complaint with the New York State Commission on Judicial Conduct (the "Commission").

No good deed goes unpunished. One year later, Mora filed this lawsuit against Koch, claiming that certain of Koch's statements in her complaint to the Commission were defamatory.

This claim is frivolous and should be dismissed. It is well established that complaints to the official bodies that govern the conduct of attorneys are immunized from defamation claims under the absolute privilege for statements in a judicial proceeding, regardless of the truth, falsity, or motive of those statements. *Wiener v. Weintraub*, 22 N.Y.2d 330 (1968). The

[1] The Complaint and Exhibit 1 to the Complaint were filed at NYSCEF Doc. Nos. 1 and 2, and are attached as Exhibits A and B to the accompanying Affirmation of Victor A. Kovner, respectively.

Commission is such a body, and consequently, Koch's statements to the Commission are clearly immunized against Mora's defamation claim under the absolute privilege.

The fundamental defects in the Complaint call into question Mora's motive for filing it. Indeed, the notion that Mora seeks redress for "humiliation" and "embarrassment" caused by Koch's *confidential* complaint is belied by the fact that Mora *publicly* filed that very complaint as an exhibit to his pleading. The purpose of this lawsuit appears to be to retaliate against Koch and to intimidate her or other witnesses in the pending judicial misconduct inquiry of Mora—the very harms that the absolute privilege is meant to prevent. This Court should not countenance these tactics and should promptly dismiss this case with prejudice.

This case is a classic "SLAPP" (Strategic Lawsuit Against Public Participation)—the use of the legal system to chill the right to free speech or to petition the government. Under New York's recently amended anti-SLAPP statute, this case must be summarily dismissed, and Koch is entitled to a mandatory award of her attorneys' fees and costs.

II. FACTUAL BACKGROUND

A. The Parties

Mora is a sitting Poughkeepsie City Court judge.[2] Compl. at 1.

Koch is the office manager of Seeta Eye, an ophthalmology practice in Poughkeepsie. Compl. ¶¶ 4–5.

[2] Mora is no stranger to controversy surrounding rules intended to stem the COVID-19 pandemic. In early 2022, Mora reportedly violated court rules by regularly entering the courthouse maskless (wearing only a face shield) and without having been vaccinated, and by presiding over criminal arraignments by video. *See* Frank G. Runyeon, *Unvaxxed NY Judge Stripped of Most Criminal Cases*, LAW360 (Feb. 1, 2022, 6:50 p.m.), https://www.law360.com/articles/1460655/unvaxxed-ny-judge-stripped-of-most-criminal-cases. Mora has also filed a federal lawsuit challenging the New York courts' vaccine requirement. *See Mora v. N.Y. State Unified Ct. Sys.*, No. 7:22-cv-10322 (S.D.N.Y. filed Dec. 6, 2022).

B. Mora Flouts Seeta Eye's COVID Masking Rules

In December 2021, as a medical practice, Seeta Eye required anyone entering the premises to wear a mask, pursuant to CDC and health department guidelines. Compl. Ex. 1.[3] On December 28, Mora entered the waiting room of Seeta Eye without a mask, instead wearing a face shield. Compl. ¶ 9. At the time, there were approximately 20 other individuals in the waiting room, plus Seeta Eye's staff. Compl. Ex. 1. Upon being asked to wear a mask, Mora refused. Compl. ¶ 10. Koch asked Mora several times to either leave or wear a mask that Seeta Eye offered to him. Compl. Ex. 1. Mora claimed to have a medical condition that prevented him from wearing a mask. Compl. ¶ 12; Compl. Ex. 1.

When Mora persisted in refusing to either leave or wear a mask, Koch called the police. Compl. ¶¶ 15, 17; Compl. Ex. 1. In Koch's words, Mora caused "a huge scene" and "taunted" her that the police would not come. Compl. Ex. 1. When it became clear that the police would respond to the call,[4] Mora finally left the premises. Compl. ¶¶ 17–19; Compl. Ex. 1.

Mora then contacted his chiropractor to obtain a note stating that Mora had an unspecified "medical condition," and provided the note to Koch. Compl. ¶ 20; Compl. Ex. 1. Koch called the chiropractor to obtain the specific diagnosis, but the chiropractor refused to

[3] On a motion to dismiss, "the Court may consider both the facts alleged in the complaint as well as the documents attached to it as exhibits, which may be incorporated by reference." *Shuman v. N.Y. Mag.*, 72 Misc. 3d 1211(A), at *2 (Sup. Ct. N.Y. Cnty. 2021), *aff'd*, 211 A.D.3d 558 (1st Dep't 2022). Thus, the Court may consider Koch's complaint, which was attached as Exhibit 1 to Mora's pleading and is cited herein for background. Insofar as Mora alleges that five specific statements in Koch's complaint are false, *see* Compl. ¶ 24(a)–(e), the Court need not resolve those factual issues because falsity "is irrelevant" where the statements are absolutely privileged, as explained *infra* p. 12. *Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).

[4] According to Koch, the police affirmatively stated that they would come to the office. Compl. Ex. 1. According to Mora, Koch told the police that it was an "emergency," which would naturally trigger a police response. Compl. ¶ 17.

provide that information and instead began an unsolicited lecture criticizing masks. Compl. Ex. 1.

At this point, Seeta Eye decided to accommodate Mora given that he was there to oversee an eye exam for his [redacted]-year-old son. Compl. ¶ 21; Compl. Ex. 1. Mora claims that the exam then occurred "without further incident." Compl. ¶ 22. In fact, Seeta Eye had to escort Mora and his son into and out of the practice through a side door so as to not expose the other patients to Mora, who remained unmasked. Compl. Ex. 1.

C. Koch Files a Complaint with the Commission on Judicial Conduct

Koch was aware that Mora was an attorney and contacted the Dutchess County Bar Association to inquire why an area attorney would behave as he did in a medical practice in defiance of CDC and health department guidelines. Compl. Ex. 1.

Upon learning that Mora was a judge, Koch was "shocked." *Id.* Out of a sense of civic duty, on December 29, Koch decided to file a complaint with the Commission reporting Mora's "unprofessional behavior" that she had witnessed the day before, by completing and signing the Commission's online complaint form. *Id.* In Koch's words, she "simply fe[lt] our government needs to know" about his behavior, because "[t]his man should not be allowed any decision making for others when he can not act professionally in this medical practice." *Id.*

D. The Commission Commences a Confidential Investigation

The Commission is authorized to receive and investigate complaints of judicial misconduct, including but not limited to "conduct, on or off the bench, prejudicial to the administration of justice." N.Y. Judiciary Law § 44(1). "Upon receipt of a complaint," the Commission "shall conduct an investigation of the complaint," or it may summarily dismiss the complaint if it lacks merit on its face. *Id.* In the course of an investigation, the Commission may

require the judge to appear before it, in which case the judge is notified and served with the complaint. *Id.* § 44(3).

By law, all complaints, proceedings, and records of the Commission are confidential. *Id.* § 45(1). However, in this lawsuit, Mora has disclosed that the Commission is investigating him and that he was "required . . . to answer [Koch's] claims before" the Commission. Compl. ¶ 27. Mora also disclosed the full text of Koch's allegations in the complaint that initiated the Commission's investigation. Compl. Ex. 1.[5]

E. Mora Files This Action Against Koch

On December 29, 2022 (exactly one year after Koch's complaint to the Commission), Mora filed this action against Koch, claiming that her complaint to the Commission defamed him. Compl. ¶ 24. Mora takes issue with five statements in Koch's complaint, including that Mora "created a huge scene" and "can not act professionally in this medical practice." *Id.* ¶ 24(a)–(e). Mora seeks $425,000 in compensatory and punitive damages, including for "humiliation, shame and embarrassment." *Id.* at 5 & ¶ 27.

Koch now moves to dismiss this action pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a.

III. ARGUMENT

A. The Amended Anti-SLAPP Statute Applies to This Action

This lawsuit is precisely the type of action that New York's recently amended anti-SLAPP statute was meant to deter. SLAPP suits "are characterized as having little legal merit

[5] Mora's lawsuit has generated media coverage of the Commission's investigation, which, but for his lawsuit, would have otherwise remained confidential. *See Judge Suing Office Manager for Defamation After Argument over Mask Policy at Doctor's Office*, MID HUDSON NEWS (Jan. 3, 2023, 4:24 a.m.), https://midhudsonnews.com/2023/01/03/judge-suing-office-manager-for-defamation-after-argument-over-mask-policy-at-doctors-office/.

but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." *Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 28 (1st Dep't 2022) (quoting *600 W. 115th St. Corp. v. Von Gutfeld*, 80 N.Y.2d 130, 137 n.1 (1992)).

The anti-SLAPP statute applies to an "action involving public petition and participation," which is defined to include a claim based on "any . . . lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition." N.Y. Civ. Rights Law § 76-a(1)(a)(2). Clearly, Koch's complaint to the Commission concerning inappropriate behavior by a sitting judge implicates her constitutional right to petition the government, as well as her right to free speech on an issue of public interest. *See Pulizotto v. McMahon*, 406 F. Supp. 3d 277, 290, 296 (S.D.N.Y. 2019) ("The nature of reporting ethical misconduct within the judiciary as a 'right to petition for a redress [of] grievances' is 'among the most precious of the liberties safeguarded by the Bill of Rights.'"); *Aristocrat Plastic Surgery*, 206 A.D.3d at 29 (recognizing that an issue of "public interest" is "construed broadly" and includes "matters of political, social, or other concern to the community"). Because this action arises from Koch's exercise of her protected rights, the anti-SLAPP statute applies.

Because the anti-SLAPP statute controls this action, special procedures apply. Where, as here, the defendant moves to dismiss for failure to state a claim, the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law." N.Y. C.P.L.R. 3211(g)(1). This provision shifts "the burden . . . upon the plaintiff to establish that its claim has the requisite substantial basis." *Sackler v. Am. Broad. Cos.*, 71 Misc. 3d 693,

700 (Sup. Ct. N.Y. Cnty. 2021) (quoting *Duane Reade, Inc. v. Clark*, 2 Misc. 3d 1007(A), at *5 (Sup. Ct. N.Y. Cnty. 2004)). In order to avoid dismissal, the "plaintiff must establish by clear and convincing evidence a 'substantial basis' in fact and law for its claim." *Id.* (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5). A "substantial" basis is "a more stringent standard than the 'reasonable' standard that would otherwise apply." *Id.* (quoting *Duane Reade*, 2 Misc. 3d 1007(A), at *5).[6]

B. Koch's Statements Are Immunized Under the Absolute Privilege for Statements in a Judicial Proceeding

Mora cannot establish that his claim has a substantial basis in law or sets forth a cognizable cause of action, because the allegedly defamatory statements are protected under the absolute privilege for statements in a judicial proceeding. "The question of whether a statement is privileged is a question of law for the court and proper to determine on a motion to dismiss." *Bisogno v. Borsa*, 31 Misc. 3d 1203(A), at *4 (Sup. Ct. Richmond Cnty. 2011), *aff'd*, 101 A.D.3d 780 (2d Dep't 2012).[7]

[6] Mora's Complaint also fails to state a claim under the traditional motion-to-dismiss standard of N.Y. C.P.L.R. 3211(a)(7). Under the traditional standard, the "court must determine whether the factual allegations taken from the four corners of the complaint manifest any cognizable cause of action." *Klepetko v. Reisman*, 41 A.D.3d 551, 551 (2d Dep't 2007). While the court considers "any reasonable view of the facts stated," *Strujan v. Kaufman & Kahn, LLP*, 168 A.D.3d 1114, 1115 (2d Dep't 2019), "bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss for failure to state a cause of action," *Parsippany Const. Co. v. Clark Patterson Assocs., P.C.*, 41 A.D.3d 805, 806 (2d Dep't 2007) (quoting *Meyer v. Guinta*, 262 A.D.2d 463, 464 (2d Dep't 1999)). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

[7] Should this litigation proceed, Koch reserves her right to assert additional defenses, including that her statements were substantially true, were not made with actual malice, and constituted protected opinion.

1. Koch's Complaint to the Commission Commenced a Judicial Proceeding

For over fifty years, the New York Court of Appeals has recognized that complaints to the official bodies that govern the conduct of attorneys are immunized from defamation claims under the absolute privilege for statements in a judicial or quasi-judicial proceeding. *Wiener v. Weintraub*, 22 N.Y.2d 330, 332 (1968); *see Bisogno*, 31 Misc. 3d 1203(A), at *4 (recognizing that *Wiener*'s holding is "abundantly clear"); *see also Kilkenny v. L. Off. of Cushner & Garvey, LLP*, 76 A.D.3d 512, 513 (2d Dep't 2010). In *Wiener*, the Court of Appeals held that the filing of a complaint letter concerning an attorney with the Grievance Committee of the New York City Bar Association initiated a judicial proceeding and thus came within the absolute privilege. *Wiener*, 22 N.Y.2d at 332. This rule furthers "the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a . . . designated body for investigation." *Id.* "[T]he necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined," without fear that the complainant will be sued for libel. *Id.*

In reaching this conclusion, the Court of Appeals relied on two factors present in attorney grievance proceedings that rendered them a "judicial proceeding" for purposes of the absolute privilege. First, the grievance committee investigates the complaint and determines whether or not the charges are supportable in the course of "quasi-judicial" proceedings. *Id.* at 331–32. In that regard, the committee employs safeguards characteristic of a judicial proceeding, namely, that "it is adversarial, results in a determination that derives from the application of appropriate provisions in the law to the facts and is susceptible to judicial review." *Herzfeld & Stern, Inc. v.*

Beck, 175 A.D.2d 689, 691 (1st Dep't 1991); *see also Allan & Allan Arts Ltd. v. Rosenblum*, 201 A.D.2d 136, 141–42 (2d Dep't 1994).

Second, the grievance complaint and proceedings are, by statute, "private and confidential." *Wiener*, 22 N.Y.2d at 332 (quoting N.Y. Judiciary Law § 90(10)). This confidentiality "eliminate[s]" any risk of reputational damage arising from a defamatory complaint. *Id.*[8]

Here, Koch's complaint to the Commission is indistinguishable from the complaint to the grievance committee in *Wiener* and is thus absolutely privileged. Just like the grievance committee, the Commission is a "quasi-judicial" body. *Doe v. Comm'n on Jud. Conduct*, 246 A.D.2d 409, 409 (1st Dep't 1998); *Harley v. Perkinson*, 187 A.D.2d 765, 766 (3d Dep't 1992); *Cunningham ex rel. Unnamed Town & Vill. Justs. v. Stern*, 93 Misc. 2d 516, 517–18 (Sup. Ct. Erie Cnty. 1978). The Commission's organic statute and Mora's own Complaint bear this out.

First, as Mora himself admits, the Commission's proceedings are adversarial, "requir[ing] him to answer her . . . claims before" the Commission. Compl. ¶ 27. The Commission is empowered to "require the appearance of the judge" and to take his and witnesses' testimony in the course of its investigation, and it may draw up formal charges that the judge must answer in writing and that are adjudicated at a hearing. N.Y. Judiciary Law § 44(3)–(4). In either case, the

[8] While confidentiality protection strongly supports the absolute privilege, the privilege may even apply to nonconfidential statements where procedural safeguards and substantial public interests are present. *See Rosenberg v. MetLife, Inc.*, 8 N.Y.3d 359, 368 & n.7 (2007) (extending absolute privilege to employee termination notice filed with National Association of Securities Dealers).

judge has the right to be represented by counsel and to present evidence relevant to his defense.[9] *Id.*

The Commission's proceedings result in a determination by applying the relevant law to the facts. If the complaint lacks merit, the Commission may dismiss the complaint. *Id.* § 44(1), (6). After a hearing, the Commission issues a written determination (together with findings of fact and conclusions of law) that the judge be admonished, censured, removed, or retired. *Id.* § 44(7). In evaluating whether the judge committed misconduct, the Commission considers whether the judge abided by New York and federal laws, the Code of Judicial Conduct, the Chief Administrator's rules governing judicial conduct, and any other rules applicable to New York judges. 22 N.Y. C.R.R. 7000.9(b); *see id.* pt. 100 (rules governing judicial conduct).

The Commission's proceedings afford judicial review. The judge may appeal the Commission's determination to the Court of Appeals. N.Y. Judiciary Law § 44(7), (9). In sum, the many safeguards of the Commission's proceedings bear all the hallmarks of judicial proceedings. *See Herzfeld*, 175 A.D.2d at 691.

Finally, Koch's complaint and the Commission's proceedings are, by law, confidential. N.Y. Judiciary Law § 45(1). As such, Koch's complaint presents no risk of prejudice to Mora, which is all the more reason that the absolute privilege applies here. *See Wiener*, 22 N.Y.2d at 332.

The same policy concerns that animated the *Wiener* court apply with equal or greater force here. Clearly, "it is in the public interest to encourage those who have knowledge of" judicial misconduct to report that misconduct to the Commission. *Id.*; *see Stern v. Morgenthau*,

[9] If the matter proceeds to a formal hearing, the judge receives additional safeguards, including the right to inculpatory and exculpatory discovery and the right to call and cross-examine witnesses. N.Y. Judiciary Law § 44(4).

62 N.Y.2d 331, 339 (1984) ("[T]he effective performance of [the Commission's] function necessarily requires the free flow of information to the Commission . . . ."). "[T]he necessity of maintaining the high standards of [the bench]—indeed, the proper administration of justice—requires that there be a forum in which . . . persons, unlearned in the law, may state their complaints" without fear of reprisal. *Wiener*, 22 N.Y.2d at 332. "There is 'hardly . . . a higher governmental interest than a State's interest in the quality of its judiciary.'" *Nicholson v. State Comm'n on Jud. Conduct*, 50 N.Y.2d 597, 607 (1980) (quoting *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 848 (1978) (Stewart, J., concurring)). Surely, "ensuring the integrity of the judiciary is no less important than . . . protecting the integrity of the bar," and that important public interest requires the application of the absolute privilege to complaints concerning judges just as much to complaints about attorneys.[10] *N.Y. State Comm'n on Jud. Conduct v. Rubenstein*, 23 N.Y.3d 570, 582 (2014). Accordingly, Koch's complaint commenced a judicial proceeding and is within the absolute privilege.

2. Koch's Statements in Her Complaint Are Absolutely Privileged

Mora's defamation claim arises from Koch's statements in her complaint to the Commission. *See* Compl. ¶ 24. Because Koch's complaint commenced a judicial proceeding, her statements are absolutely privileged.

Statements in a judicial or quasi-judicial proceeding are absolutely privileged "so long as they are material and pertinent to the issue to be resolved in the proceeding." *Bisogno v. Borsa*,

[10] For these reasons, other states' appellate courts have likewise held that complaints concerning judges are absolutely privileged. *See Bailey v. Superior Ct.*, 130 Ariz. 366, 368 (Ct. App. 1981) ("The public policy considerations that afford an absolute privilege for defamatory statements made in a complaint about a lawyer's conduct to the State Bar apply equally well to a complaint about a member of the judiciary."); *Starnes v. Int'l Harvester Co.*, 141 Ill. App. 3d 652, 654 (1986) ("Illinois public policy is to . . . grant absolute privilege to complaints made to the [judicial inquiry board].").

101 A.D.3d 780, 781 (2d Dep't 2012) (quoting *Kilkenny*, 76 A.D.3d at 513). "The test of pertinency . . . is extremely liberal so as to 'embrace[] anything that may possibly or plausibly be relevant or pertinent.'" *Brady v. Gaudelli*, 137 A.D.3d 951, 952 (2d Dep't 2016) (quoting *Black v. Green Harbour Homeowners' Ass'n, Inc.*, 19 A.D.3d 962, 963 (3d Dep't 2005)).

Here, there is no doubt that Koch's statements were pertinent to the proceeding. Indeed, her "statements concerned the very subject of the . . . proceeding." *Id.* The subject of her complaint was Mora's "unprofessional behavior in [her] medical practice," Compl. Ex. 1, and the Commission must investigate whether Mora's behavior constituted "conduct, on or off the bench, prejudicial to the administration of justice," N.Y. Judiciary Law § 44(1).[11] Each of the five allegedly defamatory statements described the unprofessional behavior that Koch witnessed. *See* Compl. ¶ 24(a)–(e). They are plainly relevant to the proceeding.

Accordingly, Koch's statements are absolutely privileged. Whether her statements are true or false "is irrelevant." *Bisogno*, 31 Misc. 3d 1203(A), at *4. The privilege protects her statements "regardless of the motive for which they were made." *Brady*, 137 A.D.3d at 952. And the privilege applies "irrespective of whether formal charges are ever presented," protecting "every step of the proceeding even if it is preliminary and/or investigatory," such as the filing of Koch's complaint here. *Nineteen Eighty-Nine, LLC v. Icahn Enters. L.P.*, 99 A.D.3d 546, 547 (1st Dep't 2012) (citation omitted). Because Koch's statements are absolutely privileged, Mora's defamation claim fails as a matter of law.

[11] Among other things, the Commission may investigate whether Mora's behavior violated his "higher obligation to insure that his conduct off the Bench does not undermine the integrity of the judiciary or public confidence in his character and judicial temperament." *Quinn v. State Comm'n on Jud. Conduct*, 54 N.Y.2d 386, 392 (1981).

C. Koch Should Be Awarded Her Costs and Attorneys' Fees

Under the anti-SLAPP statute, Koch is entitled to a "mandatory" award of attorneys' fees and costs upon the dismissal of the case. *Golan v. Daily News, L.P.*, 77 Misc. 3d 258, 272–73 (Sup. Ct. N.Y. Cnty. 2022). The statute provides that "costs and attorney's fees ***shall*** be recovered upon a demonstration . . . that the action . . . was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law." N.Y. Civ. Rights Law § 70-a(1)(a) (emphasis added). Such a demonstration mandating attorneys' fees "includ[es] an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven," i.e., the dismissal provision setting forth the "substantial basis" standard that governs this case, as explained *supra* p. 6. *Id.* If Koch prevails on her motion to dismiss, she is entitled to attorneys' fees. *See Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 27–28, 32 (1st Dep't 2022) (holding that defendant is entitled to attorneys' fees on anti-SLAPP motion to dismiss); *Golan*, 77 Misc. 3d at 272–73 (awarding counsel fees on anti-SLAPP motion to dismiss); *Gillespie v. Kling*, No. 158959/2021, 2022 WL 16699233, at *3–5 (Sup. Ct. N.Y. Cnty. Nov. 2, 2022) (same); *Kerns v. Ishida*, No. 161364/2020, 2022 WL 5519650, at *2 (Sup. Ct. N.Y. Cnty. Oct. 7, 2022) (same); *Vaughn v. Xu*, No. 160322/2020, 2022 WL 3446931, at *5 (Sup. Ct. N.Y. Cnty. Aug. 17, 2022) (same).[12]

Alternatively, the Court should award costs and attorneys' fees because this action is "frivolous" under N.Y. C.P.L.R. 8303-a and/or 22 N.Y. C.R.R. 130-1.1. An action is frivolous if

[12] Koch reserves her right under the anti-SLAPP law to seek compensatory and punitive damages, which may be awarded where the action was filed for the "purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights." N.Y. Civ. Rights Law § 70-a(1)(b)–(c). Koch's damages include, inter alia, emotional distress arising from being named as a defendant and media coverage of the lawsuit.

it is "without any reasonable basis in law or fact" or "the primary purpose in commencing [it] was to harass." *Doscher v. Meyer*, 177 A.D.3d 697, 699 (2d Dep't 2019). Courts frequently award attorneys' fees against plaintiffs who file meritless defamation claims that are barred by the absolute privilege for statements in a judicial proceeding, like the claim here. *See id.*; *Carniol v. Carniol*, 288 A.D.2d 421, 422 (2d Dep't 2001); *Grasso v. Mathew*, 164 A.D.2d 476, 480 (3d Dep't 1991).

As one justice sternly warned, bringing a defamation suit based on a privileged report of attorney misconduct is antithetical to "the proper administration of justice" and, to put it bluntly, "abhorrent." *Bisogno*, 31 Misc. 3d 1203(A), at *4. A sitting judge should know better, and should bear the costs of defending this meritless lawsuit.

IV. CONCLUSION

For all the foregoing reasons, the Court should dismiss the Complaint with prejudice pursuant to N.Y. C.P.L.R. 3211(a)(7) and (g) and N.Y. Civ. Rights Law § 76-a, and award Koch her attorneys' fees and costs pursuant to N.Y. Civ. Rights Law § 70-a(1)(a), N.Y. C.P.L.R. 8303-a, and/or 22 N.Y. C.R.R. 130-1.1.

Dated: February 2, 2023

Respectfully submitted,

By: /s/ Victor A. Kovner
Victor A. Kovner
Raphael Holoszyc-Pimentel
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: [redacted]
Fax:
Email: [redacted]@dwt.com
[redacted]@dwt.com

Attorneys for Defendant Stacey Koch

Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Victor A. Kovner, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Memorandum of Law in Support of Koch's Motion to Dismiss Complaint contains 4,461 words.

/s/ Victor A. Kovner
Victor A. Kovner

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA, Plaintiff, - against - STACEY KOCH, Defendant.	Index No. 2022-54141 Mot. Seq. No. 001

AFFIRMATION OF VICTOR A. KOVNER IN SUPPORT OF KOCH'S MOTION TO DISMISS COMPLAINT

Victor A. Kovner, an attorney duly admitted to practice before this Court, hereby affirms under penalty of perjury pursuant to N.Y. C.P.L.R. 2106(a) as follows:

1. I am a member of Davis Wright Tremaine LLP, attorneys for Defendant Stacey Koch ("Koch"). I submit this affirmation in support of Koch's motion to dismiss the Complaint and to award her attorneys' fees and costs.

2. The grounds for Koch's dismissal motion are set forth in the accompanying memorandum of law. I submit this affirmation for the limited purpose of annexing documents relevant to the motion.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint filed in this action by Plaintiff Frank Mora. *See* NYSCEF Doc. No. 1.

4. Attached hereto as **Exhibit B** is a true and correct copy of Exhibit 1 to the Complaint filed in this action by Plaintiff Frank Mora. *See* NYSCEF Doc. No. 2.

Dated: February 2, 2023
New York, New York

/s/ Victor A. Kovner
Victor A. Kovner

Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, Victor A. Kovner, certify that, pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court, the Affirmation of Victor A. Kovner in Support of Koch's Motion to Dismiss Complaint contains 152 words.

/s/ Victor A. Kovner
Victor A. Kovner

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff(s),

-against-

STACEY KOCH

Defendant(s).

Index No. [type in Index No]

Summons

Date Index No. Purchased:

To the above named Defendant(s)

Stacey Koch
27 Davis Avenue
Poughkeepsie, NY 12603

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the County of Dutchess
which is where Plaintiff and Defendant reside

Dated: Goshen, NY
December 21, 2022

Sussman & Associates
by
Michael H. Sussman
Attorneys for Plaintiff
Frank Mora
Sussman & Associates
1 Railroad Ave - Suite 3
PO Box 1005
Goshen, NY 10924

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Index No.

----------x

FRANK MORA,

Plaintiff,

vs.

STACEY KOCH,

Defendant.

VERIFIED COMPLAINT

----------x

PRELIMINARY STATEMENT

This is a defamation claim arising from the false and damaging statements written by defendant concerning plaintiff, a sitting Judge, to the New York State Commission on Judicial Conduct. Through her false and libelous statements, defendant intentionally sought to imperil and jeopardize plaintiff's ability to practice his profession and has caused plaintiff substantial emotion distress and humiliation.

PARTIES

1. Plaintiff Frank Mora is a resident of the City of Poughkeepsie, County of Dutchess and is a person of legal age who may sue and be sued.

2. Defendant Stacey Koch is a person of legal age who lives in the City of Poughkeepsie, works in the County of Dutchess, is of legal age and may sue and be sued.

JURISDICTION

3. The events giving rise to this Verified Complaint arose in the County of Dutchess as and between residents of this County and the sum in controversy is in excess of the jurisdiction of any inferior court. Accordingly, this Honorable Court has jurisdiction over this matter.

AS AND FOR A FIRST CAUSE OF ACTION

4. On December 28, 2021, within the last year, plaintiff brought one of his sons to Seeta Eye, an ophthalmology office in the County of Dutchess.

5. Defendant Koch was the office manager of Seeta Eye at the time and was at work when plaintiff entered the business with his son.

6. Plaintiff had a patient/provider relationship with Seeta Eye and known defendant Koch for more than twenty years.

7. Earlier in 2021, when visiting Seeta Eye, plaintiff explained that he did not medically tolerate face masks and wore a shield.

8. He was then permitted to enter the waiting room/reception area with his face shield to pay for medical services which one of his sons received.

9. On December 28, 2021, plaintiff again attended to the reception area wearing a face shield with another son.

10. A receptionist asked him to put on a mask and plaintiff advised he could not do so.

11. The receptionist asked plaintiff to speak with Ms. Koch, the office manager, and she then called Ms. Koch.

12. Upon her arrival, Ms. Koch demanded that plaintiff don a mask even though earlier in 2021, he had explained to her that he was unable medically to tolerate a mask; when he began to again explain why he could not do so, Koch began yelling at plaintiff in a rude and disrespectful manner.

13. Koch demanded that plaintiff provide medical documentation of his incapacity to wear a mask.

14. Such a demand of a patient was unlawful [under Interim Guidance provided by the Governor's office on April 17, 2020].

15. After Ms. Koch continued yelling and screaming at plaintiff, she called the police.

16. After calling the police, defendant claimed that it was plaintiff who was upsetting other patients.

17. After demanding that plaintiff stop talking, defendant again called the police, this time reporting she was facing an emergency.

18. During defendant's second phone call to the police, plaintiff decided to try to further defuse the situation by obtaining and providing a doctor's note attesting to his inability to wear a mask.

19. He advised defendant Koch he was going to seek such a note and left the medical office with his son.

20. Plaintiff reached his chiropractor who emailed a note which plaintiff forwarded to defendant Koch.

21. Koch received this note and allowed plaintiff and his son to return that afternoon to the eye doctor's office.

22. The visit occurred without further incident.

23. Thereafter and on the following day, Koch wrote statements about the incidents which are false, professionally damaging to the plaintiff as a jurist and calculated to subject him to personal ridicule and shame.

24. Specifically, on December 29, 2021, defendant wrote the following false and libelous statements on a complaint form provided by the New York State Office of Judicial Conduct:

a) "Mr. Mora *created a huge scene* in our waiting room..."

(b) "He *taunted me in front of a waiting room of @20 people*..."

(c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice*."

(d) "He *then had a letter created* from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask."

(e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice."* See Exhibit 1 which is attached.

25. Each statement is materially false in that: [a] plaintiff did not cause a scene, let alone a "huge scene" in the waiting room; defendant Koch lost her temper and began screaming and yelling as plaintiff sought to explain the situation; [b] plaintiff did not taunt Koch at any time; [c] plaintiff has abiding respect for the police and would never intimate or state the belief that, if called, police would not attend to a situation and plaintiff had no information as to what the police conveyed to defendant about their intent to come, or not to come, to the medical office; [d] plaintiff would never "have a letter created," which intimates to a reasonable reader the exercise of some authority he did not wield over a medical provider to make misrepresentations

concerning his medical condition and [e] at all times, plaintiff acted in a professional manner and the contrary claim is without any factual basis and diminishes plaintiff's reputation and his capacity to properly discharge his duties and responsibilities as a City Judge, his profession.

26. The account provided by Koch is further refuted by one eyewitness, an employee of Seeta, who, at great personal risk, attested to plaintiff's professional behavior during the December 28, 2021 incident with Koch.

27. Defendant's conduct has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct.

28. By libeling plaintiff and avowedly and intentionally seeking to interfere thereby with his capacity to perform the duties of his profession, defendant engaged in defamation per se.

WHEREFORE, plaintiff requests that this Honorable Court accept jurisdiction over this matter, empanel a jury to hear and decide this matter and enter judgment including compensatory damages of $250,000 and punitive damages of $175,000 against defendant and in favor of plaintiff, and order defendant to pay the costs and disbursements arising from this matter and enter any other order the interests of law and equity require.

Dated: December 16, 2022

Yours, etc.

MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES
1 Railroad Avenue, Ste 6
Goshen, NY 10924
[redacted]

Counsel for Plaintiff

VERIFICATION

STATE OF NEW YORK)
)ss:s.
COUNTY OF ORANGE)

MICHAEL H. SUSSMAN, an attorney licensed to practice law in the State of New York and in good standing to do so, hereby affirms and verifies as following:

1. I am counsel for plaintiff in this matter.
2. Plaintiff is a resident of Dutchess County.
3. My principal law office is in Goshen within Orange County.
4. I have discussed the contents of the annexed Verified Complaint with my client and reviewed relevant documents and things.
5. I hereby verify that, to my knowledge and information, the facts set forth in the annexed Verified Complaint are true and accurate.
6. I make this Verification under the authority of CPLR section 3020(d)(3).

MICHAEL H. SUSSMAN 12/16/22

EXHIBIT B

Exhibit 1

Index Number of Case (if applicable)

In the space below, please describe the alleged misconduct. Include as much detailed information as possible, such as what happened, where and when; the names of witnesses; who said what to whom, and in what tone of voice; etc.

Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police where on their way to our practice. He then had a letter created from Chiropractor [redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [redacted] year old boy. After receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora.

Today's Date
12/29/21

Judiciary Law § 44 requires that all complaints be signed and in writing. I understand that by clicking "I agree" below I am electronically signing this complaint, which has the same legal effect as my handwritten signature
I agree

COMMISSION EXHIBIT 12

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

NOTICE OF MOTION

Index No. 54141/2022

PLEASE TAKE NOTICE that upon the annexed Affirmation of Robert H. Tembeckjian, Administrator of and Counsel to the New York State Commission on Judicial Conduct ("Commission"), the accompanying Memorandum of Law, the proposed Answer and upon all prior pleadings and proceedings had herein, the Commission will move this court at the Dutchess County Courthouse, 10 Market Street, Poughkeepsie, New York, on the 28th day of February 2023 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order allowing the Commission to intervene in this action pursuant to CPLR 1012(a)(2) and/or 1013, and dismissing the Complaint in its entirety pursuant to CPLR 3211(a)(7), or, alternatively, in the event that the motion to dismiss the Complaint is denied, granting the Commission leave pursuant to CPLR 3211(f) to serve the within

Answer within ten (10) days of service of the Order deciding this motion with Notice of Entry, and for such other relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering affidavits, and any notice of cross-motion, with supporting papers, if any, shall be served upon the Commission at least seven days before the return date of this motion.

Oral argument is requested.

Dated: New York, New York
February 6, 2023

ROBERT H. TEMBECKJIAN
Administrator and Counsel
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
Tel. (518) 453-4600

TO: Michael Sussman, Esq.
Sussman & Associates
Attorney for Plaintiff
1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, New York 10924
Tel: [redacted]

Victor A. Kovner, Esq.
Raphael Holoszyc-Pimentel, Esq.
Davis Wright Tremaine
Attorneys for Defendant
1251 Avenue of the Americas, 21st Floor
New York, NY 10020
Tel: [redacted]

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

AFFIRMATION IN SUPPORT OF MOTION TO INTERVENE AND DISMISS

STACEY KOCH,

Defendant.

ROBERT H. TEMBECKJIAN, an attorney duly admitted to practice in the State of New York, hereby affirms and states the following to be true under the penalties of perjury:

1. I am the Administrator and Counsel to the New York State Commission on Judicial Conduct ("Commission"), proposed intervenor in this proceeding, and am fully familiar with all the facts and circumstances set forth herein.

2. I make this affirmation in support of the Commission's motion to intervene pursuant to CPLR 1012(a)(2) and/or 1013, and to dismiss the matter pursuant to CPLR 3211(a)(7). As part of its submission on this motion, the Commission is also filing a memorandum of law and a proposed Answer pursuant to CPLR 1014.

3. The plaintiff in this action is a judge of the Unified Court System who is currently under investigation by the Commission. The defendant in this action is a private citizen who filed the complaint with the Commission that led to its current investigation of the plaintiff.

4. As set forth more fully below, and in the accompanying memorandum of law, the Commission has a unique and substantial interest in this proceeding. Plaintiff's frivolous lawsuit is clearly intended to intimidate a complainant/witness in an ongoing Commission investigation and will likely deter other witnesses from coming forward, inasmuch as plaintiff's lawsuit has already been reported in the press.[1] On information and belief, the matter appeared in a newspaper before the defendant was even served. If the plaintiff's suit is permitted to proceed, his public attack against a Commission complainant would have a chilling effect on witnesses in every Commission investigation, who might reasonably seek to avoid the costs of defending against such litigation.

5. In addition, because Commission investigations are confidential pursuant to Judiciary Law § 45, the defendant is not as equipped to provide this Court with factual information about our investigatory and adjudicatory processes that is relevant to the adjudication of this motion to intervene and dismiss. In this

[1] https://midhudsonnews.com/2023/01/03/judge-suing-office-manager-for-defamation-after-argument-over-mask-policy-at-doctors-office/

regard, I note that it was plaintiff's own lawsuit that first made public the Commission's confidential investigation of him and the defendant's allegedly defamatory statements about him.

The Commission's constitutional mandate to accept and investigate complaints of judicial misconduct, and its complaint process.

6. Pursuant to Article VI, Section 22, of the New York State Constitution and Judiciary Law § 44(1), the Commission is required to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge or justice of the unified court system."

7. Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," the Commission has a "duty to preempt and mitigate these potential consequences by quickly and effectively investigating allegations of judicial misconduct." *New York State Commission on Judicial Conduct v Rubenstein*, 23 NY3d 570, 582 (2014).

8. The Commission's "concern is [thus] institutional, to protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984).

9. To facilitate that mandate, the Commission's website has an online complaint form, which permits private citizens to file complaints of judicial

misconduct from their computers or other electronic devices. *See* https://www.nyscjcforms.com. The form requires a name and contact information for the complainant, which enables Commission staff to conduct follow-up interviews in furtherance of its investigations.

The defendant's complaint before the Commission alleging that the plaintiff committed judicial misconduct.

10. On December 29, 2021, Stacey Koch – an employee of an ophthalmology practice in New York State – utilized that online form to file a complaint with the Commission against the Poughkeepsie City Court Judge Frank Mora. A copy of Ms. Koch's complaint to the Commission is annexed to the Plaintiff's Summons and Complaint as Exhibit 1.

11. The complaint alleged that, on December 28, 2021, Judge Mora "exhibited unprofessional behavior" in Ms. Koch's medical practice by refusing to wear a mask in the waiting room (which the practice required) and "creat[ing] a huge scene."

12. Ms. Koch alleged that she called the police after Judge Mora refused several requests to put on a mask, and that Judge Mora "taunted" her "in front of a waiting room of [about] 20 people" by "stating the police won't come."

13. The complaint further alleged that Judge Mora subsequently proffered a letter from a chiropractor "stating Mr. Mora has a 'medical condition' that prevents him from wearing a mask." Despite believing that the letter from the

chiropractor was "bogus," Ms. Koch had her staff "escort[ ] Mr. Mora and his son into the practice through a side door . . . so as not to expose [the practice's] patients to Mr. Mora."

The Commission's pending investigation into the complaint against the plaintiff.

14. Pursuant to Judiciary Law § 44(1) and 22 NYCRR 7000.3(b), the Commission authorized an investigation into Ms. Koch's complaint.

15. On April 12, 2022, after conducting preliminary witness interviews, Commission Counsel wrote a letter to Judge Mora asking him to answer a number of questions about his alleged conduct at the ophthalmology practice. Pursuant to Commission Policy 2.6(D), the letter included a copy of Ms. Koch's complaint.[2]

16. Judge Mora, through counsel, responded by letter dated June 17, 2022.

17. To date, Judge Mora has not been formally charged with misconduct related to Ms. Koch's December 29, 2021, complaint.

18. The investigation currently is ongoing and additional witness interviews are being scheduled.

19. Pursuant to Judiciary Law § 44(3), Judge Mora will also be called to testify at the Commission.

[2] The Commission's Policy Manual is available online at: https://cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.pdf

The plaintiff's instant defamation action.

20. By papers dated December 21, 2022, Judge Mora – through counsel – filed the instant defamation suit against Ms. Koch.

21. The plaintiff's Verified Complaint alleged that five particular statements made by Ms. Koch in her December 29, 2021, complaint to the Commission were materially false. Verified Complaint ¶¶ 24-25.

22. The Verified Complaint further alleged that Ms. Koch's indicated conduct "has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct." Verified Complaint ¶ 27.

23. The demand for relief at the end of the Verified Complaint seeks a judgment against Ms. Koch in the aggregate amount of $425,000. Verified Complaint p. 5.

Due process during Commission proceedings.

24. The plaintiff will be afforded a full and fair opportunity to contest the veracity of Ms. Koch's allegations during the Commission's proceedings.

25. As indicated above, Judge Mora has already been provided with a copy of Ms. Koch's complaint and an opportunity to respond in writing, with the assistance of counsel.

26. Pursuant to Judiciary Law § 44(3) and 22 NYCRR 7000.3(e), the Commission has authorized me to require Judge Mora to appear and give testimony under oath. I will set the date and send him notice after additional witnesses have been interviewed. During his testimonial appearance, Judge Mora has the right to the assistance of counsel, and to submit evidentiary material relevant to the complaint. *Id.*

27. In the event the Commission authorizes service of a Formal Written Complaint, Judge Mora would be entitled to file an Answer to the charges therein, exchange pre-hearing discovery and participate in a hearing before a neutral referee, at which the rules of evidence applicable to nonjury civil proceedings would apply. Judiciary Law § 44(4); 22 NYCRR 7000.6(g),(h), (i).

28. Upon receipt of the referee's report, Judge Mora would be entitled to briefing and oral argument before the full Commission. 22 NYCRR 7000.7.

29. Finally, if the Commission renders a public determination finding that Judge Mora has committed judicial misconduct, he is entitled to review as of right in the Court of Appeals. Judiciary Law § 44(7). *See also Matter of Raab,* 100 NY2d 305, 311 (2003).

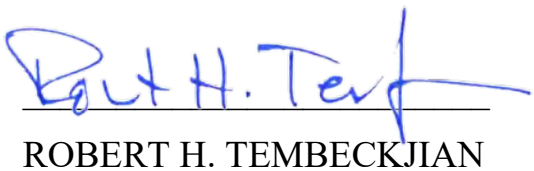
Conclusion

30. The Commission has a substantial constitutional interest in this matter that the defendant cannot adequately represent (Const Art VI, § 22). The

defendant, as a Commission complainant and witness, has absolute immunity against a defamation claim such as plaintiff has brought against her (*Wiener v Weintraub*, 22 NY2d 330, 332 (1968)). And plaintiff's lawsuit, if allowed to continue, would have a chilling effect on other Commission witnesses and as such interfere with the Commission's investigation and resolution of the complaint against him.

WHEREFORE, the Commission respectfully requests that this Court issue an order: (1) granting the Commission's motion to intervene as a third-party defendant; (2) dismissing the matter pursuant to CPLR 3211(a)(7), for the reasons noted here and further articulated in the accompanying memorandum of law; and (3) granting such other and further relief as the Court may deem just and proper.

Dated: February 6, 2023
Albany, New York



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SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

PROPOSED VERIFIED ANSWER

STACEY KOCH,

Defendant.

Third-Party Intervenor Defendant New York State Commission on Judicial Conduct ("Commission") answers the Verified Complaint in the above-entitled proceeding allege as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Verified Complaint.

2. With respect to the allegations contained in paragraph 24 of the Verified Complaint, admits that defendant Stacey Koch submitted a complaint to the Commission on December 29, 2021, using the Commission's complaint form, denies knowledge and information sufficient to form a belief as to the remaining allegations contained in that paragraph, and respectfully refers the Court to Exhibit 1 of the Verified Complaint as the best evidence of the statements contained in Ms. Koch's complaint to the Commission.

3. With respect to the allegations contained in paragraph 27 of the complaint, admits that the Commission is empowered to investigate allegations of judicial misconduct, admits that the Commission required plaintiff to provide

information relative to Ms. Koch's complaint, and denies knowledge or information sufficient to form a belief as to the remainder of the claims contained in that paragraph.

AS AND FOR A FIRSTAFFIRMATIVE DEFENSE:

4. Defendant Koch's communication to the Commission, which forms the basis of the plaintiff's instant defamation action, is entitled to absolute immunity under *Wiener v Weintraub*, 20 NY2d 330 (1968) and its progeny, such that the instant matter must be dismissed pursuant to CPLR 3321(a)(7).

WHEREFORE, the third-party intervenor defendant respectfully requests judgment denying the relief requested by the plaintiff in its entirety and dismissing the Verified Complaint.

Dated: February 6, 2023
Albany, New York

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SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF DUTCHESS

FRANK MORA

Plaintiff,

-against-

STACEY KOCH,

Defendant.

MEMORANDUM BY COUNSEL TO THE COMMISSION ON JUDICIAL CONDUCT IN SUPPORT OF MOTION TO INTERVENE AND TO DISMISS.

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Of Counsel:

Edward Lindner
Denise Buckley
David Stromes

Dated: February 6, 2023

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of a motion to intervene in the above-captioned matter pursuant to CPLR 1012(a)(2) and/or CPLR 1013, and to dismiss the matter pursuant to CPLR 3211(a)(7) because the communications at issue, which were part of a complaint to the Commission, are shielded by absolute privilege and thus are immune from defamation actions.

BACKGROUND AND PROCEDURAL HISTORY

Pursuant to Article VI, Section 22, of the New York State Constitution and Judiciary Law § 44(1), the Commission is required to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge or justice of the unified court system." Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," the Commission has a "duty to preempt and mitigate these potential consequences by quickly and effectively investigating allegations of judicial misconduct." *New York State Commission on Judicial Conduct v Rubenstein*, 23 NY3d 570, 582 (2014). The Commission's "concern is [thus] institutional, to protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984).

To facilitate that mandate, the Commission's website has an online complaint form, which permits private citizens to file complaints of judicial misconduct from their computers or other electronic devices. *See* https://www.nyscjcforms.com. The form requires a name and contact information for the complainant, which enables Commission staff to conduct follow-up interviews in furtherance of its investigations.

As indicated by Exhibit 1 to the plaintiff's complaint, on December 29, 2021, Stacey Koch – an employee of an ophthalmology practice in New York State – utilized that online form to file a complaint with the Commission against Poughkeepsie City Court Judge Frank Mora. The complaint alleged that, on December 28, 2021, Judge Mora "exhibited unprofessional behavior" in Ms. Koch's medical practice by refusing to wear a mask in the waiting room (which the practice required) and "creat[ing] a huge scene." Ms. Koch alleged that she called the police after Judge Mora refused several requests to put on a mask, and that Judge Mora "taunted" her "in front of a waiting room of [about] 20 people" by "stating the police won't come." The complaint further alleged that Judge Mora subsequently proffered a letter from a chiropractor "stating Mr. Mora has a 'medical condition' that prevents him from wearing a mask." Despite believing that the letter from the chiropractor was "bogus," Ms. Koch had her staff "escort[ ] Mr. Mora and his son into the practice through a side door . . . so as not to expose

[the practice's] patients to Mr. Mora." A copy of Ms. Koch's complaint to the Commission is annexed to the plaintiff's Summons and Complaint as Exhibit 1.

The Commission authorized an investigation into Ms. Koch's complaint (Tembeckjian Aff ¶ 14). On April 12, 2022, after conducting preliminary witness interviews, Commission Counsel sent Judge Mora a copy of Ms. Koch's complaint and asked him to answer a number of questions about his alleged conduct at the ophthalmology practice (Tembeckjian Aff ¶ 15). Judge Mora, through counsel, responded by letter dated June 17, 2022 (Tembeckjian Aff ¶ 16).

To date, Judge Mora has not been formally charged with misconduct related to Ms. Koch's December 29, 2021, complaint (Tembeckjian Aff ¶ 17). The investigation currently is ongoing, additional witness interviews are being scheduled, and Judge Mora will be called to testify at the Commission (Tembeckjian Aff ¶¶ 18, 19).

By papers dated December 21, 2022, Judge Mora – through counsel – filed the instant defamation suit against Ms. Koch, alleging that five particular statements she made in her December 29, 2021, complaint to the Commission were materially false (Verified Complaint ¶¶ 24-25). The Verified Complaint further alleged that Ms. Koch's indicated conduct "has caused plaintiff emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial

misconduct" (Verified Complaint ¶ 27). The Verified Complaint's request for relief seeks a judgment against Ms. Koch in the aggregate amount of $425,000 (Verified Complaint p. 5).

ARGUMENT

POINT I

THE COMMISSION HAS A SUBSTANTIAL INTEREST IN THIS PROCEEDING SUCH THAT INTERVENTION IS APPROPRIATE.

The Commission has a substantial and unique interest in this matter, warranting intervention. By bringing this frivolous defamation action against a witness in an ongoing Commission investigation – a witness who has absolute immunity from such a suit – the plaintiff has interfered with the Commission's constitutional mandate to investigate complaints against New York State judges. Plaintiff's suit threatens to intimidate not only this defendant, but other witnesses in this same investigation who now may be reasonably reluctant to come forward with relevant information. Equally importantly, if allowed to go forward, plaintiff's suit will have a chilling effect on every Commission investigation by discouraging citizens from reporting instances of judicial misconduct for fear of being sued for hundreds of thousands of dollars.

Intervention by the Commission is also appropriate because defendant Koch is not privy to the confidential details of the Commission's investigation, and thus

is not as equipped to provide the court with factual information about the Commission's investigatory and adjudicatory processes that is relevant to the application of absolute immunity. As set forth in Point II below, those processes provide the plaintiff with multiple opportunities to contest Ms. Koch's allegations. In light of that fact, binding precedent provides that communications by witnesses to the Commission are entitled to absolute immunity from suit, and this defamation proceeding against Ms. Koch should be dismissed pursuant to CPLR 3211(a)(7).

A. Motions to intervene should be liberally granted.

Under CPLR 1012(a)(2), a "person shall be permitted to intervene in any action . . . when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Under CPLR 1013, a court may grant permissive intervenor "when the person's claim or defense and the main action have a common question of law or fact."

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action." *Yuppie Puppy Pet Prods Inc v St. Smart Realty LLC*, 77 AD3d 197, 201 (1st Dept 2010). Although they arise under two different rules, "[d]istinctions between intervention as of right and discretionary intervention are no longer sharply applied." *Id*. (citing Siegel, NY Prac § 178, at 307 [4th ed]). "Regardless of whether intervention is sought as a matter of right pursuant to CPLR 1012 or as a

matter of discretion pursuant to CPLR 1013, intervention should be permitted where the intervener has a real and substantial interest in outcome of the proceedings." *Clarke v City of New York*, 43 Misc 3d 1202(A) (Sup Ct Queens Co 2014) (citing *Berkowski v Board of Trustees of Inc Vil of Southampton*, 67 AD3d 840, 843 [2d Dept 2009]; *Perl v Aspromonte Realty Corp*, 143 AD2d 824, 825 [2d Dept 1988]).

Judged by those standards, intervention should be granted.

B. The Commission has a unique and substantial interest in this proceeding, warranting intervention.

In order to protect its interest and constitutional mandate in ensuring public confidence in a fair, impartial, and ethical judiciary, the Commission must safeguard the ability of private citizens to lodge complaints of judicial misconduct and to serve as witnesses in such proceedings when circumstances require. If prospective complainants believe that a judge may retaliate against them with a civil defamation suit for filing a complaint and/or testifying in ensuing proceedings, the resulting chilling effect would silence many would-be complainants and severely frustrate the Commission's ability to fulfill its constitutional duties.

In *Matter of Kopf*, 169 AD2d 428 (1st Dept 1991), the Appellate Division, First Department, found that a similar institutional interest in protecting the integrity of ongoing proceedings was a sound basis for intervention. There, a

plaintiff shareholder sued a corporation alleging that a transfer of certain shares was fraudulent. While the suit was pending, the United States government commenced a criminal investigation into the plaintiff and convened a grand jury. The United States then moved to intervene in the civil suit under CPLR 1012(a)(2). The trial court denied the motion, but the First Department reversed and granted the motion to intervene, holding that "the Government has a unique interest in protecting the integrity of ongoing Grand Jury proceedings," which "constitutes the compelling interest required for intervention as of right." 169 AD2d at 428-29 (citing *Cascade Natural Gas v El Paso Natural Gas*, 386 US 129 [1967]).

Just as the government had an interest in "protecting the integrity of ongoing Grand Jury proceedings" in *Kopf*, the Commission in this matter has an interest in protecting the integrity of both its ongoing investigation of Judge Mora, as well its broader constitutional mandate. As to the former, Ms. Koch is a material witness in the case against Judge Mora, having witnessed an incident at her place of work during which the plaintiff allegedly exhibited temperament unbecoming of a judge, in violation of Sections 100.1, 100.2, and 100.4(A)(2) of the Rules Governing Judicial Conduct. By suing Ms. Koch for defamation during the pendency of that investigation, the plaintiff has intimidated and frightened a Commission witness whose continued cooperation is necessary to investigate, and perhaps prosecute, the open complaint against him.

To the broader point, the Commission has an interest in protecting the integrity of its constitutional mandate to investigate complaints against New York State judges, which depends upon private citizens who witness misconduct being willing to come forward with non-anonymous complaints. As the Court of Appeals has explained, the Commission has an "institutional" concern in "protect[ing] the integrity of the judiciary and thereby preserv[ing] and enhanc[ing] the public's confidence in its courts." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984). "Experience teaches that the effective performance of that function necessarily requires the free flow of information to the Commission." *Id.*

Here, Judge Mora's defamation suit has imperiled that "free flow of information" and will have a chilling effect as to future would-be complainants who witness judicial misconduct but are deterred from filing complaints for fear of reprisal in the form of a defamation suit. Ms. Koch – a private citizen who is unfamiliar with the Commission's procedures and the investigative status of the open case against Judge Mora – cannot adequately represent and defend the Commission's interests in defending the integrity of its pending case against Judge Mora or its broader constitutional mandate. As a result, the Commission's motion to intervene should be granted.

POINT II

THIS MATTER SHOULD BE DISMISSED BECAUSE THE DEFENDANT'S COMPLAINT TO THE COMMISSION IS ENTITLED TO ABSOLUTE IMMUNITY AS A MATTER OF LAW.

New York Courts have long shielded certain classes of communications from defamation litigation behind a specially enacted privilege, based on the "recogni[tion] that the public interest is served by shielding [such possibly defamatory] communications . . . rather than risk stifling them altogether." *Stega v New York Downtown Hospital*, 31 NY3d 661, 669 (2018) (quoting *Liberman v Gelstein*, 80 NY2d 429, 437 [1992]) (quotation marks omitted). In particular, the Court has held, because the "social benefit in encouraging free speech or the discharge of governmental responsibility sometimes outweighs [an] individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements." *Id*. (quoting *Park Knoll Assoc v Schmidt*, 59 NY2d 205, 208 [1983]) (quotation marks omitted).

Two types of privilege exist: qualified and absolute. If a communication is entitled to qualified privilege, the person who initiated it may be sued in a defamation action, but the plaintiff bears the burden of proving that the communication was made with malice – that is, "spite or ill will" or "reckless disregard of whether [it was] false or not." *Stega*, 31 NY3d at 670 (quoting

Lieberman, 80 NY2d at 437-38) (quotation marks omitted); *see Toker v Pollack*, 44 NY2d 211, 219 (1978). By contrast, communications entitled to absolute privilege "entirely immunize[ ]" the individual who made them "from liability in a defamation action." *Stega*, 31 NY3d at 669; *Rosenberg v MetLife, Inc*, 8 NY3d 359, 365 (2007); *Toker*, 44 NY2d at 219.

A. Communications made in the course of a Commission proceeding are entitled to absolute privilege.

Absolute privilege is reserved for communications that occur in the course of "a proceeding in a court" or before "an administrative body exercis[ing] a quasi-judicial function" – *i.e.*, a body that is empowered to hold a hearing at which both parties are entitled to participate and take remedial action, "whether it be an award of compensation, disbarment, or revocation of a license." *Stega*, 31 NY3d at 670-71 (quoting *Toker*, 44 NY2d at 222) (quotation marks omitted). Notably, the Court of Appeals has explicitly held where the communication at issue is made to an administrative body exercising a quasi-judicial function, "the absolute privilege can extend to preliminary or investigative stages of the process, particularly where compelling public interests are at stake." *Rosenberg*, 8 NY3d at 365.

Consistent with those standards, the Court of Appeals held more than half a century ago that a complaint to a state attorney grievance committee is entitled to "absolute privilege." *Wiener v Weintraub*, 22 NY2d 330, 332 (1968). The Court's application of absolute privilege in *Wiener* hinged on its finding that the state

attorney grievance committee constituted "a quasi-judicial body." *Id.* Since then, the Court of Appeals and Appellate Division have repeatedly reaffirmed that rule. *Stega*, 31 NY3d at 670; *Rosenberg*, 8 NY3d at 365-66; *Casa de Meadows Inc (Cayman Islands) v Zaman*, 76 AD3d 917, 920 (1st Dept 2010); *Kilkenny v Law Office of Cushner & Garvey LLP*, 76 AD3d 512, 513 (2d Dept 2010); *Sinrod v Stone*, 20 AD3d 560, 561-62 (2d Dept 2005); *Jonas v. Faith Properties, Inc*, 221 AD2d 959, 961 (4th Dept 1995).

As the *Wiener* Court explained, "it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a Grievance Committee or some other designated body for investigation." 22 NY2d at 332. The Court acknowledged that "on occasion false and malicious complaints will be made," but held that "the necessity of maintaining the high standards of our bar -- indeed, the proper administration of justice --" outweighs that potential harm, which is adequately addressed in any event by the Grievance Committee's exercise of its function as a quasi-judicial body and the confidentiality provision applicable to attorney grievance complaints. *Id.*

The holding and reasoning of *Wiener* apply with equal force to complaints made to the Commission. Indeed, the analogy is ironclad, and the application is indistinguishable. The quasi-judicial nature of the Commission has been

recognized by the Court of Appeals and lower courts. *See Nicholson v State Com. on Judicial Conduct*, 50 NY2d 597, 606 (1980); *Doe v Commission on Judicial Conduct*, 246 AD2d 409, 409 (1st Dept 1998); *Cunningham v Stern*, 93 Misc 2d 516, 517-18 (Sup Ct Erie Co 1978). Moreover, the Commission bears all of the characteristics of a quasi-judicial body. Like the attorney grievance committee in *Wiener* the Commission "functions as a quasi-judicial body through its investigation of complaints and administration of disciplinary proceedings." *Rosenberg*, 8 NY3d at 365-66. Furthermore, it holds hearings "at which both parties [are] entitled to participate," after which it "takes remedial action." *Stega*, 31 NY3d at 670. Judges who are subject to a Commission investigation have multiple opportunities to contest the veracity of a complainant's allegations, including: (1) opportunities to respond to the allegations in writing and under oath during the investigation; (2) the right to a full evidentiary hearing if the Commission authorizes a Formal Written Complaint; and (3) review as of right in the Court of Appeals if the Commission renders a determination imposing public discipline (Tembeckjian Aff ¶¶ 26-29). *See also* Judiciary Law §§ 42-45.

Given these facts, the public policy articulated by the *Wiener* Court requires that complaints made to the Commission are protected by absolute privilege. As in *Wiener*, "it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of" judges to remit that knowledge to the

Commission. 22 NY2d at 332. Indeed "[t]here is hardly . . . a higher governmental interest than a State's interest in the quality of its judiciary" (*Nicholson*, 50 NY2d at 607) (quotation marks omitted), which the Court of Appeals has explicitly held to be "no less important than . . . protecting the integrity of the bar." *Rubenstein*, 23 NY3d at 582. Because "[a]llegations of judicial misconduct bring the integrity of the judicial system into direct question and undermine the public's faith in our judicial officers," ensuring "public confidence in the judiciary is of singular importance." *Id.* at 581-82.

The same chilling effect that the *Wiener* Court sought to combat threatens the Commission now as a result of plaintiff's lawsuit: "If a complainant were to be subject to a libel action by the accused [judge]," as has happened here, "the effect in many instances might well be to deter the filing of legitimate charges" against judges in the future. *Wiener*, 22 NY2d at 332. That result – which is utterly incompatible with the Commission's constitutional mandate – is unacceptable. Fortunately, the solution is simple, requiring no more than an application of *Wiener* and its progeny to the logical conclusion that correspondence in the course of a Commission proceeding, including complaints made in the "preliminary or investigative stages of the process," are entitled to absolute privilege that confers full immunity against a defamation suit. *Rosenberg*, 8 NY3d at 363; *see Stega*, 31 NY3d at 670-71; *Toker*, 44 NY2d at 219; *Wiener*, 22 NY2d at 332.

B. Dismissal under CPLR 3211(a)(7) is an appropriate remedy.

CPLR 3211(a)(7) permits a court to dismiss a claim where the pleading fails to state a cause of action. Courts of this state have routinely invoked this statute to dismiss a defamation claim where the communications specified in the complaint were entitled to absolute privilege. *See eg*, *Credit Agricole Corporate and Inv Bank New York Branch v BDC Finance LLC*, 114 AD3d 552, 553 (1st Dept 2014); *Rufeh v Schwartz*, 50 AD3d 1002, 1004 (2d Dept 2008); *Allan and Allan Arts LTD v Rosenblum*, 201 AD2d 136, 137 (2d Dept 1994); *Capoccia v Couch*, 134 AD2d 806, 807 (3d Dept 1987); *see also Wiener*, 22 NY2d at 331, 333 (granting motion to dismiss pursuant to "CPLR 3211 (subd. (a))").

Accordingly, this Court should dismiss the claim against Ms. Koch pursuant to CPLR 3211(a)(7).

CONCLUSION

For the foregoing reasons, Commission Counsel respectfully requests that the Commission's motion for intervention be granted and the plaintiff's action be dismissed based on the absolute privilege attached to the defendant's complaint alleging judicial misconduct.

Dated: February 6, 2023
Albany, New York

Respectfully submitted,



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COMMISSION EXHIBIT 13

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF DUTCHESS Index No. 2022-54141

----------x

FRANK MORA,

Plaintiff,

vs.

STACEY KOCH,

Defendant.

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Assigned: Rosa, J.S.C.

----------x

PRELIMINARY STATEMENT

This is a defamation claim arising from the false and damaging statements written by defendant concerning plaintiff, a sitting Judge, to the New York State Commission on Judicial Conduct. Through her false and libelous statements, defendant intentionally sought to imperil and jeopardize plaintiff's ability to practice his profession and caused plaintiff substantial emotion distress and humiliation.

STATEMENT OF FACTS [1]

[1] Violating the most basic rules governing adjudication of motions to dismiss, (*Cohn v Lionel Corp.*, 21 N.Y.2d 559, 562 [1968], defendant Koch presents her own version of events and requests that this Court adjudicate the case on her narrative. But doing so would be plain error and the facts set forth below should control resolution of this motion. Judge Mora has a medical condition in which he is not able to tolerate the wearing of masks. He was given specific permission from his Administrative Judge, Hon. Kathie Davidson, and Deputy Chief Administrative Judge for Courts Outside of New York City, Hon. Vito C. Caruso, to wear a face shield in lieu of a mask due to his condition. In addition, Judge Mora was given specific permission to be in the Poughkeepsie City Court for each and every time that he was there. Further, Judge Mora was directed by his Administrative Judge to conduct criminal cases virtually. Surely, the headline "Unvaxxed NY Judge Defies Courthouses Ban As Others Ousted" is a sensational one. If the reporter had integrity, he would have published the truth. But the truth is not as interesting as the fiction he created.

According to the Verified Complaint, the factual statements of which control disposition of this motion, Plaintiff Frank Mora is a resident of the City of Poughkeepsie, County of Dutchess, and is a person of legal age who may sue and be sued, and Defendant Stacey Koch is a person of legal age who lives in the City of Poughkeepsie, works in the County of Dutchess, is of legal age and may sue and be sued. The events giving rise to this Verified Complaint arose in the County of Dutchess as and between residents of this County and the sum in controversy is in excess of the jurisdiction of any inferior court. Accordingly, this Honorable Court has jurisdiction over this matter. In addition, the matter was timely filed, and defendant and intervenor make no contrary claim.

The Underlying Event

On December 28, 2021, within the last year, plaintiff brought one of his sons to Seeta Eye, an ophthalmology office in the County of Dutchess. *See* Complaint, para. 4. Defendant Koch was then the office manager of Seeta Eye and at work when plaintiff entered the business with his son. Plaintiff had a patient/provider relationship with Seeta Eye and had known defendant Koch for more than twenty years.

Earlier in 2021, when visiting Seeta Eye, plaintiff explained that he did not medically tolerate face masks and wore a shield. Defendant then permitted him to enter the waiting room/reception area with his face shield to pay for medical services which one of his sons received.

This court should completely disregard the Law360 article and Judge Mora's federal lawsuit that has been brought up by Defendant Koch. They are both completely irrelevant to the instant matter and are only submitted in an attempt to prejudice the court against Judge Mora.

On December 28, 2021, plaintiff again attended to the reception area wearing a face shield with another son. A receptionist asked him to put on a mask and plaintiff advised he could not do so as he does not medically tolerate masks. The receptionist asked plaintiff to speak with defendant Koch, the office manager, and then called her. Upon her arrival, Koch demanded that plaintiff don a mask even though, earlier in 2021, he had explained to her that he was unable medically to do so.

When plaintiff began to again explain why he could not do so, Koch began yelling at him in a rude and disrespectful manner and demanded that plaintiff provide medical documentation of his incapacity to wear a mask. Such a demand of a patient was unlawful [under Interim Guidance provided by the Governor's office on April 17, 2020]. The authority for entities to set a mask policy is governed by 10 NYCRR 2.60. This regulation is very clear stating that only those "able to medically tolerate a face-mask may be required to cover their nose and mouth with a mask or face-covering...." Accordingly, any mask policy must except a person who is not able to medically tolerate a mask. This was not done.

Judge Mora had clearly advised Koch eleven (11) months prior to this incident that he did not medically tolerate a mask. He then again advised both the receptionist and Koch at the time of the incident. Further, the regulation does not require, nor does it make any mention of, proof of medical documentation. Even so, Judge Mora provided medical documentation, which Defendant Koch unilaterally deemed bogus. Even after Defendant Koch verified directly with Dr. M[redacted] that he had sent the documentation, Defendant Koch still wrote in her complaint to the Commission that it was "seemingly bogus."

After defendant Koch yelled and screamed at the plaintiff, she called the police and after calling the police, she again claimed that plaintiff was upsetting other patients. After demanding

that plaintiff stop talking, defendant again called the police, this time reporting she was facing an emergency.

During defendant's second phone call to the police, plaintiff decided to try to further defuse the situation by leaving to obtain a doctor's note attesting to his inability to wear a mask. He advised defendant Koch he was going to seek such a note and left the medical office with his son.

Plaintiff reached his chiropractor who emailed a note which plaintiff forwarded to defendant Koch who received this note and allowed plaintiff and his son to return that afternoon to the eye doctor's office. The visit occurred without further incident.

Defendant Falsely Reports the Event to the New York State office of Judicial Conduct

The following day, Koch wrote statements about the incident which were false, professionally damaging to the plaintiff as a jurist, and calculated to subject him to personal ridicule and shame.

Specifically, on December 29, 2021, defendant wrote the following false and libelous statements on a complaint form provided by the New York State Office of Judicial Conduct:

a) "Mr. Mora *created a huge scene* in our waiting room…"

(b) "He *taunted me in front of a waiting room of @20 people*…"

(c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice*."

(d) "He *then had a letter created* from Chiropractor G[redacted]M[redacted] [sic] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask."

(e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice."*

According to the Verified Complaint, each of these statements is materially false in that: [a] plaintiff did not cause a scene, let alone a "huge scene," in the waiting room; instead, defendant Koch lost her temper and began screaming and yelling as plaintiff sought to explain the situation; [b] plaintiff did not taunt Koch at any time; [c] plaintiff has abiding respect for the police and would never intimate or state the belief that, if called, police would not attend to a situation, and plaintiff had no information as to what the police conveyed to defendant about their intent to come, or not to come, to the medical office; [d] plaintiff would never "have a letter created" by a physician, a claim which intimates to a reasonable reader the exercise of some authority Judge Mora did not wield over a medical provider to make misrepresentations concerning his medical condition; and [e] at all times, plaintiff acted in a professional manner and the contrary claim is without any factual basis and diminishes plaintiff's reputation and his capacity to properly discharge his duties and responsibilities as a City Judge, his profession.

The account provided by Koch is further refuted by one eyewitness, an employee of Seeta, who, at great personal risk, attested to plaintiff's professional behavior during the December 28, 2021 incident with Koch.

Defendant's conduct has caused plaintiff emotional distress, humiliation, shame, and embarrassment and required him to answer her false claims before a state Commission designed and empowered to investigate judicial misconduct. By libeling plaintiff and avowedly and intentionally seeking to interfere with his capacity to perform the duties of his profession, defendant engaged in defamation *per se*.

Plaintiff seeks a jury trial on his defamation claim and compensatory damages of $250,000 and punitive damages of $175,000 against defendant.

LEGAL ARGUMENT

Defendant and the intervening Commission erroneously assert that, regardless of her intent or motive, Koch is entitled to absolute immunity because she provided her defamatory account of events to an investigative authority which New York State has empowered to investigate and discipline judges.

In fact, on its face, Koch's statement is an unsworn averment made out-of-court. It is not analogous to sworn testimony received in a court or to a sworn charge or testimony received by an administrative or investigative body. And, the Commission's web site, which invites complaints from members of the public about the judiciary and has a form for the completion of such complaints, does not suggest or require that such statements be sworn to or notarized. Nor does it promise or represent that a person filing such a complaint, let alone a sham or false complaint, will receive confidentiality or any form of immunity from suit filed by an offended party.

A. THE VERIFIED COMPLAINT MUST BE CONSTRUED IN THE LIGHT MOST FAVORABLE TO PLAINTIFF

On a motion to dismiss based upon absolute privilege, the facts must be taken most favorably to the plaintiff and "where there is a question as to the applicability of the privilege, the issue should be decided at trial." *Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986] ("In an analogous case involving a commercial relationship, where the offending statement included in the counterclaim charged the commission of fraud on numerous others (*Wiser v Koval*, 50 AD2d 523, 524 [1st Dept 1975], *appeal dismissed* 38 N.Y.2d 873 [1975], *lv*

dismissed 39 N.Y.2d 922 [1976]), this court held that the existence of a privilege at common law for the alleged defamation should be decided upon a trial. Applying the guidelines delineated in *Youmans* to the instant case, we find that triable issues of fact are raised as to the existence of the common-law privilege."). *Also see*, *Flomenhaft v. Finkelstein*, 127 A.D.3d 634, 637-38 (1st Dept 2015) (noting that Halperin remains good law, refusing to grant absolute immunity in favor of a person sued for making allegedly false out of court statements which allegedly predicated defamatory claims in lawsuit brought by a third party against plaintiff and referring the matter to fact-finder for resolution). The same principles and result obtain here.

B. **DEFENDANT FILED A SHAM COMPLAINT AND IS NOT ENTITLED TO ABSOLUTE PRIVILEGE**

When a person files a sham complaint and defames another intentionally in state court, s/he is not entitled to absolute immunity. *Halperin v Salvan*, *supra.* at 548. In *Halperin*, a lawyer filed suit against parties who had allegedly defamed him in the Complaint they filed to initiate a prior court case. The Court rejected any absolute immunity defense, holding, "[W]e cannot agree with our dissenting colleague's conclusion that the defamatory statements at issue are protected by the common-law privilege afforded to words spoken and written in the course of judicial proceedings. This privilege is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, *made in good faith and without malice*. (*Moore v Manufacturers Natl. Bank*, 123 N.Y. 420, 426 [1890].) In *Youmans v Smith, 153 N.Y. 214, 220 [1897]),* the court explained the relevant guidelines in determining whether the privilege has been lost: "If counsel through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and *so needlessly defamatory as to warrant the inference of express malice, they lose their privilege and must take the*

consequences. In other words, if the privilege is abused, protection is withdrawn." (Emphases added.)

Here, plaintiff alleges that defendant Koch intentionally made false and defamatory statements about him to induce the Commission to investigate and ultimately sanction him. The situation is directly analogous to that presented in *Flomenhaft, supra.,* where plaintiff alleged that Finkelstein "made false representations to Harrison about plaintiff and that the statements were made specifically to induce Harrison to start an action against the plaintiff." Likewise, here, plaintiff submits that Koch knowingly made false and defamatory out-of-court statements to the Commission which caused it to initiate proceedings against Judge Mora. In such a situation, no absolute privilege applies as a matter of law though a jury could conclude after hearing the evidence that Koch did NOT make her complaints with the required "sham" intent, making apposite the absolute privilege.

In short: in light of the allegations of plaintiff's Verified Complaint, no absolute immunity applies to Koch's defamatory statements, which were made out of court, never verified and, according to the Verified Complaint, offered in bad, not good, faith.

Defendant's motion is improperly premised on this court determining that defendant made her complaint in good faith and without malice, but this is inappropriate where, as here, the Verified Complaint avers the opposite – defendant intentionally made false statements about Judge Mora to embarrass and humiliate him and to have sanctions imposed upon him, and, as such, must be denied.

C. THE NATURE OF THE FORUM DOES NOT CONTROL

Defendant and the intervening Commission claim that because Koch's statements were made to a quasi-judicial forum, they automatically and categorically gain the benefit of an absolute privilege. This is plainly erroneous; the above-cited precedent establishes that even statements made in court pleadings and proceedings may be pierced and serve as a predicate for a defamation action where the trier of fact concludes that the false statements were a "sham," that is, made in bad faith and with the intent, as pled here, to subject a plaintiff to humiliation and embarrassment.

As this is such a case and as defendant Koch's complaint to the Commission constitutes libel *per se* and, if taken as true, presents plaintiff Mora as a person who should not be a jurist, defendant's motion should be denied.

Likewise, any claim that Mora instituted this proceeding in bad faith to retaliate against the defendant is categorically denied as plaintiff has no such intent and proceeds to vindicate his own professional reputation which defendant besmirched by her false and defamatory statements.

CONCLUSION

The instant motion should be denied, an answer filed within ten days, and a discovery schedule established.

Dated: March 6, 2023

Yours, etc.

MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES
1 Railroad Avenue, Ste 6
Goshen, NY 10924
[redacted]
[redacted]@sussman.law

Counsel for Plaintiff

To: All counsel through NYSCEF

COMMISSION EXHIBIT 14

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

FRANK MORA,

Plaintiff,

-against-

STACEY KOCH,

Defendant,

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Intervenor-Defendant.

DECISION AND ORDER

Index No. 2022-54141

Motion Sequences: 1, 2

The following papers were read and considered on the motion of Defendant seeking dismissal of the complaint and for an award of attorney's fees and costs (Seq. #1); and the motion of Intervenor-Defendant New York State Commission on Judicial Conduct (the "Commission") seeking dismissal of the complaint. (Seq. #2):

Document:	NYSCEF Doc. No(s).:
SUMMONS & VERIFIED COMPLAINT and EXHIBIT 1	1
NOTICE OF MOTION – Seq. #1	5
MEMORANDUM OF LAW	6
AFFIRMATION IN SUPPORT and EXHIBITS A–B	7–9
MEMORANDUM OF LAW IN OPPOSITION	26[1]
REPLY MEMORANDUM OF LAW	31
NOTICE OF MOTION – Seq. #2	15

[1] Plaintiff filed a single memorandum of law in opposition, addressing arguments made in both pending motions.

AFFIRMATION IN SUPPORT 16
PROPOSED ANSWER 17
MEMORANDUM OF LAW IN SUPPORT 18

MEMORANDUM OF LAW IN OPPOSITION 26

REPLY MEMORANDUM OF LAW 32

BACKGROUND

This is an action for defamation. The following facts are taken from the complaint and presumed to be true for purposes of deciding both motions.

The events giving rise to this action commenced on December 28, 2021. That day, Plaintiff, a Judge of the Poughkeepsie City Court, brought his son to an ophthalmology office where a dispute arose between Plaintiff and the office manager, Defendant, regarding Plaintiff's unwillingness to wear a face mask while in the office. The following day, December 29, 2021, Defendant wrote certain "statements concerning [Plaintiff] . . . to the New York State Commission on Judicial Conduct" (Complaint at "Preliminary Statement"). The written statements were submitted via a complaint form provided by the New York State Office [sic] of Judicial Conduct" (*id.* at ¶24).[2]

Plaintiff alleges that Defendant's statements were false, libelous, professionally damaging to him as a jurist and calculated to subject him to personal ridicule and shame (*id.* at ¶¶ 23–24). Plaintiff further alleges that Defendant's statements caused him "emotional distress, humiliation, shame and embarrassment and required him to answer [Defendant's] false claims before a state commission designed and empowered to investigate judicial misconduct" (*id.* at ¶27). As a result of these events, Plaintiff seeks compensatory and punitive damages of $425,000.00 on a single cause of action for defamation *per se*.

Oral argument on these motions was held March 27, 2023, at which time all parties were heard. The first branch of the Commission's motion seeking leave to intervene in this matter was granted on the record as unopposed, and the caption has been amended accordingly. Defendant moves to dismiss the complaint pursuant to the defense of absolute privilege and pursuant to New York's "anti-SLAPP" statutes. The Commission moves for dismissal based on absolute privilege.

DISCUSSION

In order to decide the pending motions, the Court must make an initial determination of whether this is "an action involving public petition and participation." As recently discussed by the Second Department:

> In 1992, legislation was enacted to address "a rising concern about the use of civil litigation, primarily defamation suits,

[2] For reasons discussed below, the substance of Defendant's statements is not relevant to the determination of the issues raised herein, and the Court will not republish them as part of this opinion.

> to intimidate or silence those who speak out at public meetings against proposed land use development and other activities requiring approval of public boards. Termed SLAPP suits—strategic lawsuits against public participation—such actions are characterized as having little legal merit but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future." The legislation was specifically aimed at broadening the protection of citizens facing litigation arising from their public petition and participation.
>
> [In 2020,] the Legislature amended the relevant statutes to broaden the scope of the law and afford greater protections to citizens facing litigation arising from their public petition and participation (see L 2020, ch 250).

(*Mable Assets, LLC v Rachmanov*, 192 AD3d 998, 998 [2d Dept 2021] (quoting *600 W. 115th St. Corp. v Von Gutfeld*, 80 NY2d 130 [1992]).

New York's "anti-SLAPP" statutes are codified at Civil Rights Law §§ 70-a and 76-a. As part of the 2020 amendments to these statutes, the Legislature enacted heightened pleading standards when a defendant moves to dismiss for failure to state a cause of action (CPLR 3211[a][7]), where the "[defendant] has demonstrated that the action . . . subject to the motion is an action involving public petition and participation as defined in [Civil Rights Law §76-a(1)(a)]" (CPLR 3211[g][1]).

An "action involving public petition and participation" is defined as lawsuit based upon: (1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition" (Civil Rights Law §76-a[1][a]). The court is to construe the term "public interest" broadly to include any subject other than a purely private matter (Civil Rights Law §76-a[1][d]).

A court is required to grant a preference to hearing a motion to dismiss a SLAPP action, and the motion "shall be granted unless the [plaintiff] demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law" (CPLR §3211[g][1]). In adjudicating a motion to dismiss a SLAPP action, the court must consider the pleadings and supporting and opposing affidavits (CPLR §3211[g][2]).

Here, the Court readily finds that Defendant's conduct, as alleged in the complaint and discussed in Defendant's motion papers, falls within the broad definition of "public petition and participation." Her statements about Plaintiff concerned his status as a public official and his fitness for that role and were made to a governmental body charged with overseeing his conduct,

i.e., the Commission. Moreover, the statements were admittedly furnished through an online form provided by the Commission, the purpose of which is to invite members of the public to submit complaints about specific judges. Defendant's complaint about Plaintiff to the Commission may therefore be viewed as a public petition[3] and participation in furtherance of the right of free speech in connection with an issue of public interest, particularly in the broad sense the Court is required to apply.

As a result, the stricter pleading standards of CPLR 3211(g) apply, and to avoid dismissal Plaintiff is required to show that the single cause of action for defamation *per se* in the complaint "has a substantial basis in law or is supported by a substantial argument for an extension, modification or a reversal of existing law." That is not the case here.

A cause of action for defamation *per se* is based upon a false statement, published *without privilege* or authorization to a third party, and so offensive that malice is presumed, *i.e.* claiming that a person committed a crime of moral turpitude or suffers from a loathsome disease; To recover damages for defamation, a plaintiff must prove the defendant's publication to a third party of a false statement about the plaintiff, without privilege or authorization (*Knutt v. Metro Intern S.A.,* 91 A.D. 3d 915 [2nd Dept. 2012] citing *Epifani v. Johnson,* 65 A.D.3d 224, 233). A defamatory statement is one which " 'tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him *in the minds of a substantial number of the community*'" (*Golub v. Enquirer/Star Group,* 89 N.Y.2d 1074, 1076, quoting *Mencher v. Chesley,* 297 N.Y. 94, 100, emphasis added). Imputing a serious crime to the plaintiff constitutes defamation *per se* (*see Geraci v. Probst,* 15 N.Y.3d 336, 344; *Liberman v. Gelstein,* 80 N.Y.2d 429, 435). In the context of a defamation action, "[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable." *Park Knoll Assoc. v Schmidt*, 59 NY2d 205, 208 [1983].

The only defamatory conduct alleged in the complaint is Defendant's submission of her statements concerning Plaintiff to the Commission. It was further admitted during oral argument on this matter, and as supported by the affirmation of counsel for the Commission, that Defendant did not publish the statements to anyone else; and until Plaintiff filed this lawsuit, Defendant's statements and the Commission's proceedings with respect thereto were confidential and non-public.

Accordingly, this matter is subject to the controlling precedent of *Wiener v Weintraub* (22 NY2d 330 [1968]), wherein the Court of Appeals held that a written complaint about an attorney submitted to the local Grievance Committee and pertaining to potential misconduct by the attorney is "absolutely privileged," based upon overriding public interests:

> If a complainant were to be subject to a libel action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the hardship on a particular attorney, the

[3] See Merriam-Webster.com Dictionary (https://www.merriam-webster.com/), *Petition:* "a formal written request made to an authority or organized body (such as a court)."

> necessity of maintaining the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

(*Wiener v Weintraub*, 22 NY2d 330, 331–332 [1968]; *see also Bisogno v Borsa*, 31 Misc 3d 1203(A) [Sup Ct, Richmond County 2011], *affd*, 101 AD3d 780 [2d Dept 2012]).

The process followed with respect to judicial conduct complaints is very similar to the process followed with respect to complaints against attorneys, including the quasi-judicial and confidential nature of the proceedings (*see* Affirmation of Robert H. Tembeckjian, Esq., dated February 6, 2023 (NYSCEF Doc. No. 16) at ¶¶ 14–19, 24–29; Judiciary Law §§ 44, 45). Moreover, the same public concerns regarding the "necessity of maintaining high standards [and] the proper administration of justice" obviously apply to sitting judges at least as forcefully as to practicing attorneys. Thus, the defense of absolute privilege applies in this matter; and if Defendant's complaint is deemed to be absolutely privileged, this Court is required to dismiss the complaint at the pre-answer stage (*Wiener*, 22 NY2d at 332–333; CPLR 3211[g][1]), and the substance of the complaint to the commission is not relevant to this determination.

Plaintiff opposes the absolute privilege argument, raised by both Defendant and the Commission, on the basis that it does not apply where the underlying complaint is a "sham." For this argument, Plaintiff relies on a line of cases in the First Department, which in turn rely upon the Court of Appeals case of *Youmans v. Smith*:

> . . . If counsel, through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason, and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege, and must take the consequences. In other words, if the privilege is abused, protection is withdrawn.

(*Youmans v Smith*, 153 NY 214, 219–220 [1897] [internal quotations omitted]). This "common law privilege afforded to words spoken and written in the course of judicial proceedings . . . is lost if abused, and is limited to statements which are pertinent to the subject matter of the lawsuit, made in good faith and without malice" (*Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986]).

The theory underlying the "sham action" exception or "sham litigation", *Flomenhaft v. Finkelstein*, 127 AD3d 634, 638 [1st Dept 2015], is inapplicable here as it is inconsistent with the policy and breadth of the absolute privilege expressed by the Court of Appeals in *Weiner*, which specifically applies even to "false and malicious complaints" (*Wiener*, 22 NY2d at 332). The critical distinction in the cases relied upon by Plaintiff is that "sham actions" are filed publicly before the attorney or judge has an opportunity to respond, while complaints made to governing

bodies overseeing attorneys and judges, and the quasi-judicial proceedings that follow, are "private and confidential" (*id.*).

In other words, there can be no abuse of the absolute privilege in the submission of a confidential complaint to the Commission, because the only persons to whom the complaint is published are public officials (Judiciary Law §41) charged with "receiv[ing], initiat[ing], investigat[ing] and hear[ing] complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge" (Judiciary Law §44), and who are bound by law to keep such complaints and related proceedings confidential (Judiciary Law §§ 45–46; *Wiener*, 22 NY2d at 332). Such circumstances are among the few, but well-recognized, reasons for application of an absolute privilege:

> Because the perceived social benefit in...he discharge of governmental responsibility sometimes outweighs the individual's underlying right to a good reputation, the individual's right may have to yield to a privilege granted the speaker barring recovery of damages for the defamatory statements...If the privilege is absolute, it confers immunity from liability regardless of motive.
>
> *...The public interest requires that such statements be absolutely privileged so that those discharging a public function may speak freely in doing so, insulated from harassment and fear of financial hazard...*

Park Knoll Assoc. v Schmidt, 59 NY2d 205, 208–209 [1983] [emphasis added; internal quotations and citations omitted].

By contrast, each of the cases on which Plaintiff relies for his argument that the "sham action" exception precludes dismissal of this case involved written statements used in a *public, civil action*, where the allegedly defamatory statements appeared in a civil pleading filed by an attorney. In each such case, the plaintiff was an attorney; and the allegedly defamatory statements were made to the public generally, before the plaintiff attorney had any opportunity to respond to the allegations confidentially in the context of a Grievance Committee investigation. Those cases present the opposite factual scenario of what has occurred here. Until Plaintiff commenced this action via a publicly-viewable compliant, to which he attached a full copy of Defendant's non-public statements to the Commission, the statements and the Commission's proceedings were confidential. Pursuant to *Wiener v. Weintraub*, Defendant's statements could not be deemed abusive of any privilege. Accordingly, the "sham action" exception to the absolute privilege does not apply here as a matter of law.

In fact, as the Commission's counsel asserted, there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility. The purpose of keeping the Commission's proceedings confidential is to protect not only the Judge involved but to protect the public by providing a safe forum in which to have complaints addressed. As counsel for the Commission stated, the absolute

privilege and confidentiality of the proceedings before it are critical to the Commission's investigation and to maintaining public confidence in the integrity of the judiciary.

Given that the subject-matter of this lawsuit squarely falls within the precedent of *Wiener v. Weintraub* and its progeny, and that Plaintiff has not furnished any "*substantial* argument" or precedent which warrant consideration of "an extension, modification or reversal of existing law" (CPLR 3211[g][1]), Defendant's statements must be deemed absolutely privileged and the complaint must be dismissed. As a statutory consequence, Defendant is entitled to an award of "costs and attorney's fees" (Civil Rights Law §70-a(1)(a)), as such an award is mandatory.

Based on the foregoing, it is hereby

ORDERED that Defendant's motion to dismiss is GRANTED; and it is further

ORDERED that the motion to dismiss of Intervenor-Defendant Commission is GRANTED; and it is further

ORDERED that the complaint is DISMISSED with prejudice; and it is further

ORDERED that a hearing on the amount of attorney's fees and costs to be awarded to Defendant shall be held in person on April 27, 2023 at 10:00 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: April 4, 2023
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

Scanned to the E-File System only

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

Michael H. Sussman, Esq.
1 Railroad Avenue, Suite 3
PO Box 1005
Goshen, NY 10924

Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020

New York State Commission on Judicial Conduct
Corning Tower, Suite 230, Empire State Plaza
Albany, NY 12223

COMMISSION EXHIBIT 15

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**"), made effective as of the date defined below, is entered into by and between Frank Mora ("**Mora**") and Stacey Koch ("**Koch**"). Mora and Koch may be referred to herein collectively as the "**Parties**" and individually as a "**Party**."

WHEREAS, Mora is a Poughkeepsie City Court Judge, and Koch is an office manager at Seeta Eye, an ophthalmology practice with a location at 27 Davis Avenue, Poughkeepsie, New York;

WHEREAS, on December 28, 2021, during the COVID-19 pandemic, Mora entered Seeta Eye, and Mora and Koch had a dispute regarding Mora's alleged inability to wear a face mask while in Seeta Eye;

WHEREAS, on December 29, 2021, Koch submitted a complaint to the New York State Commission on Judicial Conduct concerning Mora's behavior in Seeta Eye the day before;

WHEREAS, on December 29, 2022, Mora filed a lawsuit styled *Frank Mora v. Stacey Koch*, Index No. 2022-54141, in New York Supreme Court, Dutchess County (the "**Lawsuit**"), alleging that Koch's complaint was defamatory and seeking compensatory and punitive damages;

WHEREAS, on February 2, 2023, Koch filed a motion (i) to dismiss the Lawsuit (the "**Dismissal Motion**") and (ii) for attorney's fees and costs under New York Civil Rights Law § 70-a(1)(a) (the "**Fee Motion**");

WHEREAS, on April 4, 2023, the Court granted Koch's Dismissal Motion, dismissed the Lawsuit with prejudice, and held that Koch is entitled to a mandatory award of costs and attorney's fees, the amount of which would be determined at a later date;

WHEREAS, on April 27, 2023, Koch's counsel filed an affirmation in support of her Fee Motion, and Mora has prepared but not filed an opposition to the same in light of this Settlement Agreement;

WHEREAS, the Parties now desire to resolve the Fee Motion without further litigation;

NOW, THEREFORE, in consideration of the following promises, and for good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

1. **Effective Date.** The effective date of this Agreement (the "**Effective Date**") shall be the date that the last of the Parties signs this Agreement.

2. **Settlement Consideration.** In consideration of mutual agreements, representations, warranties, covenants, and releases set forth in this Agreement, the Parties agree to the following:

   a. **Payment.** Within twenty (20) days of the Effective Date, Mora shall make one payment of Twenty Thousand Dollars ($20,000.00) (the "**Payment**") to Koch. The Payment shall be made via check, cashier's check, or electronic wire transfer from Mora's counsel, Sussman & Goldman, to Koch's counsel, Davis Wright Tremaine LLP.

   b. **Apology.** Within twenty (20) days of the Effective Date, Mora shall send to Koch a signed apology letter that is attached as **Exhibit A** (the "**Apology**"). The Apology shall be sent from Mora's counsel, Sussman & Goldman, to Koch's counsel, Davis Wright Tremaine LLP. The content of the Apology shall be confidential as between Mora, Koch, and their counsel, but the fact that Mora delivered the Apology to Koch may be public.

c. **No Contact.** Beginning on the Effective Date and continuing in perpetuity, Mora shall have no contact with Koch nor any Seeta Eye location (the "**Contact Ban**"). The Contact Ban includes a prohibition on (i) any communication (whether oral, written, or electronic) with Koch or any Seeta Eye location, or (ii) intentional presence in the vicinity of Koch or at any Seeta Eye location. Mora agrees that a violation of the Contact Ban shall constitute irreparable injury warranting injunctive relief for specific performance.

d. **Waiver of Claims Related to Contact Ban and Appeal.** Mora agrees to waive and not assert any claim, including any claim based on a disability, against Koch, Seeta Eye, or its employees, arising from the Contact Ban. Mora further agrees to waive his right to appeal, or to move to reargue, renew, or otherwise reconsider, in connection with the Court's April 4, 2023 order or any judgment predicated on such order.

e. **Withdrawal of Fee Motion.** Within fourteen (14) days of Koch's receipt of the Payment and the Apology, Koch, through her counsel, shall inform the Court that she is withdrawing her Fee Motion pursuant to a settlement agreement. Neither this Agreement, nor any exhibits, shall be filed with the Court.

f. **Release of Claims in Fee Motion.** Upon the withdrawal of the Fee Motion, Koch shall thereby forever and unconditionally release, remit, acquit, and discharge Mora, and his present, former, and future (as applicable) spouses, heirs, representatives, predecessors, successors, insurers, agents, partners, principals, employees, contractors, and attorneys, from any claim for costs and attorney's

fees under New York Civil Rights Law § 70-a(1)(a), that Koch may have or ever had, from the beginning of time to the Effective Date, arising from the Lawsuit.

3. **No Release of Obligations in This Agreement.** Notwithstanding any provision in this Agreement, nothing in this Agreement is intended to or shall release any of the Parties from the obligations, duties, and covenants that are set forth in this Agreement.

4. **Miscellaneous.**

a. **Representations.** The Parties represent and warrant by their execution of this Agreement that they have approved and accepted this Agreement, and that they have the capacity to enter into this Agreement.

b. **Incorporation of Recitals.** The statements contained in the "**WHEREAS**" recitals of this Agreement are true, material, and necessary for a full comprehension and understanding of this Agreement and are accordingly incorporated herein as contractual terms of this Agreement.

c. **Choice of Law, Jurisdiction, and Venue.** This Agreement shall be deemed to have been made in the State of New York. This Agreement shall be governed by, and construed in accordance with, the internal laws of New York, without regard to conflict-of-law principles. The New York Supreme Court, New York County, shall have exclusive jurisdiction and venue over any claims or disputes arising under this Agreement.

d. **Severability.** The terms of this Agreement are severable, and if for any reason any part hereof shall be found to be unenforceable, the remaining terms and conditions shall remain in full force and effect.

e. **Acknowledgment of Advice of Counsel.** The Parties acknowledge that they have read this Agreement carefully, that they have been afforded a sufficient amount of time to consider and accept the terms and effects of this Agreement, that they have been advised by legal counsel of their choosing on all of the terms and effects of this Agreement prior to executing this Agreement, and that in all aspects and respects they are voluntarily entering into and executing this Agreement.

f. **Entire Agreement; Modifications.** No amendment, modification, or termination of this Agreement shall be deemed valid unless reduced to writing signed by all of the Parties. This Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements and understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. No Party is relying on any representations or promises other than those set forth expressly in this Agreement.

g. **Participation in Drafting.** Each of the Parties cooperated in the drafting and preparation of this Agreement and, if there is any deficiency in the construction of this Agreement, it shall not be construed against either Party.

h. **Successors and Assigns.** This Agreement shall inure to the benefit of the Parties' successors and assigns.

i. **Execution in Counterparts.** This Agreement may be executed in counterparts and transmitted by email, facsimile, or other electronic transmission, each of which when executed shall be deemed to be an original and all of which together shall constitute a single instrument binding upon the Parties. Signatures may be

electronic or handwritten, both of which being of equal effect whether kept in electronic or paper form. All fully executed copies shall be considered duplicate originals, equally admissible in evidence.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed as of the Effective Date.

By: _____ Date: May 16, 2023
FRANK MORA

By: _____ Date: May 22, 2023
STACEY KOCH

COMMISSION EXHIBIT 16

May 4, 2023

Dear Ms. Koch:

As you know, I was attempting to withdraw the lawsuit after the March 27th court appearance, however, it was not finalized before the court issued its expedited decision on April 4th.

I am going to share some very personal things with you. Perhaps if you had known at the time, our exchange would have turned out differently. I do not wear a mask because I suffer from severe (acute) anxiety, which manifests as object phobia. The physical symptoms were addressed by my chiropractor, that is why he was able to write a note. He was not able to put a diagnosis, as chiropractors are not able to address mental health issues or disabilities. [redacted].

[redacted].

I now know that this suit should not have been brought in the first instance, and I apologize for doing so.

The Patron Saint of Attorneys, Sir Thomas More, wrote a letter while imprisoned in the Tower of London. The following is one of the quotes from that letter, "To think my worst enemies my best friends, for the brethren of Joseph could never have done him so much good with their love and favour as they did him with their malice and hatred."

[redacted]

Please forgive me for any angst I have caused you.

Frank Mora

COMMISSION EXHIBIT 17

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Tuesday, July 21, 2020 8:27 AM
To: Hon. Kathie Davidson
Subject: RE: Face shield

Good morning. Thank you again!

From: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 7:29 PM
To: Hon. Frank M Mora [redacted]@nycourts.gov>
Subject: RE: Face shield

Good Evening Frank,

I spoke with Judge Caruso this evening since your request is based on a medical reason you do not have to wear the mask. Please continue to practice the 6 feet social distancing.

Have a nice evening,

Kathie

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 3:39 PM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Subject: RE: Face shield

Good afternoon. Any word on the face shield? I'm on the bench tomorrow and just want to make sure it will not be a problem.

From: Hon. Frank M Mora
Sent: Monday, July 20, 2020 8:17 AM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Subject: RE: Face shield

Thank you so much!

From: Hon. Kathie Davidson [redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 8:17 AM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Subject: RE: Face shield

GM

This I believe would be an exception let me check with Judge Caruso and get back to you.

Kathie

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Monday, July 20, 2020 8:14 AM
To: Hon. Kathie Davidson [redacted]@nycourts.gov>
Subject: RE: Face shield

Uh oh. Due to health concerns, I don't normally wear a mask for more than a few minutes at a time. Since I am well more than 6 feet away on the bench, is it possible to get a "waiver," and just use the face shield?

From: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Sent: Friday, July 17, 2020 12:10 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>; Lorna Hinson <[redacted]@nycourts.gov>; James McAllister [redacted]@nycourts.gov>
Subject: RE: Face shield

Good Morning Frank,

I apologized for giving you incorrect information regarding the wearing of a mask with a face shield. I have been informed by Judge Caruso that you must wear a mask with the face shield. Again my apologies.

Have a nice weekend,

Kathie

Hon. Kathie E. Davidson
Administrative Judge
Ninth Judicial District
Westchester County Supreme Court
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
[redacted]
e-mail: [redacted]@nycourts.gov

From: Hon. Frank M Mora <[redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 2:00 PM
To: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker <[redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: RE: Face shield

Thank you.

From: Hon. Kathie Davidson <[redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 2:00 PM
To: Hon. Frank M Mora <[redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners <[redacted]@nycourts.gov>; Lorna Hinson <[redacted]@nycourts.gov>
Subject: RE: Face shield

yes

Hon. Kathie E. Davidson
Administrative Judge
Ninth Judicial District
Westchester County Supreme Court
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
[redacted]
e-mail: [redacted]@nycourts.gov

From: Hon. Frank M Mora [redacted]@nycourts.gov>
Sent: Monday, July 13, 2020 1:32 PM
To: Hon. Kathie Davidson [redacted]@nycourts.gov>
Cc: Hon. Sam Walker [redacted]@nycourts.gov>; Lori Conners [redacted]@nycourts.gov>; Lorna Hinson [redacted]@nycourts.gov>
Subject: Face shield

Kathie,

I was issued a Face shield by my court officers to wear in lieu of a mask on the bench. Please confirm that I am authorized to do so.

Thank you.

Frank

Please be CAREFUL when clicking links or opening attachments.

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

COMMISSION EXHIBIT
18

MEMORANDUM

To: All UCS Judges and Personnel

From: Nancy J. Barry

Date: June 14, 2021

Re: Revised Mask Policy Program

In keeping with Center for Disease Control and Prevention and New York State guidance relaxing mask and physical distancing requirements for individuals fully vaccinated against COVID-19, the Unified Court System will implement a voluntary Revised Mask Policy Program ("Program") for fully vaccinated judges and non-judicial personnel in certain areas of our court facilities. The program will start the enrollment process today.

Eligibility

All fully vaccinated judges and non-judicial personnel are eligible to enroll in the Program. Individuals are considered fully vaccinated for COVID-19:

- Two weeks after their second dose of a two-dose series, such as the Pfizer or Moderna vaccines; or
- Two weeks after a single-dose vaccine, such as the Johnson and Johnson vaccine.

Enrollment

Enrollment in the Program is strictly voluntary. Declining to enroll or participate in the Program will have no impact on an individual's assignment or any other employment decision.

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Starting today, interested and eligible judges and non-judicial personnel may enroll from a computer connected to the UCS network using the Program's share point site (https://nycourts.sharepoint.com/sites/COVID-19/CPV), where they will be asked to enter the date of their last COVID-19 vaccine shot and upload an image of the front and back of their COVID-19 vaccination card or, in the alternative, a screenshot of a "COVID-19 Vaccination" Excelsior Pass from their smartphone.[1]

The information submitted on the share point site will be strictly confidential; maintained separate and apart from personnel records; and used solely to authorize and issue a Program identification card. These records will be maintained and accessed only by authorized Office of Court Administration staff tasked with issuing the Program identification card, monitoring program compliance and maintaining the share point site.

Program Identification Card

Upon approval of the share point application, Department of Public Safety (DPS) staff will issue an orange Program identification card which will contain the UCS Seal, a picture of the judge or employee ("participant"), the participant's name and the Program expiration date for that participant (the last day of the month/year in which the efficacy of the vaccine is set to expire – currently one year).[2] No other information will be placed on the Program identification card.

DPS will send each participant's identification card to the appropriate District Executive, Chief Clerk (NYC Supreme Court), Borough Chief Clerk or Clerk of Court (NYC Citywide Courts) or Office of Court Administration Director with a signature sheet. The manager will distribute the card to the participant, obtain a signature from the participant and return the signature list to DPS.

This identification card will identify the wearer as someone who may remove their mask pursuant to the rules listed below and must be worn on the outermost garment of every participant, including all uniformed personnel, during work hours at any time when their mask has been removed.

Participants must receive, sign for and wear the identification card before they may participate in the Program.

Program

Once enrolled and wearing a Program identification card, participants will be permitted to enter and remain in non-public spaces in UCS courthouses and other facilities without wearing a mask

[1] The screenshot must show an Excelsior "COVID-19 Vaccination" pass with the judge or employee's name and vaccine expiration date. Screenshots of an Excelsior "COVID-19 Test" pass will not be accepted.
[2] The current picture on file for the judge's or employee's official UCS identification card will be used on the Program identification card, so there will be no need to take or submit another picture.

or other face covering when non-UCS court users are not present in those areas. These non-public spaces include:

- Back offices not accessible to court users[3] (Back offices where employees interact with court users only at a window unit that has glass or plexiglass covering the entire length of the window, with only a paper slot and/or "speak-thru" talking hole, are considered "not accessible to court users");
- Chambers;
- Robing rooms;
- Private hallways/corridors, i.e., those not normally accessible to court users;
- Private restrooms;
- Locker rooms;
- Conference rooms not accessible to court users; and
- Any other room not generally accessible to court users.

Participants will continue to be required to wear masks in public spaces in UCS courthouse and other facilities, including:

- Open courtrooms (when a courtroom is locked, e.g., before or after a session, and not accessible to court users, participants may remove their masks);
- Back offices regularly accessible to court users, including those back offices with a window unit without a full-length glass or plexiglass covering;
- Public hallways/corridors/lobbies;
- Holding areas; and
- Any room or location in which a court user is present.

In buildings shared by UCS judges and employees and other agencies, participants may remove their masks on floors or spaces normally frequented only by UCS staff. In shared locations of the building, such as a lobby, public bathroom or elevator, UCS staff must continue to wear a mask. If a court user comes into space normally frequented only by UCS staff, all UCS staff that come in contact with that court user must wear a mask for the duration the court user's stay in that space.

Additional Information

Judges and non-judicial personnel choosing not to participate must continue to wear masks in UCS courthouses and other facilities in compliance with the May 29, 2020 Memorandum – *Additional Safety and Operational Protocols* and the March 30, 2021 Memorandum – *Coronavirus – Updated Safety and Operational Protocols.*

All non-UCS court users, regardless of vaccination status, will continue to be required to wear a mask while in a UCS courthouse or other facility

[3] For the purpose of the Program, "court user" means any person other than a UCS judge or employee.

Participants must continue to follow all other safety and operational protocols.

The science and safety procedures surrounding the coronavirus continue to evolve, sometimes quite rapidly. As the Court System receives additional or modified guidance from the CDC and New York State, the rules of the Program may be modified.

COMMISSION EXHIBIT 19

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Friday, August 20, 2021 9:07 AM
To: Hon. Sam Walker
Subject: RE: COVID-19 Testing Program

Sam,

Good morning. Thanks for the info. Yes, I do have questions. Here they are:

1. It's my understanding that the USA is part of the Nuremberg Code, which outlaws coerced medical treatments. By treating "vaccinated" people differently than unvaccinated people, that is coercion.

2. What "science" determines that orange card holders are allowed to go mask-less in nonpublic areas, but not in public?

3. What "science" determines that orange card holders and not those with natural immunity (i.e. those who had Covid) are allowed to go mask-less?

4. How is it that an employer is allowed to mandate a medical procedure (i.e. Wearing medical devices (masks); Covid tests)?

5. How is it that an employer is allowed to ask for medical information (i.e. medical test results)?

6. What "science" determines that testing weekly is going to protect anyone, as a person can have Covid, get tested, it come back negative because enough time has not gone by for it to show up on a test, then go to work with Covid for over a week?

7. There is talk about mandatory "vaccination." How is it that an employer will be allowed to mandate a medical procedure (i.e. mandatory "vaccination")?

8. The "science" is now showing that "vaccinated" people are getting Covid and spreading Covid. On August 6, 2021, the director of the CDC stated that "what they ["vaccinations"] can't do anymore is prevent transmission." Why then, would "vaccination" not be an individual's choice?

9. Data clearly shows that there is no statistical difference between states with mask mandates and those without. What "science" is the CDC, and in turn OCA, relying on to show that masks work? Even presuming that masks work, why is it not an individual's choice to wear a mask or not? If the mask works for the individual wearing it, then why are those who wish not to wear it, forced to?

10. OSHA has guidelines on wearing masks, because they are known to be harmful. What "science" shows that masks are safe to be worn for the period of time employees are being asked to wear them?

11. I have "approval" to wear a face-shield in lieu of a mask. Plexiglass was supposed to be installed on all of the benches last year in the height of the "pandemic," but that did not happen. If plexiglass was installed, the face-shield "requirement" would be moot. Why was plexiglass not installed, as the public was told every court either had it or was going to get it?

12. What “science” determines that I am a “threat” to anyone if I am over 6 feet away from everyone in the courtroom?

Thank you.

Frank

From: Hon. Sam Walker <s[redacted]@nycourts.gov>
Sent: Thursday, August 19, 2021 10:13 AM
To: Hon. Frank M Mora [redacted]@nycourts.gov>
Subject: Fw: COVID-19 Testing Program

Goodmorning:

Just in case you may not have received this memo from Judge Marks.

Please let me know if you have any questions.

Sam Walker
Supervising Judge, City Courts

From: Cindy Martucci-Kiyar [redacted]@nycourts.gov> on behalf of Hon. Lawrence Marks [redacted]@nycourts.gov>
Sent: Thursday, August 19, 2021 9:54 AM
Subject: COVID-19 Testing Program

Good morning.

Please see the attached memorandum from Chief Administrative Judge Marks.

Thank you.

Please be CAREFUL when clicking links or opening attachments.

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

COMMISSION EXHIBIT 20

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

August 12, 2021

To: Administrative Judges

From: Nancy J. Barry
Justin A. Barry

Re: Updates to the Revised Mask Policy

As Hon. Lawrence Marks indicated today in his message to all judges and staff, the Centers for Disease Control and Prevention (CDC) recently revised its COVID-19 mask guidance in response to localized increases in coronavirus transmission. Under this new guidance, the CDC recommends that even fully vaccinated individuals wear a mask or face-covering indoors in public in areas of substantial or high transmission, based on a scale of low, moderate, substantial or high. As of today, the majority of New York State is currently listed as an area of substantial or high transmission.

In order to further our ongoing efforts to ensure the health and safety of all employees and court users and in keeping with our commitment to follow the most up to date guidance promulgated by public health authorities, effective Friday, August 13, 2021 and until further notice, the Unified Court System will temporarily suspend the green attorney/agency pass and white visitor pass program and require all court users, regardless of vaccination status, to wear a mask or face covering at all times while present in any of our court facilities. In addition, the orange card program for fully vaccinated judges and non-judicial staff will be modified to require that such card holders wear a mask or face covering in all public areas of the court or facility, as well as any areas and/or situations where physical distancing is not possible. Orange card holders will continue to be able to enter and remain in non-public areas of court facilities without wearing a mask/face covering, being mindful of physical distancing requirements.[1]

Uniformed staff will take steps to ensure any signage reflecting exemptions to mask requirements for fully vaccinated individuals is removed or otherwise not visible, as well as begin enforcing the suspension of the attorney/agency and visitor passes, i.e., masks/face coverings must be worn by court users at all times regardless of vaccination status.

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[1] Please see Nancy J. Barry's "Revised Mask Policy Program," dated June 14, 2021, for guidance on what constitutes a non-public area of a court facility.

Judges and non-judicial staff with orange cards may continue to enter courts/facilities without having to undergo a temperature screening and continue to be exempt from the daily COVID Self-Assessment. All other court users, including green card holders, must have their temperature taken and undergo the COVID screening before entry. All judges, nonjudicial staff and court users are reminded that they should not report to work or enter any court or facility if they are a "Person at Risk" as set forth in the "Coronavirus – International Travel and Updated Safety and Operational Protocols" memorandum, dated May 5, 2021.

As always, thank you for your patience, assistance and cooperation in addressing this ongoing public emergency. We have seen a great deal of successes in dealing with this crisis in the past months. The upswing in variant cases has led to updated CDC guidance and this response, seemingly on the heels of our general loosening of masking requirements. We continue to follow the latest public health guidance for the health and safety of the public and our colleagues, families and friends.

Stay well and stay safe.

cc: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Edwina G. Mendelson
Linda Dunlap-Miller
Scott Murphy
NYC Chief Clerks
District Executives
Chief Michael Magliano
Chief Howard Metzdorff
Lucian Chalfen
Jennifer DiLallo
Chief Sean Egan
Chief Michael Senese

COMMISSION EXHIBIT

21

From: Sam D. Walker

To: Frank Mora

Subject: Covid-19 Protocols for Judges

Date: August 23, 2021

Good afternoon, Judge Mora:

As we discussed, there is an OCA requirement that all judges in the public areas of the courthouse to include the courtroom wear a mask or a shield. At the beginning of the Covid-19 outbreak you requested special permission, due to a pre-existing condition, to wear a shield instead of a mask. Your request was granted.

It was brought to my attention that you have been traversing the courthouse in both the public and private areas without wearing a mask and/or a shield, and you have not provided any proof that you were vaccinated.

I provided you with a copy of the latest Memorandum from Chief Administrative Judge Marks, addressing COVID-19 Testing Program For Judges. Emanating from Judge Mark's Memorandum, you submitted a series of questions which I will attempt to answer below.

Please be reminded that I do not set policy on how to confront the COVID-19 Pandemic. This is done by OCA. I just advise on what those policies are, and you are expected to follow them.

1. It's my understanding that the USA is part of the Nuremberg Code, which outlaws coerced medical treatments. By treating "vaccinated" people differently than unvaccinated people, that is coercion.

A. I don't understand the relevance of the Nuremberg Code. It's not a question of you being mandated to take the vaccine. In fact, you were exempted based upon a pre-existing condition, and based upon your request you were given permission to wear a shield instead of a mask. All we are requesting is that you wear a shield or mask in the courtroom or in public areas of the courthouse.

2. What "science" determines that orange card holders are allowed to go mask-less in nonpublic areas, but not in public?

A. OCA has directed this policy and we are all expected to comply.

3. What “science” determines that orange card holders and not those with natural immunity (i.e. those who had Covid) are allowed to go mask-less?

A. OCA has directed this policy and we are all expected to comply.

4. How is it that an employer is allowed to mandate a medical procedure (i.e. Wearing medical devices (masks); Covid tests)?

A. The wearing of a mask or face shield is not a medical procedure, it's a safety precaution.

5. How is it that an employer is allowed to ask for medical information (i.e. medical test results)?

A. You don't have to respond to the inquiry, but then you must wear a mask or face shield in all public and private areas of the courthouse.

6. What “science” determines that testing weekly is going to protect anyone, as a person can have Covid, get tested, it come back negative because enough time has not gone by for it to show up on a test, then go to work with Covid for over a week?

A. OCA has directed this policy and we are all expected to comply.

7. There is talk about mandatory “vaccination.” How is it that an employer will be allowed to mandate a medical procedure (i.e. mandatory “vaccination”)?

A. If such a mandate is directed, and if you cannot comply, then you may have to reconsider your position.

8. The “science” is now showing that “vaccinated” people are getting Covid and spreading Covid. On August 6, 2021, the director of the CDC stated that “what they [“vaccinations”] can’t

do anymore is prevent transmission." Why then, would "vaccination" not be an individual's choice?

A. Because OCA has determined this as a safety policy. If you don't get vaccinated, you must wear a mask or face shield in all public and private areas of the courthouse.

9. Data clearly shows that there is no statistical difference between states with mask mandates and those without. What "science" is the CDC, and in turn OCA, relying on to show that masks work? Even presuming that masks work, why is it not an individual's choice to wear a mask or not? If the mask works for the individual wearing it, then why are those who wish not to wear it, forced to?

A. Because OCA has determined this as a safety policy. If you cannot comply you may have to reconsider your position.

10. OSHA has guidelines on wearing masks because they are known to be harmful. What "science" shows that masks are safe to be worn for the period of time employees are being asked to wear them?

A. OCA has determined this as a safety policy. If you cannot comply you may have to reconsider your position.

11. I have "approval" to wear a face-shield in lieu of a mask. Plexiglass was supposed to be installed on all of the benches last year in the height of the "pandemic," but that did not happen. If plexiglass was installed, the face-shield "requirement" would be moot. Why was plexiglass not installed, as the public was told every court either had it or was going to get it?

A. OCA determined that plexiglass would not be installed in every courtroom.

12. What "science" determines that I am a "threat" to anyone if I am over 6 feet away from everyone in the courtroom?

A. OCA has determined this as a safety policy. If you cannot comply, you may have to reconsider your position.

If you are having difficulty complying with the directives of OCA please let me know. Until then, you will be required to comply, as you have always done, with wearing a shield in all public and private areas of the courthouse.

Thanks

Sam D. Walker

COMMISSION EXHIBIT 22

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me and with the approval of the Chief Judge, to protect the health and safety of all judicial and non-judicial personnel, all court users, and the general public from the ongoing COVID-19 pandemic, I hereby direct that all judicial and non-judicial personnel of the Unified Court System comply with the Testing and Mandatory Vaccination Requirements detailed in the memoranda attached hereto as Attachments 1 through 5.

Chief Administrative Judge of the Courts

Dated: September 23, 2021

AO/275/2021

ATTACHMENT

1

State of New York
Unified Court System

Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

August 18, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: COVID-19 Testing Program

As was previously announced, the Unified Court System will be implementing a mandatory weekly COVID-19 testing program for judges and court employees. This new program is fully consistent with the steps that public and private organizations have been taking in New York and across the country.

The mandatory testing program will begin on September 7, 2021. The following are the key elements of the program:

- All judges who are fully vaccinated and who have enrolled in the court system's mask policy program and been issued an orange card are exempt from the mandatory testing program. Fully vaccinated judges who have not enrolled in the program may do so at any time, but to be exempt from the program on the date of implementation (September 7) they must do so by September 3, 2021. Click on the following link for instructions on enrolling in the mask policy program https://nycourts.sharepoint.com/sites/COVID-19/CPV

- Judges not enrolled in the mask policy program must submit proof each week that they have received a COVID-19 test.

- Judges may obtain their COVID-19 test at any licensed facility and should request a proof of test. Locations, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Judges will find a variety of

community testing resources in their areas that are widely available and frequently free of charge.[1] Tests may be either rapid or PCR. At-home tests may not be used.

- Proof of the test conducted by the medical health provider must be uploaded to the UCS Mandatory Testing Program SharePoint site on the day the test was taken. Instructions on accessing and uploading proof of testing will be provided in a separate memorandum that will be distributed prior to the start of the mandatory testing program.

- Judges who work any portion of a workweek must submit proof of testing. Judges on leave for one week or longer are not required to submit proof of testing.

- Judges who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace (e.g., they are likely to test positive because of a recent infection but are no longer contagious) must submit to their Administrative Judge a letter from the medical health provider stating the reason for the determination and how long the restriction is expected to continue.

- While judges are not required to report the results of their test each week, they must continue to follow current UCS protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19. Please note that judges who have COVID-19 symptoms (cough, sore throat, shortness of breath or temperature of 100° or higher) should remain at home even if they receive a negative result from a COVID-19 test.

As circumstances and conditions relating to the coronavirus pandemic continue to evolve, it may be necessary to modify these policies. In the meantime, thank you for your cooperation with our guidance and protocols. This has greatly contributed to keeping judges, their colleagues and all who work and conduct business in our facilities safe and healthy.

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

ATTACHMENT

2

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

August 18, 2021

To: All Non-Judicial Staff

From: Nancy J. Barry
Justin a. Barry

Re: Mandatory Testing Program

In order to maintain the safest environment for everyone who works and conducts business in our court facilities, as previously announced, the Unified Court System will implement a mandatory weekly COVID-19 testing program. Because the Centers for Disease Control and Prevention (CDC) continues to advise that COVID-19 vaccinations protect people from getting sick or severely ill and may also protect people around them, all fully vaccinated judges and non-judicial employees, who have enrolled in the Revised Mask Policy Program and submitted proof of vaccination, will be exempt from this testing program.

This mandatory testing program will commence on September 7, 2021.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Exemption

All non-judicial personnel who have provided proof of vaccination in order to receive an orange card by enrolling in the Unified Court System's (UCS) Revised Mask Policy Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021 for eligibility, enrollment and program description) are exempt from this weekly testing mandate.

Employees may enroll in the orange card program at any time but in order to be exempt from the testing mandate on the date of implementation, they must submit proof of full vaccination by

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September 3, 2021. (Note: Employees will shortly be able to submit proof of vaccination and opt not to receive an orange card).

Mandatory Testing Procedure

Employees must submit proof each week that they have received a COVID-19 test. Personnel will coordinate with their supervisor to schedule a one-hour period during their regularly scheduled workweek in which they will be granted excused leave so that the employee may get a rapid or PCR test. Employees may have the test administered after work hours, but they will not be granted leave or compensatory time, if they choose this option.

Personnel may obtain their test at any licensed medical facility and should ask for a proof of test with the date the test was administered (result is not required). Location, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Employees may find a variety of community testing resources at these websites in their areas, which are widely available and many free of charge.[1] Please note that some testing facilities require appointments, and it is the responsibility of the employee to find appointments during their scheduled weekly testing hour or, if unavailable, coordinate an alternate time during the workweek with their supervisor. Use of at-home tests are not permitted for the purposes of UCS' testing requirement.

Proof of the test provided by the medical health provider administering the procedure should be uploaded to the UCS Mandatory Testing Program Share Point site the same day the test was taken but no later than the next business day. Employees who have not been issued individual desktop or laptop computers may upload the proof of test to the Share Point site using a personal mobile device using their CourtNet identification and password or will be given access to do so on a court-issued computer.[2]

Every morning, the Office of Court Administration's Division of Technology will provide each Kronos supervisor and/or a designated court manager with lists of their employees to compare with their employees' scheduled test hours. These lists will permit the supervisors to review and approve submitted testing documentation.

Those employees who do not submit proof of test to the Share Point site and who have not coordinated an alternate testing date/time within that same week will be designated as unfit for service and will not be permitted to report to work. Employees designated as unfit for service may

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

[2] Instructions on accessing and uploading proof of testing to the UCS Mandatory Testing Program Share Point site will be sent under a separate memorandum.

charge annual or compensatory leave accruals. Employees without annual or compensatory leave will have their pay docked.[3]

Personnel who work any portion of a workweek must submit proof of testing. Individuals on extended leave are not required to submit proof of test until they return to work. (Extended leave is defined, in this context, as any leave in which an employee does not report to work during all of a particular workweek).

Exceptions

Those employees, who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace, e.g., they are likely to test positive because of a recent infection but they are no longer contagious, must submit a letter from that medical health provider to their chief clerk or human resources professional indicating the reason for that determination and how long that restriction is expected to extend. Upon review and approval, that employee will not be required to submit proof of testing for the period prescribed by the medical health provider.

Positive Tests

While personnel are not required to report the results of their test each week, they must continue to follow the most current protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19 (See Nancy Barry's memorandum, "Coronavirus – Updated Safety and Operational Protocols Related to International Travel, dated May 11, 2021). Please note that all employees who have COVID-19 symptoms (cough, sore throat, shortness of breath, or temperature of 100.0 or higher) should remain at home even if they have received a negative result on a COVID-19 test.

Additional Information

Non-judicial personnel are reminded that compensatory time is available to any employee who submits proof of vaccination appointment(s).

Non-judicial personnel must continue to follow all other safety and operational protocols.

The science and safety procedures surrounding the coronavirus continue to evolve, sometimes quite rapidly. As the Court System receives additional or modified guidance from the CDC and New York State, these policies may be modified.

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[3] If an employee experiences technical difficulty uploading proof of test to the Share Point site, they should notify their supervisor and submit the proof of testing in person either by the end of their shift or on the next day they report to work.

We are deeply grateful to staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves, their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. Vito Caruso
Hon. George Silver
Hon. Edwina Mendelson
Administrative Judges
Linda Dunlap-Miller
Scott Murphy
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT

3

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 1, 2021

To: All Judges and Non-Judicial Staff

From: Nancy J. Barry
Justin Barry

Re: Mandatory Testing Program – Supplemental Information

As announced last month, the Unified Court System will begin its mandatory COVID-19 testing program on September 7, 2021. Fully vaccinated judges and nonjudicial employees, who have submitted proof of vaccination *via* the Revised Mask Policy ("Orange Card") Program will be exempt from this testing program.

As promised, this memorandum will offer detailed information on how judges and employees will submit proof of testing and supplemental information on other aspects of the program.

A copy of the August 18, 2021 memorandum is attached for your information.

Mandatory Testing Procedure

1. Exemption

   To be exempt from weekly testing, judges and nonjudicial employees must submit proof of full vaccination using the UCS share point site – https://nycourts.sharepoint.com/sites/COVID-19/CPV. Individuals uploading proof of vaccination may now select whether they wish to be issued an orange card. The share point site will email confirmation to the applicant when the proof of vaccination is submitted and when it has been approved. Judges and nonjudicial employees must submit proof of fully vaccinated status by the close of business on September 3, 2021. Any judge or nonjudicial employee who has not received an email confirming that their proof of vaccination has been approved by the close of business on September 7, 2021 will be required to begin weekly COVID-19 testing the week of September 13, 2021, as explained further below.

25 BEAVER STREET, NEW YORK, NEW YORK 10004 • PHONE: 212-428-2120 • FAX: 212-428-2190

Nonjudicial employees that received paid leave and/or Compensatory Time ("CT") for attending vaccination appointments are still required to upload proof of fully vaccinated status through the share point site in order to be exempt from weekly testing. Under no circumstances will employees who received paid leave and/or CT for attending vaccination appointments be granted paid leave for purposes of weekly testing.

2. Start of Testing Program

The weekly testing program starts on September 7, 2021. On September 7, 2021 every Kronos supervisor, Administrative Judge and Supervising Judge ("supervisor") will receive an email with a link to the UCS Employee Web Portal ("Portal") which will contain a list of all of the judges or employees ("participants") under their supervision who must submit weekly proof of COVID tests. (Again, judges and nonjudicial employees who have submitted an approved proof of vaccination will be excluded from this list).

While participants will not be required to submit proof of testing during the week of September 7, 2021, they should use this time to coordinate a time with their supervisor to be tested during their regular work hours in the workweek that follows, i.e. the week starting September 13, 2021. Nonjudicial employees will be provided with one (1) hour of paid leave without charge to accruals each week for purposes of undergoing this testing.

Participants must upload proof of testing within one workday from the day they were tested. Supervisors will need to check the Portal each workday to ensure each participant has timely submitted proof of testing.

3. Supervisor Scheduling

Supervisors will be responsible for ensuring that all participants on their September 7, 2021 "Portal" list have coordinated/scheduled a date and time to undergo testing during the week that follows.

To the extent practicable, and subject to the operational needs of the court and the availability of testing appointments, the supervisor and participant may want to coordinate/schedule a set day and time each week for the participant to undergo testing, i.e., establish a recurring testing hour each week. Supervisors should be flexible, where possible, to accommodate a participant's scheduled or unscheduled leave or available testing appointments.

Nonjudicial employees are entitled to one (1) hour of excused leave per week which will be granted upon substantiating that testing was conducted on the date the employee was released from work for their test. Supervisors will make every effort to coordinate/ schedule release time at a mutually convenient time, taking into consideration that some

employees may wish to be tested at a location near their home while others may find it easier to be tested near their workplace.

In order to ensure adequate release time, participants should make every effort to schedule and/or request their one-hour of excused leave with their supervisor by the Wednesday preceding each testing week, e.g., by Wednesday, September 8, 2021 for testing the following week. Supervisors should note and/or keep track of each participant's scheduled hour (by calendar or some other method) that will allow them to confirm that the participant is released for testing and that proof of testing is timely uploaded thereafter.

Nonjudicial employees that are overtime eligible, i.e., required to swipe in/out at the beginning and end of their shift should follow the normal rules for appointments during the workday. That is, only if the employee is not expected to return to work following their test are they required to swipe out, e.g., an overtime eligible employee with regular hours of 9:00 AM to 5:00 PM that is scheduled for a 4:00 PM test is not expected to return to work and therefore, must swipe out when leaving for their test/appointment.

4. Submitting Proof of Test

Upon completion of the test, each participant should be sure to obtain an electronic confirmation (pdf or jpeg) or paper document from the testing facility indicating that they took the test with the date, time, location and facility information. The participant must upload a copy of that confirmation using the Portal, which is accessible anywhere from any device using the following URL - https://portal.nycourts.gov/ucsmtp/.

Upon clicking the Portal URL, the participant will be asked for their UCS user id and password (same user id and password used for Kronos and Outlook) and the date and time of their test for that week. At the bottom of the Portal page, the participant will upload a digital image of their proof of test which must include the location, date, time and type of test.[1]

Instructions for using the Portal in every operating system are contained on the Portal upload page. Nonjudicial employees that do not have regular access to a UCS computer and do not wish to use their personal mobile device to upload proof of testing may request access to a computer at their worksite from their supervisor.

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[1] Acceptable tests include PCR, RT-PCR, ddPCR, Rapid PCR (Polymerase Chain Reaction), NAA / NAAT (Nucleic Acid Amplification), AMP PRB (Amplified Probe), LAMP (Loop-mediated Isothermal Amplification), TMA (Transcription-mediated Amplification), Molecular test brands, such as, but not limited to: Abbott ID NOW, Quidel Lyra PCR, Abbott Realtime PCR, Cobas Qualitative PCR, FTD PCR, Xpert Xpress and Simplexa Direct PCR.

Unacceptable tests include all Antigen (Ag) tests (including Quidel Sophia, Abbott BinaxNOW and Rapid Antigen Tests), all Antibody tests (such as IgG, IgA, IgM and Rapid Antibody Tests), all blood tests (such as fingerstick, venipuncture), all plasma tests, all serum tests and all lateral flow tests.

5. Supervisor Review

Each morning at 10:00 AM, supervisors will receive a combined COVID Self-Assessment and COVID Test Advisory email with a link. The link will take the supervisor to the Portal which will indicate which participants have completed their daily self-assessment and which participants uploaded their proof of test on the previous day.

The supervisor should then compare their participants' schedule of tests for that week to ensure the participants have completed the test as scheduled.

If a participant does not submit a proof of test within one workday of the scheduled hour for that week but reports a valid reason why he/she was unable to submit his/her proof of testing (e.g., the pharmacy canceled their appointment, there was technical trouble uploading the proof, they were sick on the day of the appointment), the supervisor should exercise reasonable discretion in permitting the participant an additional opportunity to be tested and/or upload proof of testing during that workweek.

If the employee does not present mitigating circumstances and/or refuses to comply, the matter must be referred to the District Executive or NYC Chief Clerk, who should exclude the employee from the workplace for their failure to comply with the testing program. As is the case with employees who do not comply with UCS screening and/or self-assessment protocols, employees that are excluded from the workplace for failure to comply with the testing program may be considered absent without authorization for which approval to charge accruals may be denied.

6. Additional Information

Participants can find locations, times and descriptions of testing sites at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Testing sites are widely available and many are free of charge. It is the responsibility of each participant to find a location near their home or workplace and schedule their testing time with their supervisor.

As the testing program is rolled out in September, employees should bring any concerns or difficulties that they face regarding testing to their supervisor, who will in turn forward them to the appropriate District Executive or NYC Chief Clerk. The District Executive and NYC Chief Clerks will collect any concerns or difficulties experienced in their District or Court and refer them to the appropriate Deputy Chief Administrative Judge ("DCAJ"). The DCAJ should forward all such concerns or difficulties to OCA Human Resources for further review/consideration.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT
4

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

September 10, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: Mandatory COVID-19 Vaccination Program

As previously announced, the Unified Court System will require all judges and employees to obtain and submit proof of COVID-19 vaccination by **September 27, 2021** or submit and obtain an approval for a medical or sincerely-held religious exemption.

The program is outlined in this memorandum.

Vaccinations

- All judges must submit proof that they are fully vaccinated for COVID-19. Full vaccination is defined as:

  - Two weeks after a second dose of a two-dose series, such as the Pfizer or Moderna vaccines; or
  - Two weeks after a single-dose vaccine, such as the Johnson and Johnson vaccine.

- Judges must provide proof of vaccination by enrolling in the UCS Revised Mask Policy ("Orange Card') Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021). This proof should be submitted through the UCS SharePoint site at https://nycourts.sharepoint.com/sites/COVID-19/CPV

- Judges must submit proof of at least one dose of a COVID-19 vaccine by September 27, 2021. Those judges who received a vaccine with a two-dose series will be expected to receive and submit proof of the second shot within the medically recommended timeframe.

- Judges who have submitted proof of vaccination by September 27, 2021 but are not yet fully-vaccinated because they must receive a second dose and/or they have to wait an

additional two weeks after their last dose, must continue to submit proof of weekly COVID-19 testing until they are fully-vaccinated.

Exemptions

- Exemptions to the mandatory vaccination requirement will be considered for judges with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and judges with sincerely-held religious beliefs and practices that prohibit them from being vaccinated.

- Judges must apply for an exemption by September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). Completed exemption forms must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading the exemption requests are contained on the portal which will "go live" on September 20, 2021.

- Applications for medical exemptions must be accompanied by documentation from the judge's medical health professional.

- Applications for religious exemption must contain the judge's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination.

- Judges submitting an exemption application will be notified of the decision as soon as practicable. In the alternative, the judge may be notified that more information may be required to process the exemption application.

- Judges whose requests for medical or religious exemption are granted will receive a notification that includes the expiration date of the exemption and notice that they will have to submit weekly proof of testing.

- Those judges whose requests for medical or religious exemption are denied will receive a notification and will have ten business days from the date of the notification to submit proof of their first vaccination. They must subsequently show proof of full vaccination within the medically recommended timeframe.

Weekly Testing

- Judges who fall into the following categories must provide weekly proof of COVID-19 testing:

- Judges who are waiting to receive a second dose of vaccine or are waiting for two weeks after the final shot in a vaccine series;
- Judges who have received an approved religious or medical exemption; or
- Judges who have submitted a request for medical or religious exemption but have not yet received approval.

As circumstances and conditions relating to the pandemic continue to evolve it may be necessary to modify these policies. Thank you for your cooperation with these and other policies. Please be reminded that they are designed to maintain a safe environment for all who work, practice, visit or are otherwise required to enter our facilities.

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR MEDICAL EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting qualified individuals with underlying medical conditions. Upon request, UCS will grant a medical exemption for individuals with underlying medical conditions that makes receiving the COVID-19 vaccine unsafe for them. To request a medical exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form; have a licensed health care provider, not related to the applicant, whose specialty is appropriate to the associated medical condition, prepare the **Certification of Licensed Health Care Provider** form; and return the form, along with any such additional documentation as may be necessary to support the request, to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Medical exemptions are intended for those with underlying medical conditions that render the COVID-19 vaccine unsafe for them.

For the current year, requests for medical exemptions must be received by September 27, 2021. The expiration of the exemption will be based upon the Certification of the Licensed Health Care Provider, which date will be noted in the UCS Approval, but shall be no longer than one year. Individuals may request to renew exemptions upon the expiration of such Approval, but annually no later than October 1 for each year.

Individuals who have timely submitted a request for a medical exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for medical exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals whose requests are denied are permitted to reapply if new documentation and information is later available in support of a new application for medical exemption.

If a judge or employee refuses to provide the information necessary for UCS to review and consider the request for medical exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Medical exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the **Verification and Accuracy** statement;
- Have your Licensed Health Care Provider complete the **Certification of Licensed Health Care Provider** form;
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

In some cases, UCS will need to obtain additional information and/or documentation about your medical condition in support of the request for medical exemption.

STATEMENT OF MEDICAL CONDITION
FOR EXEMPTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I sincerely certify that my medical condition makes it unsafe for me to receive a COVID-19 vaccination, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I certify that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my current medical condition.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.
	I authorize my licensed health care provider to provide UCS with personal health information about my medical condition related to this request for exemption from COVID-19 vaccination and to provide UCS with a Certification of Licensed Health Care Provider. I acknowledge that I may be required to provide additional medical documentation in support of my request for medical exemption.

Verification and Accuracy

I verify that the information I am submitting in support of my request for a medical exemption to the COVID-19 vaccination is true, accurate, and complete to the best of my knowledge. I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Name: _____

Primary Email: _____

Phone: _____

Signature: _____

Date: _____

New York State Unified Court System

Certification of Licensed Health Care Provider

For Request for Medical Exemption from COVID-19 Vaccine

The New York State Unified Court System (UCS) requires all employees to be fully vaccinated for COVID-19.

My patient, _____, is submitting a request for a medical exemption from this COVID-19 vaccination requirement.

In support of that medical exemption, my patient voluntarily requests and authorizes me to prepare this Form, and to provide UCS with personal health information about the patient's medical condition(s) related to this request, including supporting documentation regarding the medical reason that vaccination is contraindicated to the patient's medical condition(s) that render the vaccine unsafe for the patient at this time.

Option 1 - Allergy

☐ A documented history of a severe allergic reaction to any component of a COVID-19 vaccine or to a substance that is cross-reactive with a component. Please specify the allergic components of **ALL** the following vaccines.

NOTE: since egg-free vaccine is available, history of an egg allergy will not be accepted as an allergic reaction to a COVID component.

- Moderna - List the allergic component(s):
- Pfizer - List the allergic component(s):
- Janssen/Johnson & Johnson - List the allergic component(s):

☐ A documented history of a severe allergic reaction after a previous dose of the COVID-19 vaccine. Please indicate to which vaccine the patient had a reaction, the date of the vaccine, and the severe reaction:

- Moderna - Date of Vaccine & Reaction:
- Pfizer - Date of Vaccine & Reaction:
- Janssen/Johnson & Johnson - Date of Vaccine & Reaction:

Option 2 - Physical Condition/Medical Circumstance

☐ The physical condition or medical circumstances of the patient that render vaccination unsafe or contraindicate COVID-19 vaccination are as follows:

Probable time the physical condition or medical circumstances is expected to render vaccination unsafe or contraindicated to COVID-19 vaccination is: _____

Health Care Provider Certification

I certify that the information contained herein is true, accurate, and complete and I support the patient's request for a medical exemption from the COVID-19 vaccine requirement of UCS.

Health Care Provider Name: _____

Practice/Specialty: _____

License Number: _____

Address: _____

Telephone Number: _____

Email: _____

Signature: _____

Date: _____

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting religious beliefs and practices. Upon request, UCS will grant a religious exemption for sincerely held religious beliefs and practices which prohibit a judge or employee from receiving a COVID-19 vaccine. To request a religious exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form and return it, along with the "Affidavit of Religious Objection to COVID-19 Vaccination", "Personal Statement Form" and such additional documentation as may be necessary/appropriate to support the request to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

For the current year, requests for religious exemptions must be received by September 27, 2021. If approved, the exemption will remain in effect through September 30, 2022. Individuals with approved exemptions may request to renew exemptions annually no later than October 1 for each year.

Individuals who have timely submitted a request for a religious exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for religious exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

If a judge or employee refuses to provide the information necessary for UCS to review and consider their request for religious exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Religious exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete the **Affidavit of Religious Objection to COVID-19 Vaccination;**
- Complete the **Personal Statement Form;**
- Sign before a Notary Public;
- Attach such additional documentation about your faith/beliefs which are contrary to vaccination, including but not limited to the COVID-19 vaccination, as necessary/appropriate to support your request; and
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

Your request must be accompanied by the signed and notarized "**Affidavit of Religious Objection to COVID-19 Vaccination**" **and** "**Personal Statement Form**" (attached below). In some cases, UCS will need to obtain additional information and/or documentation about your sincerely held religious practice(s) or belief(s). UCS may need to discuss the nature of your religious belief(s)/practice(s) with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exemption.

(Proceed to Following Pages for Affidavit of Religious Objection to COVID-19 Vaccination and Personal Statement)

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I swear or affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I swear or affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

I swear or affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: _____

Print Name: _____

Email: _____

Phone: _____

Sworn and subscribed before me

This _____ day of_____, 2021

_____

Notary Public

My commission expires: _____

ATTACHMENT
5

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 10, 2021

To: All Non-Judicial Personnel

From: Nancy J. Barry
Justin Barry

Re: Mandatory Vaccination Requirement

As previously announced, the Unified Court System will require all judges and non-judicial personnel to be vaccinated by September 27, 2021, unless otherwise approved for an exemption due to medical reasons or sincerely held religious beliefs, as explained more fully below.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Proof of Vaccination

All non-judicial personnel must be fully vaccinated against COVID-19 by September 27, 2021, or as soon thereafter as medically practicable provided they have received at least one dose of a COVID-19 vaccine by such date.[1]

To this end, no later than September 27, 2021, all non-judicial personnel must either submit proof that they: (1) are fully vaccinated; or (2) have received at least one dose of any COVID-19 vaccine. This proof must be submitted through the UCS SharePoint site https://nycourts.sharepoint.com/sites/COVID-19/CPV as outlined in Section (1) of our September 1, 2021 Memorandum (Mandatory Testing Program – Supplemental Information).

[1] Fully vaccinated is defined as: two weeks after receiving a second dose of a two-dose vaccine, such as the Pfizer or Moderna vaccines; or two weeks after receiving a single-dose vaccine, such as the Johnson and Johnson vaccine.

Acceptable proof of having received at least one dose of a COVID-19 vaccine is a copy of the front **and** back of the employee's vaccination card. For fully vaccinated employees, a screenshot of the employee's Excelsior Pass is also acceptable. Those employees, who submit proof of having received their first dose of a two-dose vaccine, will be required to submit proof of having received the second dose within the medically recommended timeframe, i.e., typically 3 weeks from the first dose, using the same UCS SharePoint site referenced above.

Employees, who have submitted proof of vaccination by September 27, 2021 but are not yet fully vaccinated because they must receive a second dose and/or they must wait an additional two weeks after their last dose, will be subject to the Mandatory Testing Program until such time as they are fully vaccinated.

Exemptions

Exemptions to the mandatory vaccination requirement will be considered for employees with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and employees with sincerely held religious beliefs and practices that prohibit them from receiving a COVID-19 vaccine.

Employees seeking a medical or religious exemption to vaccination must submit their request by 5:00 p.m. on September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). The completed Exemption Request Form must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading these Forms will be available on the Portal, which will "go live" on September 20, 2021.

No exemption requests will be considered unless they are fully completed on the appropriate form and filed through the Portal.

Applications for medical exemptions must be accompanied by documentation from the employee's medical health professional. Applications for religious exemption must contain the employee's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination. Employees submitting an exemption application will be notified, in writing, of the decision [which, if granted, will include the expiration date of the exemption] or, that more information is needed in order to consider the employee's request for an exemption, as soon as practicable after their request is filed.

Employees who timely file a request for exemption will be subject to the Mandatory Testing Program while their request is being reviewed. Those employees who are granted a medical or religious exemption to vaccination will be subject to the Mandatory Testing Program during the specified exemption period.

An employee who receives written notice that their request for medical or religious exemption was denied will have ten workdays from the date of the notification to submit proof of having received

at least one dose of a COVID-19 vaccine and must otherwise comply with the provisions set forth in "Proof of Vaccination" above.

Non-Compliance

Employees who fail to comply with the provisions of this Policy are prohibited from reporting to work and may be considered absent without authorization for which approval to charge accruals may be denied, until they have taken steps to remedy their non-compliance. Continued failure to comply may result in disciplinary action, up to and including termination.

Additional Information

Non-judicial personnel are reminded that they are eligible for Excused Leave and/or Compensatory Time for becoming vaccinated (up to 3.5 hours per appointment upon submission of the requisite proof of same).

Non-judicial personnel must continue to follow all other safety and operational protocols.

We are deeply grateful to our staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves, their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

COMMISSION EXHIBIT 23

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I ~~swear or~~ affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I ~~swear or~~ affirm that each statement is true and accurate, and I accept the conditions set forth:

FMM	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
FMM	I understand and assume the risks of non-vaccination.
FMM	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
FMM	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
FMM	Should I contract COVID-19, I will <u>immediately</u> report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
FMM	I acknowledge that I have read the <u>CDC COVID-19 Vaccine Information</u>.
FMM	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
FMM	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
FMM	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

See attached statement made a part hereof, dated September 21, 2021. (Form)

I ~~swear or~~ affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: 9/21/21

Print Name: Frank Mora

Email: [redacted]@nycourts.gov

Phone: [redacted]

Sworn and subscribed before me
This 21st day of September, 2021

Lori A. Kiernan
Notary Public

My commission expires: April 9, 2022

LORI A. KIERNAN
Notary Public - State of New York
No. 01KI6002119
Qualified in Dutchess County
My Commission Expires April 09, 2022

September 21, 2021

My name is Frank Mora. I claim exemption from immunizations/vaccinations based on my sincere and genuine religious convictions and beliefs. I was baptized a Roman Catholic at Our Lady of Mount Carmel Church on December 29, 1970. I was a member of the Church's Pastoral Council, a Lector, and a Trustee for four (4) years. Mount Carmel was my parish since my birth until switching to my current parish. My family members are now parishioners of Holy Trinity Church, where we regularly attend mass. I am a Trustee at Holy Trinity, a member of the Finance Council, and a Lector.

I, as a parent entrusted by God for the care of [redacted] and [redacted] have claimed exemption from immunizations/vaccinations from my childrens' births, until they were unethically kicked out of school in 2019 by the NYS Legislature and former disgraced Governor. My children are [redacted], and [redacted] years old, respectively. I have studied Sacred Scripture (the Bible) for many years, the Catechism of the Catholic Church (CCC), as well as Canon Law, and other Church documents. I am opposed to <u>all</u> immunizations.

When we have politicians such as Assemblyman Dinowitz saying my religious beliefs are "Utter Garbage!," we, as a country, have seriously lost our way. Our founding fathers are turning over in their graves. Our country was founded on religious freedom. Many brave men and women died for this inalienable right. When we as a society demand that parents, and now adults, prove they have "sincere religious beliefs," we truly are going down a slippery slope. When we as a society force parents to choose between a mandatory public education for their children and for adults to go to work, or to stand firm in their religious beliefs, we have failed!

The Catechism of the Catholic Church, which is the supreme teaching authority of the Catholic Church, as illumined by Sacred Scripture and Apostolic Tradition, under the Magisterium of the Church and the Apostolic Authority of our Holy Father, the Pope, along with Canon Law, illumines by beliefs.

The Catechism of the Catholic Church defers to moral conscience as the guideline that states, "In all he says and does, man is obliged to follow faithfully what he knows to be just and right." **1778**

The Catechism of the Catholic Church teaches us the following (see pages 438-441):

> Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice ever calling him to love and to do what is good and to avoid evil, sounds in his heart at the right moment... For man has in his heart a law inscribed by God... His conscience is man's most secret core and sanctuary. There he is alone with God whose voice echoes in his depths. **1776**

Moral conscience, present at the heart of the person, enjoins him at the appropriate moment to do good and to avoid evil. It also judges particular choices, approving those that are good and denouncing those that are evil. It bears witness to the authority of truth in reference to the supreme Good to which the human person is drawn, and it welcomes the commandments. When he listens to his conscience, the prudent man can hear God speaking. **1777**

Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescriptions of divine law. **1778**

Man has the right to act in conscience and in freedom so as personally to make moral decisions. He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters. **1782**

Conscience must be informed and moral judgment enlightened. A well-formed conscience is upright and truthful. It formulates judgments according to reason, in conformity with the true good willed by the wisdom of the Creator. The education of conscience is indispensable for human beings who are subjected to negative influences and tempted by sin to prefer their own judgment and to reject authoritative teachings. **1783**

Faced with a moral choice, conscience can make either a right judgment in accordance with reason and the divine law or, on the contrary, an erroneous judgment that departs from them. **1786**

Man is sometimes confronted by situations that can make moral judgments less assured and decision difficult. But he must always seriously seek what is right and good and discern the will of God expressed in divine law. **1787**

Some rules apply in every case: One must never do evil so that good may result from it; The Golden Rule: Whatever you wish that men would do to you, do so for them; and Charity always proceeds by way of respect for one's neighbor and his conscience: Thus sinning against your brethren and wounding their conscience...you sin against Christ. (1 Cor 8:12). **1789**

Sacred Scripture tells us that we have been created in the image and likeness of God. It is God who has infused and charged us with dominion over all of the birds of the sky, the fish of the sea, the cattle on the land, and every creeping thing that creeps

on the earth. Our bodies have been miraculously and wonderfully made, and as such, are equipped to grow and be healthy, naturally, as God intended. God is our Creator and our Healer. He has created us to thrive naturally, and we honor God's way of health.

"Truly you have formed my inmost being; you knit me in my mother's womb. I give you thanks that I am fearfully, wonderfully made; wonderful are your works." **Psalm 139:13-14**

"Trust in the Lord with all your heart, on your own intelligence rely not; In all your ways be mindful of him, and he will make straight your paths." **Proverbs 3: 5-6**

"Guide me in your truth and teach me, for you are God my savior, and for you I wait all the day." **Psalm 25: 4-5**

"I will instruct you and show you the way you should walk; I will counsel you, keeping my eye on you." **Psalm 32: 8**

"If you really listen to the voice of the Lord, your God," he told them, "and do what is right in his eyes: if you heed his commandments and keep all his precepts, I will not afflict you with any of the diseases with which I afflicted the Egyptians; for I, the Lord, am your healer." **Exodus: 26**

The Book of Exodus further holds that it is "The Lord, your God, you shall worship: then I will bless your food and drink, and I will remove all sickness from your midst; no woman in your land will be barren or miscarry; and I will give you a full span of life." **Exodus 23:25-26**

The Book of Job reveals how God allowed Satan to inflict all sorts of diseases and evil upon Job, to show Satan that Job would not turn from God, no matter what befell him. No matter what human beings may have injected Job with (if in fact immunizations were around at that time), it would not have mattered, as God gave Satan authority over Job to inflict him. And no matter what diseases and evil Satan inflicted Job with, the Book of Job further tells us that God has placed a hedge of protection around His people to protect against disease. **Job 1:10, 12**

The Book of Leviticus tells us that the life of a living body is in its blood ... and the blood is the seat of life. **Leviticus 17:11**

"You must know that your body is a temple of the Holy Spirit, who is within - the Spirit you have received from God. You are not your own. You have been purchased, and at a price. So glorify God in your body." **1 Corinthians 6: 19-20**

"People who are in good health do not need a doctor; sick people do." **Matthew 12**

"People who are healthy do not need a doctor; sick people do." **Mark 2:17**

2 Timothy 3:12-14 says it very well, "Anyone who wants to live a godly life in Christ Jesus can expect to be persecuted. But all the while evil men and charlatans will go from bad to worse, deceiving others, themselves deceived."

I do not wish to interfere with God's natural way. To inject foreign substances (immunizations) into our blood, in order to hopefully protect against a possible disease, is contrary to God's law, and is against my conscience.

To vaccinate would be an act of violence against my conscience, and thus, an evil. It is my sincere religious conviction and belief that God has created us whole, with everything we need to grow according to His natural ways, and to vaccinate is a violation of God's way. The Book of James tells us that if there is anyone sick among us, he should ask for the presbyters of the Church. They in turn will pray over him, anointing him with oil in the Name of the Lord. This prayer uttered in faith will reclaim the one who is ill, and the Lord will restore him to health. **James 5:4-15**

My spiritual health is much more important than my physical health. I'm not discounting physical health, on the contrary, by the Grace of God, I had the Covid and have completely recovered and am abundantly physically healthy. My spiritual health far surpasses the physical. Our life here on Earth is but a twinkle of the eye compared to our eternal life that awaits. My main job here on Earth is to prepare and guide my wife and children (and whoever else I can help along the way), to Heaven, to be with the One True God - Father, Son, and Holy Spirit!

You serve who you want! "But as for me and my household, we will serve the Lord." **Joshua 24:15**

Very truly yours,

Frank M. Mora

COMMISSION EXHIBIT 24

Section B

You have provided information in a previous statement indicating that your religious faith calls for you to abstain from medicines and vaccines due to concerns regarding the sanctity of your body or its purity. Please answer the below questions to allow us to gain a better understanding of your beliefs.

1. Please list all the medicines, medical treatments and procedures, vaccines, and/or foods that you abstain from due to your religious beliefs:

2. Please list the date you began to abstain from the above listed medicines and vaccines and/or other medical treatments:

3. Please provide a detailed explanation as to why your religious faith requires you to abstain from the listed substances in question 1.

See attached statement made a part hereof, for all 5 questions, dated November 12, 2021.

(continue to next page)

4. Have you received an influenza (flu), pneumonia, tetanus, shingles, HPV or any other type of vaccine since turning 18 years of age? If yes, please specify the type of vaccine(s) and when it/they was/were administered.

5. If you listed any vaccines in question 4, please explain how your religious beliefs permit you to take these vaccines but prohibit the taking of a COVID-19 vaccine.

Please complete notarization and signature on page 7.

I acknowledge that false statements intentionally made herein can lead to disciplinary action, up to and including termination of employment, and may be punishable as class A misdemeanor under PL 210.05.

Signature: _____

Date: 11/12/21

Print Name: Frank Mora

Email: [redacted]@nycourts.gov

Phone: [redacted]

Sworn and subscribed before me

This 12th day of November, 2021

LORI A. KIERNAN
Notary Public - State of New York
No. 01KI6002119
Qualified in Dutchess County
My Commission Expires April 09, 2022

Lori A. Kiernan
Notary Public

My commission expires: April 9, 2022

November 12, 2021

My name is Frank Mora. This is in response to your demand for more information regarding my religious "faith" per Section B from the email sent to me from "NYCourts" dated November 4, 2021. I repeat and reiterate everything in my statement dated September 21, 2021.

Your statement on Section B wherein you claim that I "have provided information in a previous statement indicating that your religious faith calls for you to abstain from **medicines** and vaccines due to concern regarding the sanctity of your body or its purity" in incorrect. (Emphasis added). I stated no such thing regarding "medicines."

Question 1 - I fully stated my personal deeply held and sincere religious beliefs regarding vaccines in my almost four (4) page statement dated September 21, 2021. Regarding medicines, medical treatments and procedures, I do not speculate as to what will happen in the future. My family currently does not take any medicines. Again, I will not speculate as to the future, as it is impossible to comment on something of which I have no knowledge. In addition, there is no comparison to taking a vaccine to possibly prevent a future disease (please read my statement dated September 21, 2021 for an in-depth explanation of this issue), and taking a medicine or having a medical treatment or procedure to help a body suffering from a crisis. If my body was in crisis, I would consider all of the options available to me, and discuss what to do with my doctor. I would also consult the Bible, Catechism of the Catholic Church, and pray to God for guidance. In anything that God sends my way, I would seek His guidance for solutions. Although my beliefs reject vaccinations, as a healthy body does not need intervention (please read my statement dated September 21, 2021 for an in-depth explanation of this issue), there is a significant difference between a body in crisis needing help and a body that is healthy accepting a procedure. I believe God accepts help in a crisis and rejects vaccinations for "prevention."

Question 2 - Since 18 years of age.

Question 3 - This is fully explained in my statement dated September 21, 2021.

Question 4 - No.

Question 5 - N/A.

Very truly yours,

Frank M. Mora

NEW YORK STATE
Unified Court System

COMMISSION EXHIBIT
25

OFFICE OF COURT ADMINISTRATION

UCS VACCINATION EXEMPTION COMMITTEE

12/23/2021

Dear Frank Mora,

Your request for a religious exemption to the UCS Vaccination Mandate was considered by the UCS Vaccination Exemption Committee and denied.

Please be advised that you must submit proof of the first dose of your COVID-19 vaccination through the UCS Revised Mask Policy SharePoint site at https://nycourts.sharepoint.com/sites/COVID-19/CPV in 10 calendar days or if the tenth day falls on a weekend or holiday, the following business day. Please submit by close of business on 01/03/2022, and proof of the second dose (if the vaccine is Pfizer or Moderna) within the medically recommended time frame. Until you are fully vaccinated (defined as two weeks after the single Johnson & Johnson vaccination or two weeks after the second Pfizer or Moderna vaccination), you must continue to submit proof of weekly COVID-19 testing through the UCS Employee Web Portal https://portal.nycourts.gov/ucsmtp/.

Signed,

UCS Vaccination Exemption Committee

COMMISSION EXHIBIT 26

9-ADMJ-1-31-22

The HON. ANNE E. MINIHAN, pursuant to the authority vested in her as the Administrative Judge of the Ninth Judicial District,

D O E S H E R E B Y:

ORDER that, until further Administrative Order, the **HON FRANK M. MORA**, Judge of the Poughkeepsie City Court, shall only preside over the following matters in the Poughkeepsie City Court:

Civil matters in which the litigants mutually consent to proceed with the Judge appearing remotely, and

The issuance of Decisions and Orders related to criminal matters which arise from motions submitted on criminal matters where no appearances are required.

HON. ANNE E. MINIHAN
Administrative Judge,
Ninth Judicial District

Dated: White Plains, New York
January 31, 2022

Hon. Frank M. Mora

Lori Conners, Chief Clerk
Poughkeepsie City Court

COMMISSION EXHIBIT 27

Hon. Frank M Mora

From: Hon. Anne Minihan
Sent: Tuesday, January 18, 2022 5:36 PM
To: Hon. Frank M Mora
Cc: Larry Daley; Hon. Barry E. Warhit; Scott Murphy; Jennifer DiLallo; Lori Conners; James McAllister; Omar Cumberbatch; Hon. Sam Walker
Subject: Covid protocol and facility access

Good afternoon, Judge Mora,

In follow up to our conversation a little while ago, under no circumstances are you permitted to access the Poughkeepsie City Court facility unless you are masked.

Further, and in light of recent events, it has become necessary to limit your access to the facility. Until further notice, you must have my express permission, or that of Judge Warhit or Judge Walker, before you will be allowed into the courthouse facility. Permission, when granted, will be for a stated and limited purpose. I, or the judge granting you permission, will provide notification to Operations and to Ms. Conners of the date, time, and purpose of your visit. You will check in with Sergeant Jones when you arrive and check out with him when you leave. Again, you will need to be masked for the duration of your visit. In the event that you are unable or unwilling to wear a mask, you will have to make arrangements with court staff to deliver whatever you need to you outside the building.

If you have any questions, please contact me.

Thank you.

AEM
Hon. Anne E. Minihan, A.J.S.C.

Administrative Judge, 9th Judicial District
Westchester County Courthouse
111 Dr. Martin Luther King Junior Blvd.
White Plains, New York 10601

[redacted]

Please be CAREFUL when clicking links or opening attachments.

RESPONDENT EXHIBIT

A

WILLIAM F.X. O'NEIL
COUNTY EXECUTIVE

LIVIA SANTIAGO-ROSADO, MD, FACEP
COMMISSIONER

JEAN-MARIE NIEBUHR, LCSW-R
DEPUTY COMMISSIONER

COUNTY OF DUTCHESS
DEPARTMENT OF BEHAVIORAL & COMMUNITY HEALTH
Division of Mental Hygiene

November 3, 2023

Kathleen Carroll
City of Poughkeepsie Court
62 Civic Center Plaza
Poughkeepsie, NY 12601

Dear Ms. Carroll,

In response to the court's request, attached please find the list of names of CPL 730 Orders requested by Judge Frank M. Mora [redacted] received by the Dutchess County Department of Behavioral & Community Health for the time period of January 1, 2019, through present.

If you have any questions, or need additional information please let me know.

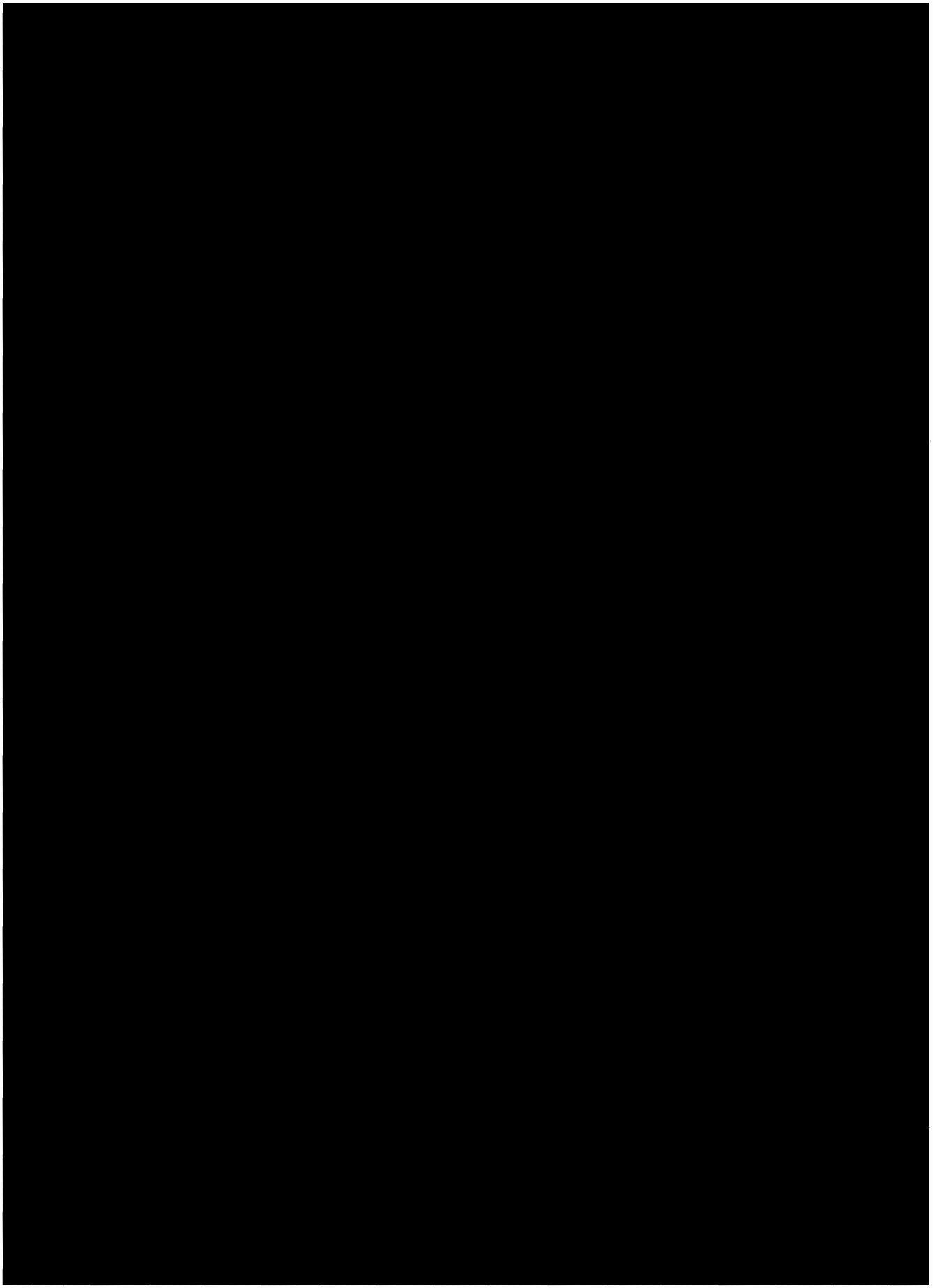
Sincerely,

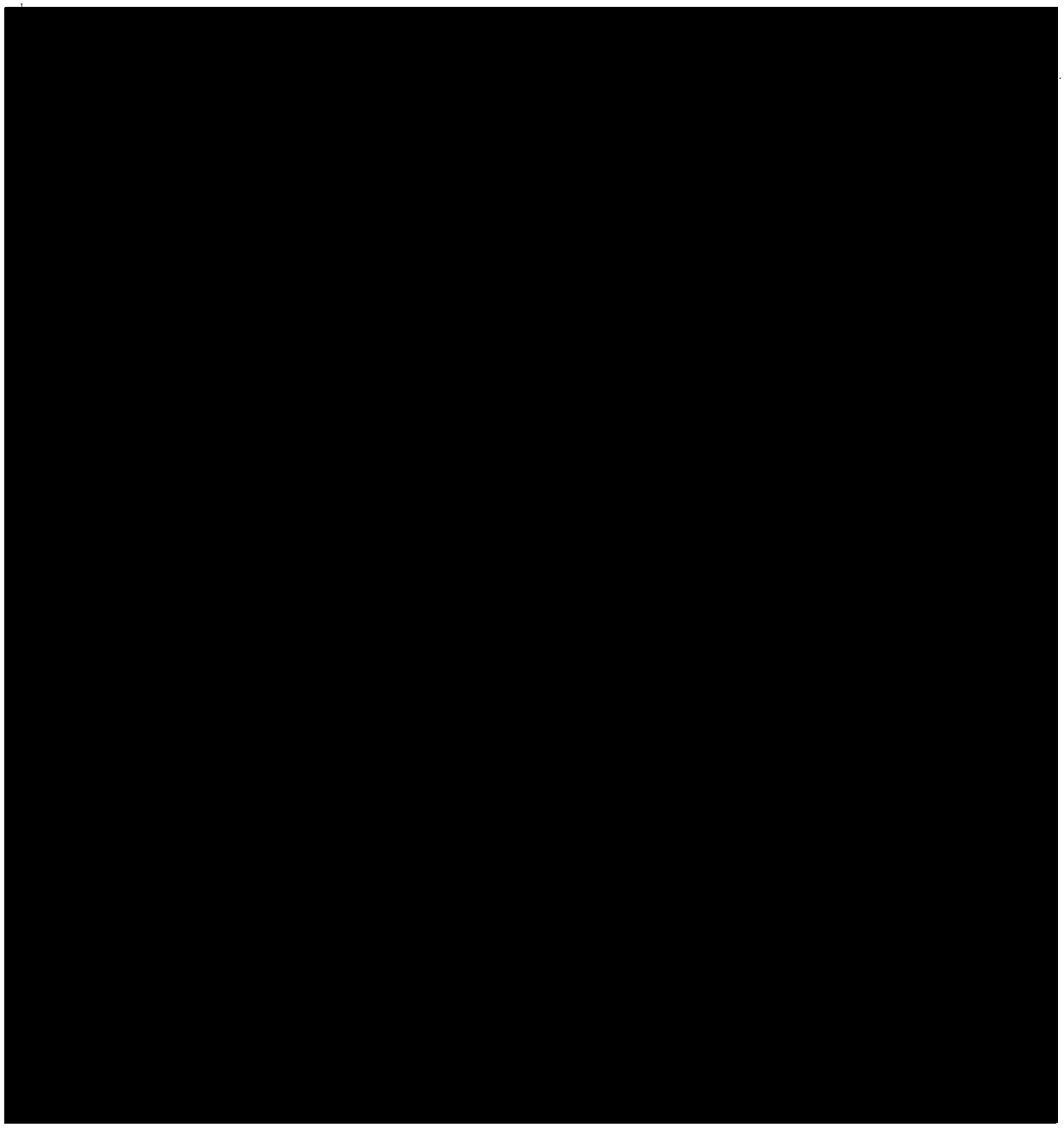
Gary M. Collins, PhD

Gary Collins, Ph.D.
Psychologist III, Chief Psychologist
Dutchess County Department of Behavioral and Community Health

RECEIVED
NOV 03 2023
POUGHKEEPSIE
CITY COURT

730 Exams ordered per DCOM







UNCERTIFIED ROUGH DRAFT TRANSCRIPT ONLY

R O U G H D R A F T D I S C L A I M E R

IMPORTANT NOTICE:
PLEASE READ BEFORE USING ROUGH DRAFT

AGREEMENT OF PARTIES
WORKING WITH ROUGH DRAFTS

We, the party working with rough draft transcripts, understand that if we choose to use the rough draft screen, or the printout, that we are doing so with the understanding that the rough draft is an uncertified copy.

We further agree not to share, give, copy, scan, fax, or in any way distribute this rough draft in any form (written or computerized) to any party. However, our own experts, co-counsel, and staff may have limited internal use of same with the understanding that we agree to destroy our rough draft and/or any computerized form, if any, and replace it with the final transcript upon its completion.

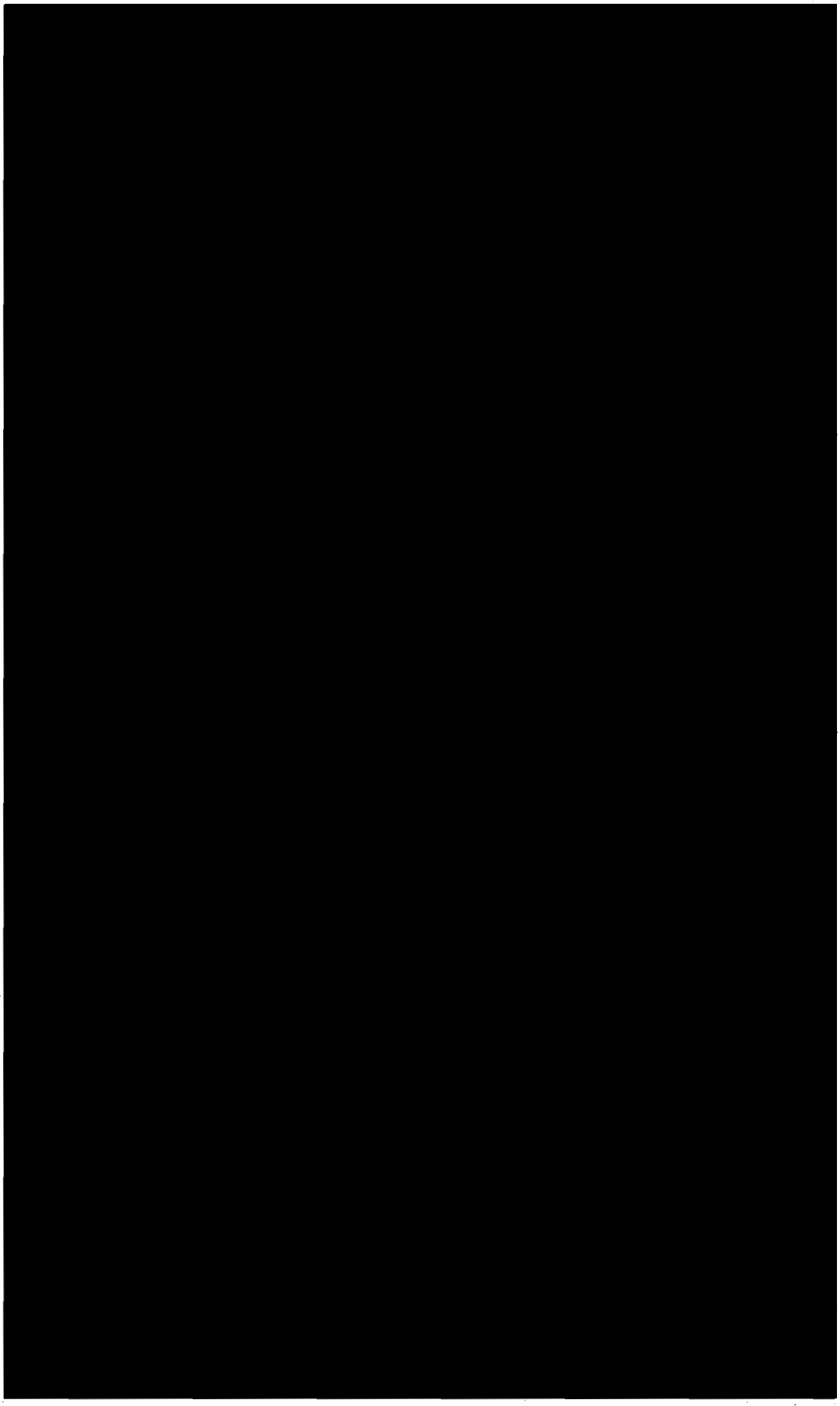
Case: People v. [redacted] [redacted]

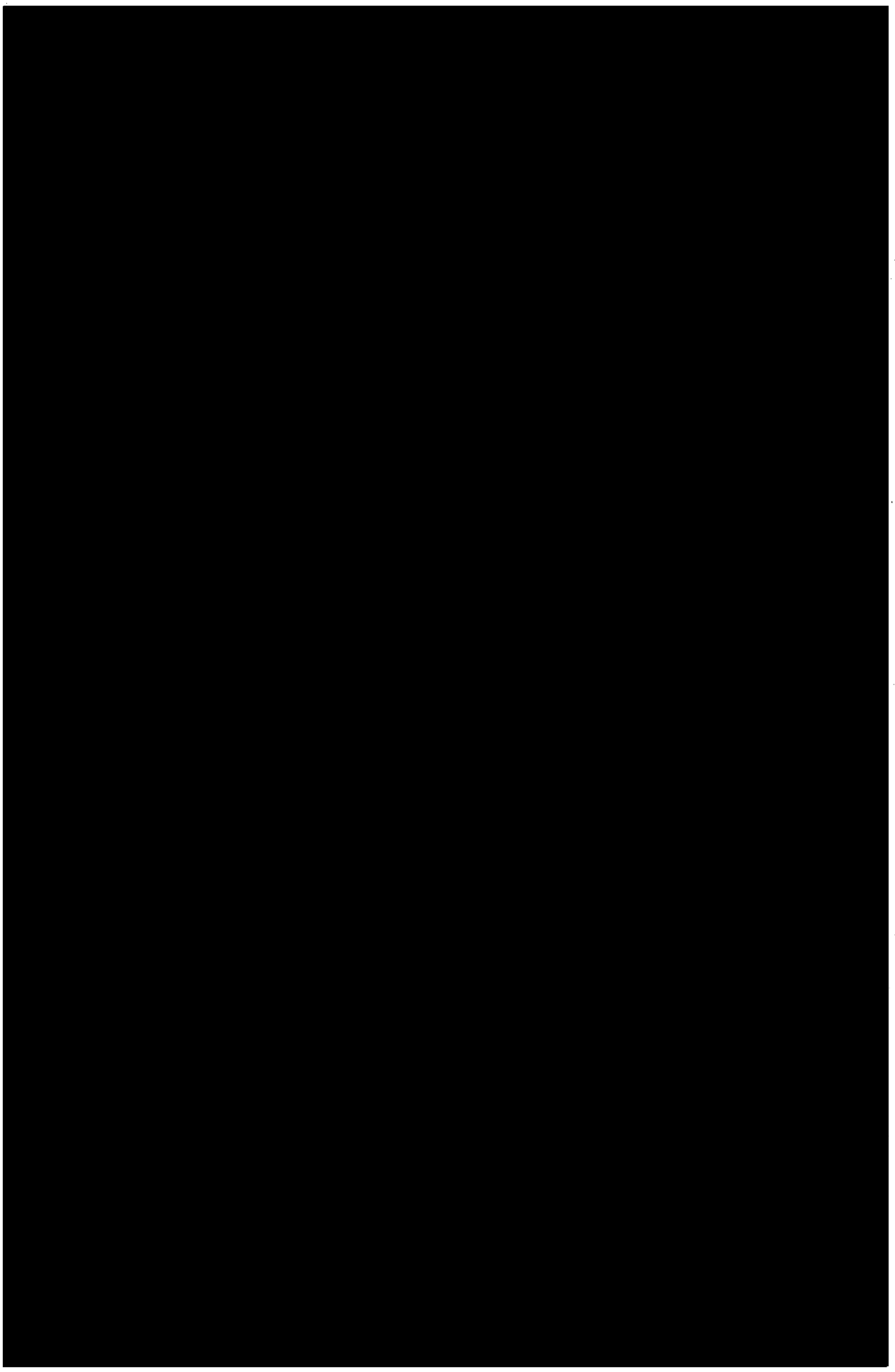
Date: [redacted]

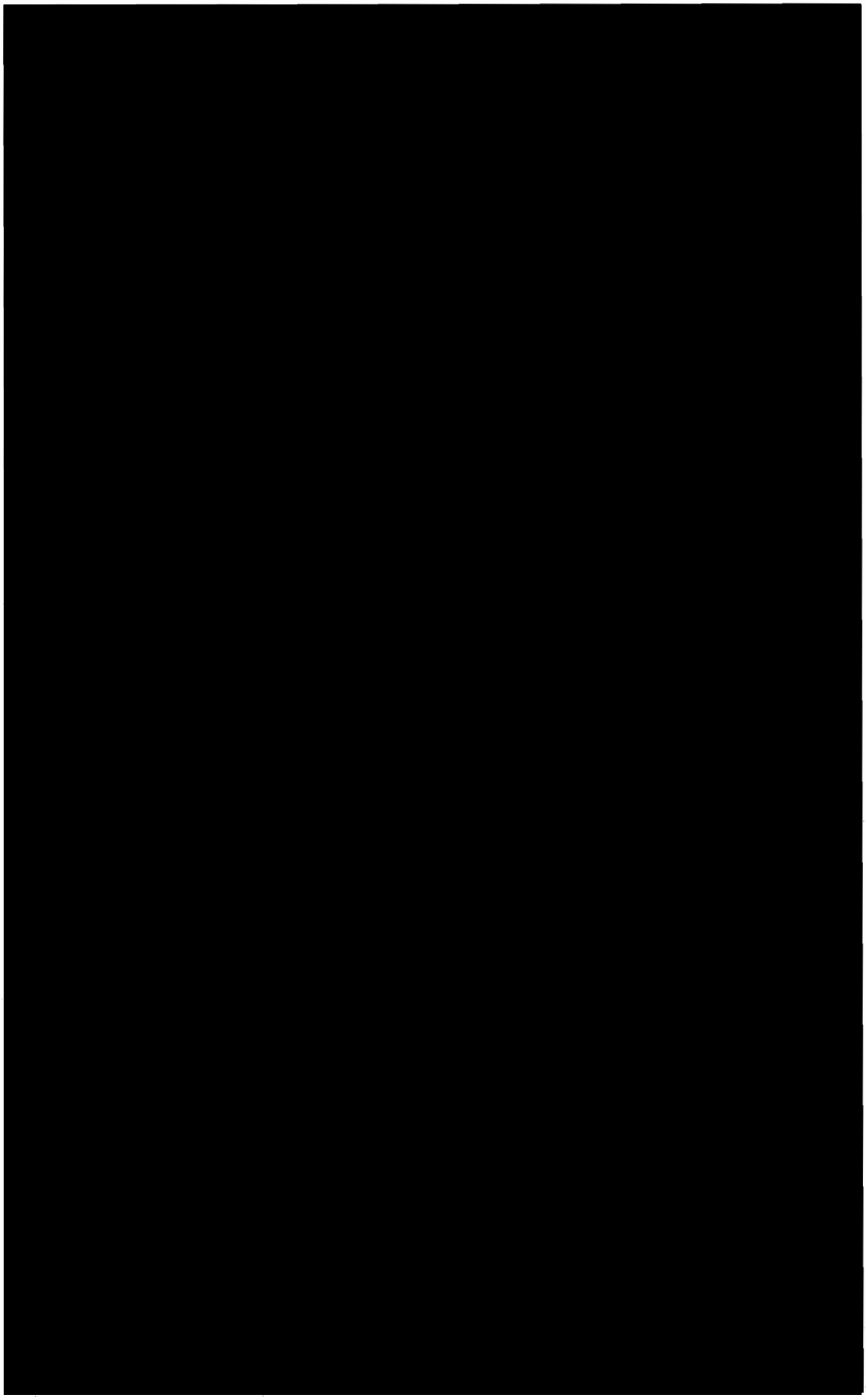
REPORTER'S NOTE:
Since this transcript is in rough draft form, please be aware that there may be a discrepancy regarding page and line number when comparing the rough draft, rough draft disk, and the final transcript.

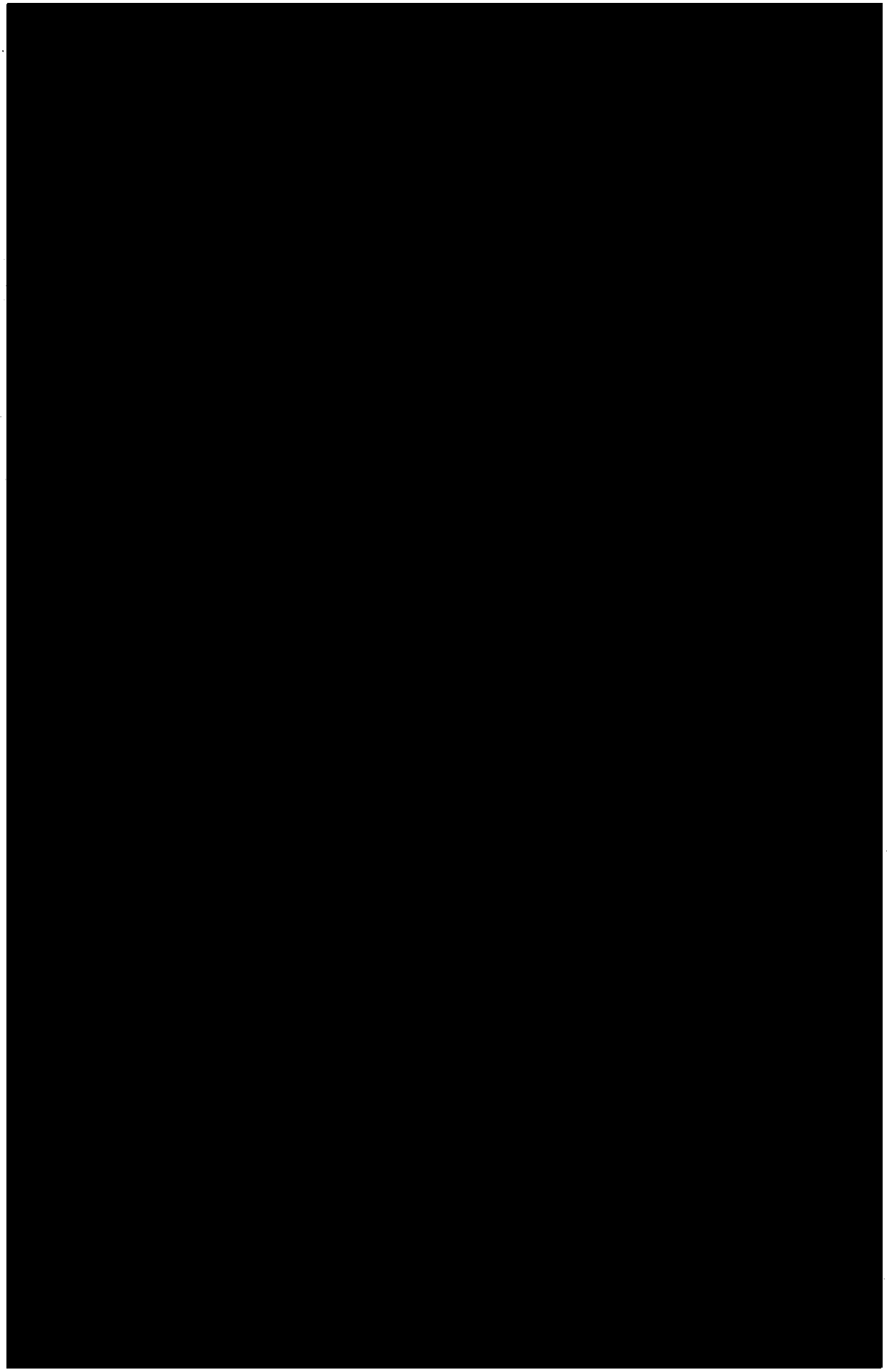
Also please be aware the uncertified rough draft transcript may contain untranslated steno, reporter's note in double parentheses or ^ck, misspelled proper names, incorrect or missing Q/A symbols or punctuation, and/or nonsensical English word combinations. All such entries will be corrected on the final certified transcript.

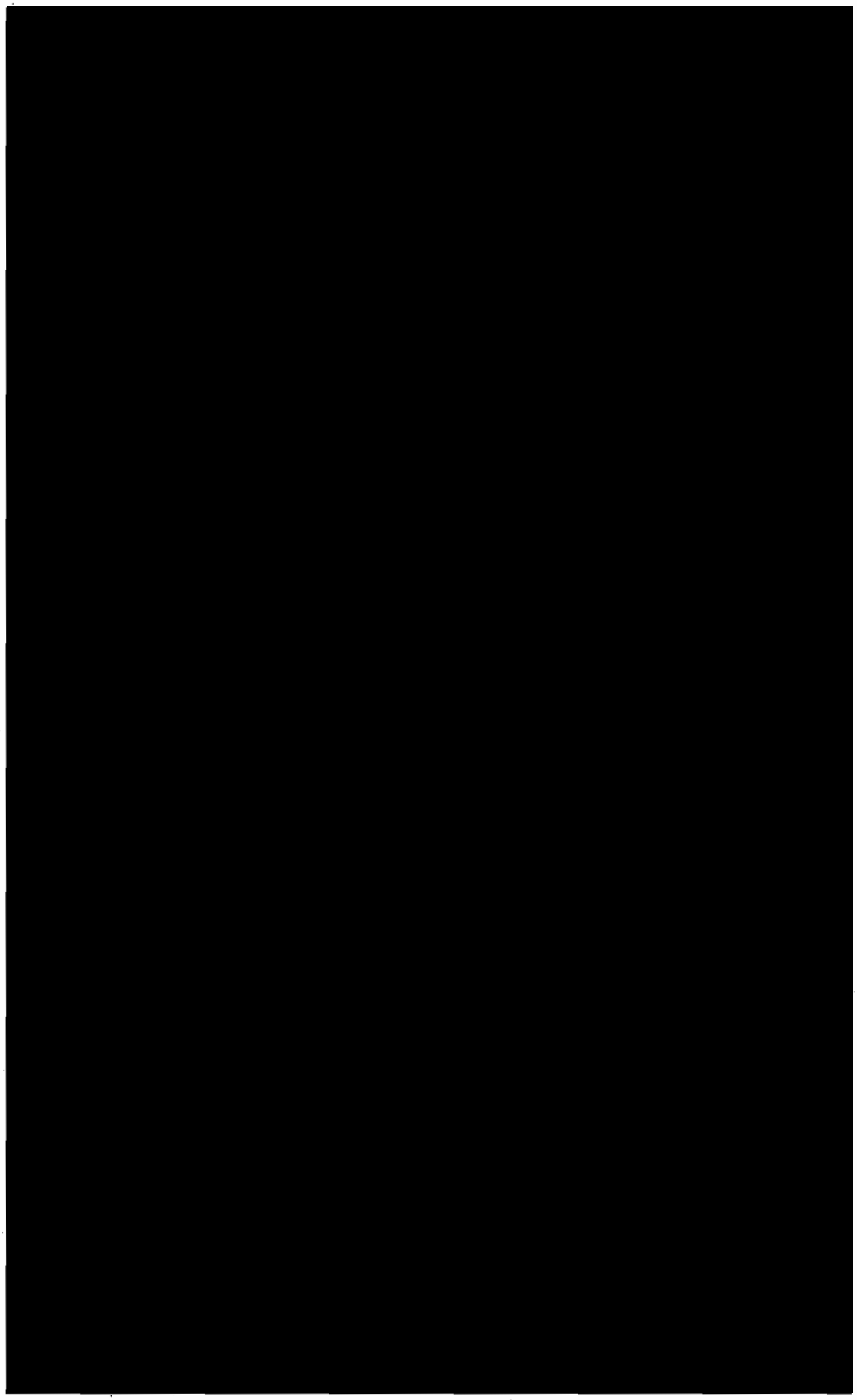
THERESA TALLEUR, Court Reporter

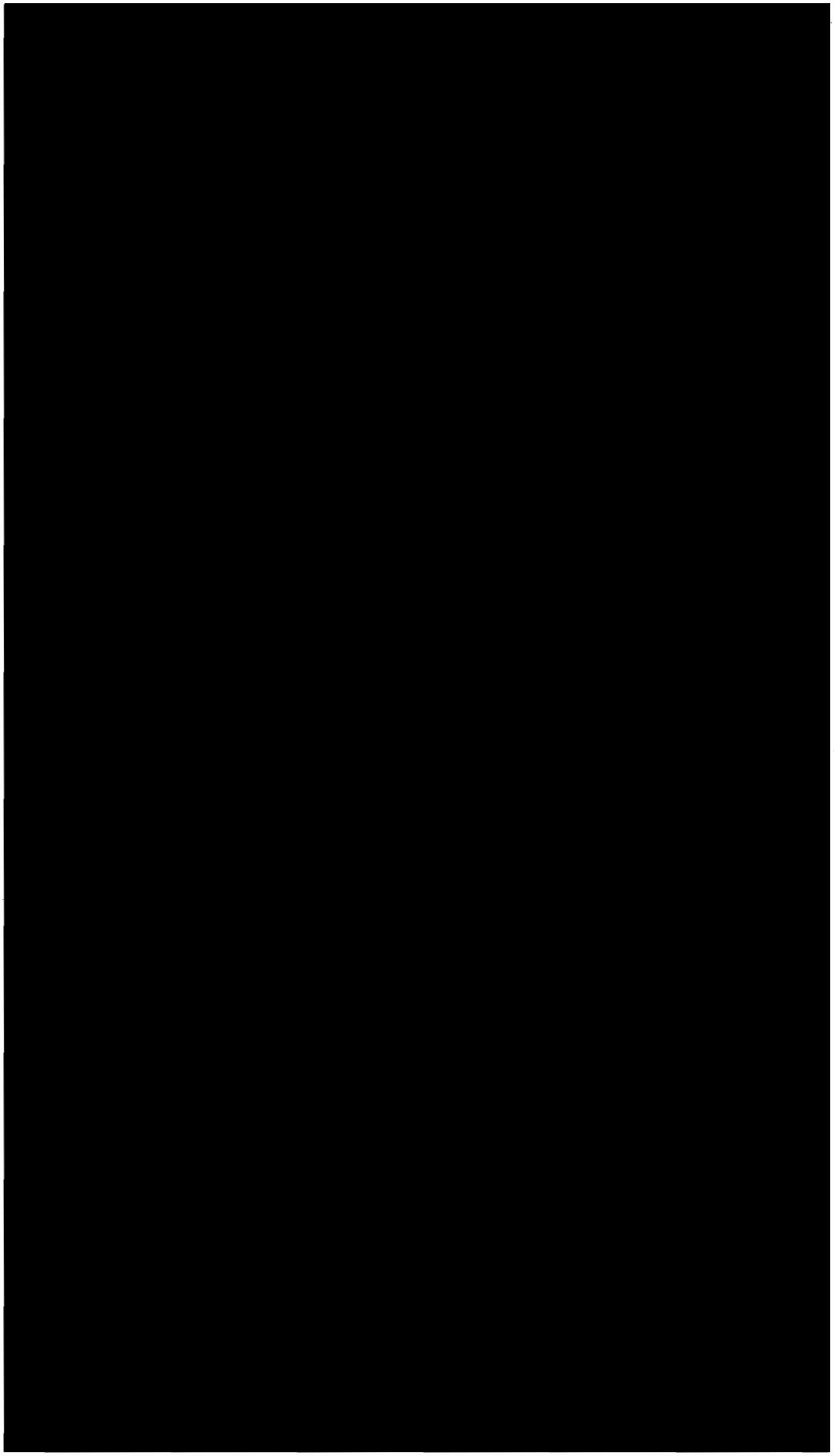












RESPONDENT EXHIBIT C

Hon. Frank M Mora

From: Hon. Frank M Mora
Sent: Thursday, June 8, 2023 12:46 PM
To: Hon. E Loren. Williams
Cc: [redacted]
Subject: RE: Poughkeepsie 730 complaint
Attachments: [redacted] transcript [redacted] pdf

Judge Williams,

In your response to [redacted], you stated that from the "colloquy directly with the defendant" both [redacted] and I would determine whether a 730 examination was needed. As for both [redacted] and I, that colloquy was only one part of what we would take into consideration in determining whether or not to order an exam.

I also know, and knew then, that the standard for ordering an exam is when I [the judge] is of the opinion that a defendant "may" be incapacitated, not "is" incapacitated.

The caselaw seems to be very clear that the judge is allowed to have a colloquy with the defendant. However, based on your directive not to have any more colloquies with defendants, I have not had any further colloquies since the Teams meeting with you, [redacted] and I, on [redacted].

[redacted]

Thank you.

Frank

From: Hon. E Loren. Williams <[redacted]@nycourts.gov>
Sent: Monday, May 8, 2023 5:36 PM
To: [redacted] <[redacted]@nycourts.gov>; Hon. Frank M Mora <[redacted]@nycourts.gov>
Subject: FW: Poughkeepsie 730 complaint

Judges,

I have included my response to the complaint we discussed. I will set up a Teams meeting with you to answer any questions you may have concerning this complaint. My assistant will contact you to set it up.

Regards,

ELW

From: Hon. E Loren. Williams <[redacted]@nycourts.gov>
Sent: Monday, May 8, 2023 5:23 PM

RESPONDENT EXHIBIT

D

JUDGES'
CRIMINAL JUSTICE/MENTAL HEALTH
LEADERSHIP INITIATIVE

Judges' Guide to Mental Illnesses in the Courtroom

OBSERVATIONS THAT INDICATE A DEFENDANT MAY HAVE A MENTAL ILLNESS

When Mental Illness Seems to be a Factor, Consider:

Prevalence:

- **Serious Mental Illness:** 17% of adults booked into jails (31% of women; 15% of men)
- **Substance Use Disorder:** 65% of adults in U.S. corrections systems
- **Co-Occurring Mental Illness/Substance Use Disorder:** 72% of adults with serious mental illnesses in jail also had co-occurring substance use disorders

Contextualizing Observations: *While these categories of observation are provided to alert judges that an individual may have a mental illness that requires different judicial action and/or attention by a mental health professional, they are not definitive signs of mental illness. Certain contextual elements are important to remember:*

- Appearing in court is an anxiety-provoking experience for most people.
- Individuals may not be prepared to navigate a system as complex and demanding as the criminal justice system.
- Individuals may bring to court skills that have allowed them to survive in their communities but are poor fits for interacting with the court (e.g., toughness, argumentativeness, silence).

Categories of Observation: *Do you see something in one of the following areas that does not make sense in the court context?*	**Courtroom Observations:** *Examples of how behaviors in the observational areas can indicate that the individual may have a mental illness:*
Appearance: Age, hygiene, attire, ticks/twitches	• Looks older/younger than the listed date of birth • Wears inappropriate attire (e.g., multiple layers of clothing in the summertime) • Trembles or shakes, is unable to sit or stand still
Cognition: Understanding/appreciation of situation, memory, concentration	• Does not understand where s/he is • Seems confused or disoriented • Has gaps in memory of events • Answers questions inappropriately
Attitude: Cooperativeness, appropriate participation in court hearing	• Stays distant from attorney or bench • Acts belligerent or disrespectful • Is not attentive to court proceedings
Affect/Mood: Eye contact, outbursts of emotion/indifference	• Does not make eye contact with judge or court staff • Appears sad/depressed, or too high-spirited • Switches emotions abruptly • Seems indifferent to severity of proceedings
Speech: Pace, continuity, vocabulary *(Note: Can this be explained by discomfort with English language?)*	• Speaks too quickly or too slowly • Misses words • Uses vocabulary inconsistent with level of education • Stutters or has long pauses in speech
Thought Patterns and Logic: Rationality, tempo, grasp of reality	• Seems to respond to voices/visions • Expresses racing thoughts that may not be connected to each other • Expresses bizarre or unusual ideas

AMERICAN PSYCHIATRIC ASSOCIATION FOUNDATION
JUSTICE CENTER
THE NATIONAL JUDICIAL COLLEGE
POLICY RESEARCH ASSOCIATES

JUDICIAL INTERACTIONS

Before Interacting with a Defendant, Consider:

- **How the courtroom environment is affecting the defendant:**
  - Are there noises or distractions in the courtroom that are negatively affecting the defendant?
  - Is there a family member or defense attorney who can help calm the person?
- **Safety** for yourself, the court staff, and the individual.
- **What is being asked and said in open court** and how this may affect future proceedings.

While Interacting with a Defendant, Consider:

Courtroom Situations: *Examples of commonly-observed scenarios*	**Immediate Reponses:** *Recommendations for immediate situation management*

When a mental illness is affecting a defendant's courtroom participation	• Speak slowly and clearly
	• Avoid jargon
	• Explain what's happening
	• Write instructions down if dates/address are involved
	• Treat individual with the respect you would give other adults
	• If appropriate, use principles of Motivational Interviewing:*
	  • Express empathy
	  • Point out discrepancies between goals and current behavior
	  • Roll with resistance
	  • Support self-efficacy

Loss of Reality:** *When the defendant appears confused or disoriented*	• Ground defendant in the here and now**
Loss of Hope: *When the defendant appears sad, desperate*	• As appropriate, instill hope in positive end result • To extent possible, establish a personal connection
Loss of Control: *When the defendant appears angry, irritable*	• Listen, defuse, deflect • Ask defendant about why s/he is upset • Avoid threats and confrontation
Loss of Perspective: *When defendant appears anxious, panicky*	• Seek to understand • Reassure and calm defendant • Deflect concerns

When Taking Action, Consider:

- **Having defendant approach the bench:** Would this de-escalate the situation or create a safety risk?
- **Re-calling the case later in the session/calendar:** Could this help the defendant calm down?
- **Determining whether to proceed:** Is a fitness or competency evaluation appropriate?
- **Setting conditions of release:**
  - Does defendant have capacity to understand conditions?
  - Does defendant have ability to adhere to conditions?
  - What effect will these conditions have on regularity of treatment?
  - What effect will time in jail have on mental health, access to medication, benefits maintenance, etc.?
  - How will conditions/time in jail affect the defendant's access to a primary caregiver?
- **Requesting mental health information:** What exactly do you need to make the decision facing you?
- **Making a referral (to mental health services provider or other services):**
  - What are the goals of the referral?
  - How might the defendant's cultural background and linguistic needs impact access to services?
  - What are the expectations for reporting back to the court?

* Motivational Interviewing is a counseling approach initially developed by William R. Miller and Stephen Rollnick.

**The Loss of Reality, Hope, Control, and Perspective and the immediate responses are based on the LOSS Model developed by Paul Lilley.

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JUSTICE CENTER
THE NATIONAL JUDICIAL COLLEGE
POLICY RESEARCH ASSOCIATES

COMMISSION EXHIBIT 34

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

----------X

In the Matter of the Proceeding Pursuant to
Section 44, subdivision 4, of the Judiciary Law
In Relation to

FRANK M. MORA, **VERIFIED ANSWER**

a Judge of the Poughkeepsie City Court,
Dutchess County

----------X

Hon. Frank M. Mora, by and through his attorney, Stephen R. Coffey, Esq., as and for his answer to the Formal Written Complaint, sets forth the following upon information and belief:

RESPONSE #1: Respondent admits the allegations contained in this paragraph.

RESPONSE #2: Respondent denies information sufficient to form a belief as to the allegations in this paragraph.

RESPONSE #3: Respondent repeats and re-alleges the responses to the specific acts set forth in Charges I, II, and III, *infra*, as if fully set forth herein, and denies that he committed judicial misconduct.

RESPONSE #4: Respondent admits the allegations contained in this paragraph.

CHARGE I

RESPONSE #5: Respondent admits that he had a verbal confrontation with Stacey Koch, denies that it was discourteous, admits that he advised Ms. Koch that he could not medically tolerate a mask, that he was in full compliance with 10 NYCRR 2.60, hereinafter the "mandate," admits that any Seeta mask policy that contravenes the mandate is void, a nullity, and unenforceable, admits that Ms. Koch called the police, denies that he left only after a police official said he would

send an officer to Seeta, and admits he left after Ms. Koch agreed to have his son's eyes examined if he provided medical documentation that he could not medically tolerate wearing a mask.

RESPONSE #6: Respondent denies information sufficient to form a belief as to Seeta's policies, admits that any Seeta mask policy that contravenes the mandate is void, a nullity, and unenforceable, admits that he advised Ms. Koch that he could not medically tolerate a mask, and that he was in full compliance with the mandate. Respondent admits that he was more than six (6) feet away from EVERYONE in the room the entire time he was there (with his son standing next to him). Respondent admits that Ms. Koch had known since January 29, 2021, that he did not medically tolerate a mask, which is eleven (11) months prior to this incident, when he advised her of same when he accompanied his other son, [redacted] at Seeta for an eye examination. Respondent admits that [redacted] was wearing a mask (as he could medically tolerate masks). Respondent admits that he was not asked to provide medical documentation for the next time he would be at Seeta to be allowed in the building. He admits that although there is nothing in the mandate that stated one must show proof or medical documentation, he would have provided same if it was requested prior to the December 28, 2021, visit.

RESPONSE #7: Respondent admits that on December 28, 2021, Respondent and his [redacted] son, [redacted] entered Seeta, where [redacted] had an appointment for an eye examination. Respondent admits that both he and his son were in full compliance with the mandate; [redacted] was wearing a mask (as he could medically tolerate masks), and Respondent was wearing a clear plastic face shield that was provided to him by his employer, the New York State Unified Court System, Office of Court Administration, hereinafter "OCA," which he was authorized by OCA to wear in lieu of a mask. Respondent admits that the mandate states, "any person who is over age two and **able to medically tolerate** a face-covering may be required to cover their nose and mouth with a mask or face-covering...." (emphasis added). Respondent admits that the mandate states in (e), "For purposes of this section face-coverings shall include, **but are not limited to**, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth." (emphasis added). Respondent admits that his shield met this definition, as it completely covered his nose and mouth. Respondent admits that the shield is open at the bottom and admits that many masks are open not only at the bottom, but at the top, and on the sides. Respondent admits that there were approximately 20 patients in the waiting room but denies information sufficient to form a belief as to the waiting room's

fullness, or the number of chairs occupied.

RESPONSE #8: Respondent admits that a receptionist asked him if he had a face mask and that he advised he could not medically tolerate masks. Respondent denies that he was told that he could alternatively wait outside. He admits that had a policy been in place for those who could not tolerate a mask where he would wait outside and then be called in, even by a backdoor, he would have gladly done so. He admits that he would not wait outside while his [redacted]-minor son remained inside with approximately twenty (20) strangers, and that he would not allow his son to go into the exam room without him. Respondent admits that Ms. Koch was called.

RESPONSE #9: Respondent admits that Ms. Koch entered the waiting room and asked him to put on a face mask, and that he advised he was not able to medically tolerate a mask. Respondent admits that he did not identify his disability or any medical reason that he was unable to wear a mask. Respondent admits that he was not asked by anyone why he could not medically tolerate wearing a mask. He admits that even if he had been asked, this information is personal, confidential, and under no circumstances something Ms. Koch was entitled to know.

RESPONSE #10: Respondent denies that Ms. Koch asked him to produce documentation of the medical condition that exempted him from the face masking requirement. Respondent admits that she asked

for medical documentation stating that he could not medically tolerate a mask. Respondent admits that he did not produce such documentation at that moment, but stated he would try to get it for her (as he was not sure if Dr. M[redacted] was available or able to write a note), and asked her to please have [redacted] seen. He admits that no other person or entity prior to, or after, this incident asked him any questions regarding his inability to wear a mask, or for medical documentation, as EVERY other person/entity followed the mandate. He admits that there is nothing in the mandate that allowed for someone to request, let alone demand, medical records. Respondent admits that the mandate did not speak to an exemption requirement, nor was there a process setup for same.

RESPONSE #11: Respondent admits that Ms. Koch asked him to put on a face mask, and that he was not able to do so. Respondent admits that he again told her he could not medically tolerate a mask. He admits that Ms. Koch was in violation of the mandate by demanding that he put on a face mask or leave. Respondent admits that he did not put on face mask, not because he was refusing, but because he was not medically able to tolerate one. Respondent admits that although Seeta is a private business, it is a Public Accommodation, as defined by 42 USC, Chapter 126. Section 12181(F) lists, among many other establishments, a professional office of a health care provider. Respondent admits that he had a license to be there

(his appointment for his minor son's eye exam), and that Ms. Koch's demand that he leave was for the sole reason that he could not wear a mask, which was a violation of the mandate, unlawful, and discriminatory.

RESPONSE #12: Respondent admits that Ms. Koch stated she would call the police. Respondent denies that he stated that the police would not come to remove him because Dutchess County was not enforcing the mask mandate. Respondent admits that he stated that Dutchess County was not enforcing the mask mandate. He admits that just as the police dispatcher advised Ms. Koch, respondent was referring to County Executive Molinaro's Executive Order stating same.

RESPONSE #13: Respondent admits that Ms. Koch called 911 and the call was transferred to the Town of Poughkeepsie Police Department, which recorded the call. Respondent denies stating, "Go ahead. They're not coming." Respondent admits that he again stated in words or substance, "Go ahead. They're not enforcing it."

RESPONSE #14: Respondent admits that Ms. Koch offered to provide him with a paper mask and in violation of the mandate repeated that he could not be in the office without a mask. He admits the balance of the paragraph. Respondent admits that he wanted desperately to put the mask on, but could not mentally do it, as just the thought caused a panic attack.

RESPONSE #15: Respondent admits that Ms. Koch was on the phone with the

police, but at the time of the incident did not know what was said to Ms. Koch, as the officer was not on speakerphone. Respondent denies that he left the premises because of anything the official said, as he could not hear what the official said. Respondent admits to practically begging Ms. Koch to please have [redacted]'s eyes examined, but she refused. He admits that while Ms. Koch was still on the phone with the police during the second call, he asked her if she would have [redacted] seen if he could get medical documentation from his doctor, and she said yes. Respondent admits that it was at that point, while Ms. Koch was still on the phone with the police, that he left to try to get medical documentation, as all he wanted was for [redacted]'s eyes to be examined.

RESPONSE #16: Respondent admits the allegations contained in this paragraph. He admits that the mandate did not establish any procedure that required a certain type of doctor to give a medical exemption, and that the mandate does not even speak to the requirement of an exemption. Respondent admits that he sought treatment for his disability, and he began treating with a therapist on April 30, 2022. He admits that he has been continuously treating with her since then, and continues to the present day. He further admits that he was diagnosed with severe anxiety, which manifests as object phobia. He admits that although not diagnosed at the time of the

incident, this is what he was suffering from. He admits that physical symptoms and manifestations from this are headaches and neck pain. He admits that the regulation does not call for, contemplate, nor require a diagnosed medical condition. As chiropractors cannot diagnose mental health issues, and they deal with physical and body structural issues, no diagnosis was provided. Respondent admits that Dr. M[redacted], as his treating doctor for his physical symptoms, and a doctor licensed by the State of New York, had the right and authority to provide a doctor's note.

RESPONSE #17: Respondent admits the allegations contained in this paragraph.

RESPONSE #18: Respondent denies the allegations and inferences of misconduct contained in this paragraph.

CHARGE II

RESPONSE #19: Respondent admits that he filed a defamation suit but denies that it was in retaliation for her having filed a confidential complaint against him with the Commission. Respondent admits that he takes his ethical responsibilities extremely seriously. He does not leave anything to chance when placed in a situation where it is not clear what is ethically proper. He admits that even prior to becoming a judge on January 1, 2011, he had sought advice formally and informally from the Judicial Advisory Committee (JAC), and its long-time former Co-chair, the Honorable George

Marlow. He also speaks regularly with Laura Smith, Esq., the JAC's Chief Counsel, whenever an issue arises that he has questions about. He admits that he is mindful of and careful to adhere to the Rules of Judicial Conduct. Respondent admits that he has written to the JAC approximately twenty (20) times for opinions so he can follow the rules appropriately. He admits that in a time span of approximately fifteen (15) months alone (1/20/22 – 6/6/24), he exchanged phone calls with Ms. Smith approximately fifty (50) times. He admits that prior to bringing this suit, he called Ms. Smith to seek advice about bringing lawsuits and she advised that a judge, like any individual, is allowed to bring lawsuits. He admits that Ms. Smith did not qualify her answer in any way. He admits that had she stated that certain lawsuits are not allowed, he would have inquired further. He admits that he would have provided specifics about this suit, and if she did not have an answer, he would have written to the JAC and would have complied with its advice. He admits that had she advised that the suit was not proper, he would not have filed it. He admits that he would not have sought advice from Mr. Sussman if that were the case. Respondent admits that prior to this lawsuit, he had NEVER been involved in a defamation case, neither in his professional capacity as a lawyer or judge, or as an individual. He admits that prior to this lawsuit, he had NEVER heard of a SLAPP suit.

Respondent admits that this lawsuit was a good faith attempt to vindicate conduct he perceived to be actionable.

RESPONSE #20: Respondent denies information sufficient to form a belief as to the allegations in this paragraph.

RESPONSE #21: Respondent denies information sufficient to form a belief as to the allegations in this paragraph.

RESPONSE #22: Respondent admits the allegations contained in this paragraph.

RESPONSE #23: Respondent admits the allegations contained in this paragraph.

RESPONSE #24: Respondent admits the allegations contained in this paragraph.

RESPONSE #25: Respondent admits the allegations contained in this paragraph.

RESPONSE #26: Respondent admits the allegations contained in this paragraph. Respondent admits that prior to the suit his attorney, Mr. Sussman, advised that the filing of the complaint with the Commission satisfied the publication element of defamation, and was therefore public.

RESPONSE #27: Respondent admits the allegations contained in this paragraph, in that Mr. Sussman arranged for service of Ms. Koch.

RESPONSE #28: Respondent admits the allegations contained in this paragraph. He admits that in addition to this visit, he had two (2) other visits after the December 28, 2021, visit, and prior to filing of the suit. Respondent admits that he had no interactions with Ms. Koch during any of these visits, he was wearing his face shield the entire time, and all three (3) visits took place without incident.

RESPONSE #29: Respondent admits that he telephoned Janna Whearty as a potential witness. He denies that he was angry, that his tone was aggressive, and denies the remainder of the allegations in this paragraph.

RESPONSE #30: Respondent admits the allegations contained in this paragraph.

RESPONSE #31: Respondent admits the allegations contained in this paragraph.

RESPONSE #32: Respondent admits the allegations contained in this paragraph, in that Mr. Sussman filed the papers.

RESPONSE #33: Respondent admits the allegations contained in this paragraph.

RESPONSE #34: Respondent admits the allegations contained in this paragraph.

RESPONSE #35: Respondent denies the allegations and inferences of misconduct contained in this paragraph.

CHARGE III

RESPONSE #36: Respondent admits that certain documents, including emails, were not turned over to the Commission, but it was inadvertent and due to human error. He admits that Mr. Sussman was retained to represent him on his federal suit, the Koch defamation suit, and advised him pro-bono regarding the original three (3) Commission complaints: 2021/N-1176, 2021/N-0723, and 2021/N-1120. Respondent admits that he spent several hours searching for, printing, reviewing, and culling the emails that he sent to the Commission, even numbering each email in the July 10, 2024, submission by hand from 1 to 127. He admits that he culled the

emails to make it easier for the Commission to review them, and when he did, he mistakenly put several of the missing emails in a "duplicate" pile, which was accidentally excluded. Regarding the redacted emails, Respondent admits that he redacted in good faith approximately 24 of the 127 emails that related to his federal suit and the Commission complaints, of which he did not waive his attorney-client privilege between himself and Mr. Sussman. Respondent admits that he pointed out to the Commission that he was redacting non-Koch matters in both the May 9th and July 10th submissions, and the Commission did not object to it. He admits that had the Commission objected, he would have created a privilege log and asked for an independent 3rd party referee be appointed to determine if the emails had to unredacted. Respondent admits that he acted in good faith in redacting emails, has cooperated with the commission for three (3) years now, and would not intentionally withhold or redact anything the Commission is entitled to. Respondent apologizes for any mistakes that were made.

RESPONSE #37: Respondent admits the allegations contained in this paragraph.

RESPONSE #38: Respondent denies that the letter dated April 8, 2024, contains the words "and related matters," and admits the remaining allegations contained in this paragraph.

RESPONSE #39: Respondent admits the allegations contained in this paragraph. He

again admits that the Commission did not state that the redactions were unacceptable.

RESPONSE #40: Respondent admits the allegations contained in this paragraph. He again admits that the Commission did not state that the redactions were unacceptable.

RESPONSE #41: Respondent admits the allegations contained in this paragraph. He again admits that the Commission did not state that the redactions were unacceptable.

RESPONSE #42: Respondent admits the allegations contained in this paragraph in that he waived the attorney-client privilege of confidentiality between himself and Mr. Sussman SOLEY related to the matter related to *Frank Mora v Stacey Koch* (Index No. 2022-54141).

RESPONSE #43:

(A): Respondent denies the allegations contained in this paragraph, as he searched diligently and could not find these two (2) emails. He admits they were not produced because he had no record of them. He admits that these emails corroborate that he sought and relied upon Mr. Sussman's advice in determining whether a viable suit could be brought and are exculpatory.

(B): Respondent repeats and re-alleges the response from thirty-six (36) above, as if fully set forth herein. He denies that the text was redacted, and admits that the email was not turned over as it was missed due to human error as explained in Response 36.

(C): Respondent repeats and re-alleges the response from thirty-six (36) above, as if fully set forth herein. He admits that the attachment was not turned over as it was missed due to human error. He admits that it is exculpatory, as it shows Respondent believed the suit was viable as he was putting forth his theory of the case. He also admits that the Commission left out these exculpatory statements, "I would have gladly waited until the commission was through to bring suit against Koch, however, the one year SOL prevented that." "The paragraph regarding the police is complete nonsense. I knew the police were coming, and was waiting. It was after she called the 2nd time regarding the "emergency," that I left. I think we should spell this out exactly as in my response starting on page 31." "We should also point out that I did not criticize masks. Both my sons were wearing masks on January 29, 2021, and December 28, 2021. If I was able to tolerate a mask, I would have been wearing one." "No time when I was in the waiting room did I come within 6 feet of anyone.... I had Covid in September 2021, and was completely healthy when I went in there. Per Koch's instructions, I called when I was in the parking lot, and Brown came out to let my son and I in through the side door. If she had done this from the beginning, there would have been no issues."

(D): Respondent repeats and re-alleges the response from thirty-six (36)

above, as if fully set forth herein.

(E): Respondent repeats and re-alleges the response from thirty-six (36) above, as if fully set forth herein.

(F): Respondent repeats and re-alleges the response from thirty-six (36) above, as if fully set forth herein.

(G): Respondent repeats and re-alleges the response from thirty-six (36) above, as if fully set forth herein.

(H): Respondent repeats and re-alleges the response from thirty-six (36) above, as if fully set forth herein.

(I): Respondent repeats and re-alleges the response from thirty-six (36) above, as if fully set forth herein.

RESPONSE #44: Respondent denies the allegations and inferences of misconduct contained in this paragraph.

FURTHER ANSWERING THE COMPLAINT

45: Respondent denies the remaining allegations of the complaint not hereinbefore specifically admitted or otherwise denied.

Dated: April 11, 2025

O'Connell and Aronowitz, P.C.



Stephen R. Coffey
Attorneys for Respondent
54 State Street, Floor 9
Albany, NY 12207

To: Robert H. Tembeckjian
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

ATTORNEY VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

Stephen R. Coffey, being duly sworn, deposes and says that he is an attorney-at-law and is a shareholder of the law firm of O'Connell and Aronowitz, P.C., attorneys for the Respondent, HON. FRANK M. MORA, that he has read the foregoing VERIFIED ANSWER and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

The reason why this verification is made by deponent instead of the Respondent is because the Respondent does not reside within the County of Albany which is the county where the deponent has his office.

Stephen R. Coffey

Stephen R. Coffey, Esq.
Attorney for the Respondent

Sworn to before me on this
11th day of April 2025

Kelly E Finelli
NOTARY PUBLIC

KELLY E. FINELLI
Notary Public, State of New York
Qualified In Rensselaer County No. 01FI6412906
Commission Expires January 11, 2028

COMMISSION EXHIBIT 36

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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STAFF ATTORNEYS

ALAN W. FRIEDBERG
SPECIAL COUNSEL

CONFIDENTIAL

March 30, 2022

Via UPS Overnight Mail & Email: [redacted]@nycourts.gov

Hon. Frank M. Mora
Poughkeepsie City Court Judge
62 Civic Center Plaza
Poughkeepsie, New York 12601

Re: File No. 2021/N-1176

Dear Judge Mora:

Pursuant to Article 2-A of the Judiciary Law, the Commission on Judicial Conduct is investigating a complaint alleging that you failed to comply with an administrative mandate requiring that all judges and employees of the Unified Court System be vaccinated against COVID-19, after your request for a religious exemption to the vaccination requirement was denied.

Enclosed is a copy of the complaint. Also enclosed is a copy of Administrative Order 275/2021 issued by Chief Administrative Judge Lawrence K. Marks and the attachments thereto.

For your reference, the Rules Governing Judicial Conduct, the Commission's Operating Procedures and Rules, the Commission's Policy Manual and other documents are available on the Commission's website.[1]

The Commission requests your written response to the allegations. In your letter, please include answers to the questions below and number your responses to correspond to the questions. We prefer that you respond in the form of a letter attached to a reply email to the Commission at [redacted]@cjc.ny.gov. However, we will accept a reply typed into an email message, faxed to (518) 299-1757, or sent by US mail, UPS, or another carrier.

Please note that, pursuant to Section 2.6(D)(3) of the Commission's Policy Manual, if your written reply is submitted by counsel, you must co-sign or submit a separate statement indicating that you have read and adopt it.

1. Are you familiar with Judge Marks' Administrative Order 275/2021, which required that by September 27, 2021, all judges, and employees of the Unified Court System either be fully vaccinated against COVID-19, or submit a request for an exemption on medical or religious grounds? Assuming so, please answer the following questions.

2. Did you submit a request for a religious exemption from the COVID-19 vaccination to the Unified Court System ("UCS")? Assuming so, please provide with your response to this letter (i) a copy of the request and supporting documentation you submitted, and (ii) all written or electronic communications between yourself and UCS regarding your exemption request.

3. Did the UCS Vaccination Exemption Committee ("Committee") deny your request for an exemption on or around December 23, 2021, and direct you to submit proof of your first dose of the COVID-19 vaccination within 10 business days from the date of notification? Assuming so, please answer the following questions:

---

[1] http://www.cjc.ny.gov/Legal.Authorities/legal.authorities.htm

A. Did you submit proof of your first vaccination dose on or before January 10, 2022, which was 10 business days from the Committee's notification? If so, please provide a copy of your proof of first dose submission with your response to this letter. If not, please explain why not.

B. Did you receive a vaccination dose at any time after December 23, 2021? If so, please provide proof of each vaccination dose with your response to this letter.

C. If you have not yet received a first dose of the COVID-19 vaccination, and in view of the fact that the Committee's decision denying your request for a religious exemption is final and not subject to appeal (*see* AO 275/2021, Attachment 4), please indicate whether you intend to comply with the Administrative Order and receive the COVID-19 vaccination, and if so, when. If you do not intend to comply with AO 275/2021, please explain why not.

4. Under the terms of AO 275/2021, a judge who is not vaccinated against COVID-19, or who has been denied an exemption, is barred from entering or working at the courthouse or other court facilities. Please answer the following questions related to these terms.

A. Have you physically appeared for work at the Poughkeepsie City Court from January 10, 2022, through the present? If so, please indicate all dates on which you physically appeared for work, and why you chose to do so.

B. If you have not physically appeared for work since January 10, 2022, or currently are not appearing for work at the courthouse, please explain how, if at all, you are performing your judicial duties.

5. Do you consider that your conduct in failing to comply with the UCS's vaccine mandate is consistent with Section 100.1 of the Rules

Governing Judicial Conduct ("Rules"), which requires a judge to maintain and observe high standards of conduct so that the integrity of the judiciary is preserved? Please explain your answer.

6. Do you consider that your conduct in failing to comply with the UCS's vaccine mandate is consistent with Section 100.2(A) of the Rules, which requires a judge to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity of the judiciary? Please explain your answer.

7. Do you consider that your conduct in failing to comply with the UCS's vaccine mandate is consistent with Section 100.3(C)(1) of the Rules, which requires a judge to cooperate with other judges and court officials in the administration of court business? Please explain your answer.

Please feel free to include any relevant information or material that you wish the Commission to consider in connection with this matter.

Please respond in writing to this inquiry by April 29, 2022. Thank you for your prompt attention to this matter.

Very truly yours,

MARK LEVINE
Deputy Administrator

Enclosures
cc: Melissa DiPalo
Senior Attorney

Tracking#:1ZV57A910191945993

ADMINISTRATOR'S COMPLAINT

In the Matter of: Frank M. Mora
Poughkeepsie City Court Judge
Dutchess County

Complaint # 2021/N-1176

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Based upon the attached letter from Chief Administrative Judge Lawrence K. Marks dated January 6, 2020, it is alleged that Judge Mora has not complied with an administrative mandate requiring that all judges and employees of the Unified Court System be vaccinated against COVID-19, in that Judge Mora failed to submit proof of his first COVID-19 vaccination to the Office of Court Administration following the denial of his request for an exemption to the mandatory vaccination requirement on religious grounds.

Robert H. Tembeckjian

Robert H. Tembeckjian, Administrator

New York, New York

Date Signed: February 11, 2022

Authorized on February 3, 2022

State of New York
Unified Court System

Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

January 6, 2020

New York State Commission on Judicial Conduct
c/o Robert Tembeckjian, Administrator and Counsel
61 Broadway, Suite 1200
New York, NY 10006

Dear Mr. Tembeckjian:

On September 27, 2021, the Unified Court System implemented a Mandatory Vaccination Policy requiring that all state-paid judges and non-judicial employees provide proof of COVID-19 vaccination or submit a request for medical or religious exemption. By the close of business on that date, all judges and non-judicial employees were required to upload proof of vaccination or an exemption request to the UCS Employee Web Portal.

Poughkeepsie City Court Judge Frank Mora submitted a request for a religious exemption. That request was ultimately denied on December 23, 2021, and in accordance with stated policy Judge Mora was required to submit proof of COVID-19 vaccination (one dose) within ten days. As of this date, Judge Mora has failed to do so.

Accordingly, I am referring this matter to the Commission for its consideration and appropriate action.

Very truly yours,

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me and with the approval of the Chief Judge, to protect the health and safety of all judicial and non-judicial personnel, all court users, and the general public from the ongoing COVID-19 pandemic, I hereby direct that all judicial and non-judicial personnel of the Unified Court System comply with the Testing and Mandatory Vaccination Requirements detailed in the memoranda attached hereto as Attachments 1 through 5.

Chief Administrative Judge of the Courts

Dated: September 23, 2021

AO/275/2021

ATTACHMENT

1

State of New York
Unified Court System

Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

August 18, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: COVID-19 Testing Program

As was previously announced, the Unified Court System will be implementing a mandatory weekly COVID-19 testing program for judges and court employees. This new program is fully consistent with the steps that public and private organizations have been taking in New York and across the country.

The mandatory testing program will begin on September 7, 2021. The following are the key elements of the program:

- All judges who are fully vaccinated and who have enrolled in the court system's mask policy program and been issued an orange card are exempt from the mandatory testing program. Fully vaccinated judges who have not enrolled in the program may do so at any time, but to be exempt from the program on the date of implementation (September 7) they must do so by September 3, 2021. Click on the following link for instructions on enrolling in the mask policy program https://nycourts.sharepoint.com/sites/COVID-19/CPV

- Judges not enrolled in the mask policy program must submit proof each week that they have received a COVID-19 test.

- Judges may obtain their COVID-19 test at any licensed facility and should request a proof of test. Locations, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Judges will find a variety of

community testing resources in their areas that are widely available and frequently free of charge.[1] Tests may be either rapid or PCR. At-home tests may not be used.

- Proof of the test conducted by the medical health provider must be uploaded to the UCS Mandatory Testing Program SharePoint site on the day the test was taken. Instructions on accessing and uploading proof of testing will be provided in a separate memorandum that will be distributed prior to the start of the mandatory testing program.

- Judges who work any portion of a workweek must submit proof of testing. Judges on leave for one week or longer are not required to submit proof of testing.

- Judges who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace (e.g., they are likely to test positive because of a recent infection but are no longer contagious) must submit to their Administrative Judge a letter from the medical health provider stating the reason for the determination and how long the restriction is expected to continue.

- While judges are not required to report the results of their test each week, they must continue to follow current UCS protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19. Please note that judges who have COVID-19 symptoms (cough, sore throat, shortness of breath or temperature of 100° or higher) should remain at home even if they receive a negative result from a COVID-19 test.

As circumstances and conditions relating to the coronavirus pandemic continue to evolve, it may be necessary to modify these policies. In the meantime, thank you for your cooperation with our guidance and protocols. This has greatly contributed to keeping judges, their colleagues and all who work and conduct business in our facilities safe and healthy.

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

ATTACHMENT

2

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

August 18, 2021

To: All Non-Judicial Staff

From: Nancy J. Barry
Justin a. Barry

Re: Mandatory Testing Program

In order to maintain the safest environment for everyone who works and conducts business in our court facilities, as previously announced, the Unified Court System will implement a mandatory weekly COVID-19 testing program. Because the Centers for Disease Control and Prevention (CDC) continues to advise that COVID-19 vaccinations protect people from getting sick or severely ill and may also protect people around them, all fully vaccinated judges and non-judicial employees, who have enrolled in the Revised Mask Policy Program and submitted proof of vaccination, will be exempt from this testing program.

This mandatory testing program will commence on September 7, 2021.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Exemption

All non-judicial personnel who have provided proof of vaccination in order to receive an orange card by enrolling in the Unified Court System's (UCS) Revised Mask Policy Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021 for eligibility, enrollment and program description) are exempt from this weekly testing mandate.

Employees may enroll in the orange card program at any time but in order to be exempt from the testing mandate on the date of implementation, they must submit proof of full vaccination by

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September 3, 2021. (Note: Employees will shortly be able to submit proof of vaccination and opt not to receive an orange card).

Mandatory Testing Procedure

Employees must submit proof each week that they have received a COVID-19 test. Personnel will coordinate with their supervisor to schedule a one-hour period during their regularly scheduled workweek in which they will be granted excused leave so that the employee may get a rapid or PCR test. Employees may have the test administered after work hours, but they will not be granted leave or compensatory time, if they choose this option.

Personnel may obtain their test at any licensed medical facility and should ask for a proof of test with the date the test was administered (result is not required). Location, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Employees may find a variety of community testing resources at these websites in their areas, which are widely available and many free of charge.[1] Please note that some testing facilities require appointments, and it is the responsibility of the employee to find appointments during their scheduled weekly testing hour or, if unavailable, coordinate an alternate time during the workweek with their supervisor. Use of at-home tests are not permitted for the purposes of UCS' testing requirement.

Proof of the test provided by the medical health provider administering the procedure should be uploaded to the UCS Mandatory Testing Program Share Point site the same day the test was taken but no later than the next business day. Employees who have not been issued individual desktop or laptop computers may upload the proof of test to the Share Point site using a personal mobile device using their CourtNet identification and password or will be given access to do so on a court-issued computer.[2]

Every morning, the Office of Court Administration's Division of Technology will provide each Kronos supervisor and/or a designated court manager with lists of their employees to compare with their employees' scheduled test hours. These lists will permit the supervisors to review and approve submitted testing documentation.

Those employees who do not submit proof of test to the Share Point site and who have not coordinated an alternate testing date/time within that same week will be designated as unfit for service and will not be permitted to report to work. Employees designated as unfit for service may

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

[2] Instructions on accessing and uploading proof of testing to the UCS Mandatory Testing Program Share Point site will be sent under a separate memorandum.

charge annual or compensatory leave accruals. Employees without annual or compensatory leave will have their pay docked.[3]

Personnel who work any portion of a workweek must submit proof of testing. Individuals on extended leave are not required to submit proof of test until they return to work. (Extended leave is defined, in this context, as any leave in which an employee does not report to work during all of a particular workweek).

Exceptions

Those employees, who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace, e.g., they are likely to test positive because of a recent infection but they are no longer contagious, must submit a letter from that medical health provider to their chief clerk or human resources professional indicating the reason for that determination and how long that restriction is expected to extend. Upon review and approval, that employee will not be required to submit proof of testing for the period prescribed by the medical health provider.

Positive Tests

While personnel are not required to report the results of their test each week, they must continue to follow the most current protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19 (See Nancy Barry's memorandum, "Coronavirus – Updated Safety and Operational Protocols Related to International Travel, dated May 11, 2021). Please note that all employees who have COVID-19 symptoms (cough, sore throat, shortness of breath, or temperature of 100.0 or higher) should remain at home even if they have received a negative result on a COVID-19 test.

Additional Information

Non-judicial personnel are reminded that compensatory time is available to any employee who submits proof of vaccination appointment(s).

Non-judicial personnel must continue to follow all other safety and operational protocols.

The science and safety procedures surrounding the coronavirus continue to evolve, sometimes quite rapidly. As the Court System receives additional or modified guidance from the CDC and New York State, these policies may be modified.

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[3] If an employee experiences technical difficulty uploading proof of test to the Share Point site, they should notify their supervisor and submit the proof of testing in person either by the end of their shift or on the next day they report to work.

We are deeply grateful to staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves. their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. Vito Caruso
Hon. George Silver
Hon. Edwina Mendelson
Administrative Judges
Linda Dunlap-Miller
Scott Murphy
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT

3

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 1, 2021

To: All Judges and Non-Judicial Staff

From: Nancy J. Barry
Justin Barry

Re: Mandatory Testing Program – Supplemental Information

As announced last month, the Unified Court System will begin its mandatory COVID-19 testing program on September 7, 2021. Fully vaccinated judges and nonjudicial employees, who have submitted proof of vaccination *via* the Revised Mask Policy ("Orange Card") Program will be exempt from this testing program.

As promised, this memorandum will offer detailed information on how judges and employees will submit proof of testing and supplemental information on other aspects of the program.

A copy of the August 18, 2021 memorandum is attached for your information.

Mandatory Testing Procedure

1. Exemption

   To be exempt from weekly testing, judges and nonjudicial employees must submit proof of full vaccination using the UCS share point site – https://nycourts.sharepoint.com/sites/COVID-19/CPV. Individuals uploading proof of vaccination may now select whether they wish to be issued an orange card. The share point site will email confirmation to the applicant when the proof of vaccination is submitted and when it has been approved. Judges and nonjudicial employees must submit proof of fully vaccinated status by the close of business on September 3, 2021. Any judge or nonjudicial employee who has not received an email confirming that their proof of vaccination has been approved by the close of business on September 7, 2021 will be required to begin weekly COVID-19 testing the week of September 13, 2021, as explained further below.

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Nonjudicial employees that received paid leave and/or Compensatory Time ("CT") for attending vaccination appointments are still required to upload proof of fully vaccinated status through the share point site in order to be exempt from weekly testing. Under no circumstances will employees who received paid leave and/or CT for attending vaccination appointments be granted paid leave for purposes of weekly testing.

2. Start of Testing Program

The weekly testing program starts on September 7, 2021. On September 7, 2021 every Kronos supervisor, Administrative Judge and Supervising Judge ("supervisor") will receive an email with a link to the UCS Employee Web Portal ("Portal") which will contain a list of all of the judges or employees ("participants") under their supervision who must submit weekly proof of COVID tests. (Again, judges and nonjudicial employees who have submitted an approved proof of vaccination will be excluded from this list).

While participants will not be required to submit proof of testing during the week of September 7, 2021, they should use this time to coordinate a time with their supervisor to be tested during their regular work hours in the workweek that follows, i.e. the week starting September 13, 2021. Nonjudicial employees will be provided with one (1) hour of paid leave without charge to accruals each week for purposes of undergoing this testing.

Participants must upload proof of testing within one workday from the day they were tested. Supervisors will need to check the Portal each workday to ensure each participant has timely submitted proof of testing.

3. Supervisor Scheduling

Supervisors will be responsible for ensuring that all participants on their September 7, 2021 "Portal" list have coordinated/scheduled a date and time to undergo testing during the week that follows.

To the extent practicable, and subject to the operational needs of the court and the availability of testing appointments, the supervisor and participant may want to coordinate/schedule a set day and time each week for the participant to undergo testing, i.e., establish a recurring testing hour each week. Supervisors should be flexible, where possible, to accommodate a participant's scheduled or unscheduled leave or available testing appointments.

Nonjudicial employees are entitled to one (1) hour of excused leave per week which will be granted upon substantiating that testing was conducted on the date the employee was released from work for their test. Supervisors will make every effort to coordinate/ schedule release time at a mutually convenient time, taking into consideration that some

employees may wish to be tested at a location near their home while others may find it easier to be tested near their workplace.

In order to ensure adequate release time, participants should make every effort to schedule and/or request their one-hour of excused leave with their supervisor by the Wednesday preceding each testing week, e.g., by Wednesday, September 8, 2021 for testing the following week. Supervisors should note and/or keep track of each participant's scheduled hour (by calendar or some other method) that will allow them to confirm that the participant is released for testing and that proof of testing is timely uploaded thereafter.

Nonjudicial employees that are overtime eligible, i.e., required to swipe in/out at the beginning and end of their shift should follow the normal rules for appointments during the workday. That is, only if the employee is not expected to return to work following their test are they required to swipe out, e.g., an overtime eligible employee with regular hours of 9:00 AM to 5:00 PM that is scheduled for a 4:00 PM test is not expected to return to work and therefore, must swipe out when leaving for their test/appointment.

4. Submitting Proof of Test

Upon completion of the test, each participant should be sure to obtain an electronic confirmation (pdf or jpeg) or paper document from the testing facility indicating that they took the test with the date, time, location and facility information. The participant must upload a copy of that confirmation using the Portal, which is accessible anywhere from any device using the following URL - https://portal.nycourts.gov/ucsmtp/.

Upon clicking the Portal URL, the participant will be asked for their UCS user id and password (same user id and password used for Kronos and Outlook) and the date and time of their test for that week. At the bottom of the Portal page, the participant will upload a digital image of their proof of test which must include the location, date, time and type of test.[1]

Instructions for using the Portal in every operating system are contained on the Portal upload page. Nonjudicial employees that do not have regular access to a UCS computer and do not wish to use their personal mobile device to upload proof of testing may request access to a computer at their worksite from their supervisor.

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[1] Acceptable tests include PCR, RT-PCR, ddPCR, Rapid PCR (Polymerase Chain Reaction), NAA / NAAT (Nucleic Acid Amplification), AMP PRB (Amplified Probe), LAMP (Loop-mediated Isothermal Amplification), TMA (Transcription-mediated Amplification), Molecular test brands, such as, but not limited to: Abbott ID NOW, Quidel Lyra PCR, Abbott Realtime PCR, Cobas Qualitative PCR, FTD PCR, Xpert Xpress and Simplexa Direct PCR.

Unacceptable tests include all Antigen (Ag) tests (including Quidel Sophia, Abbott BinaxNOW and Rapid Antigen Tests), all Antibody tests (such as IgG, IgA, IgM and Rapid Antibody Tests), all blood tests (such as fingerstick, venipuncture), all plasma tests, all serum tests and all lateral flow tests.

5. Supervisor Review

Each morning at 10:00 AM, supervisors will receive a combined COVID Self-Assessment and COVID Test Advisory email with a link. The link will take the supervisor to the Portal which will indicate which participants have completed their daily self-assessment and which participants uploaded their proof of test on the previous day.

The supervisor should then compare their participants' schedule of tests for that week to ensure the participants have completed the test as scheduled.

If a participant does not submit a proof of test within one workday of the scheduled hour for that week but reports a valid reason why he/she was unable to submit his/her proof of testing (e.g., the pharmacy canceled their appointment, there was technical trouble uploading the proof, they were sick on the day of the appointment), the supervisor should exercise reasonable discretion in permitting the participant an additional opportunity to be tested and/or upload proof of testing during that workweek.

If the employee does not present mitigating circumstances and/or refuses to comply, the matter must be referred to the District Executive or NYC Chief Clerk, who should exclude the employee from the workplace for their failure to comply with the testing program. As is the case with employees who do not comply with UCS screening and/or self-assessment protocols, employees that are excluded from the workplace for failure to comply with the testing program may be considered absent without authorization for which approval to charge accruals may be denied.

6. Additional Information

Participants can find locations, times and descriptions of testing sites at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Testing sites are widely available and many are free of charge. It is the responsibility of each participant to find a location near their home or workplace and schedule their testing time with their supervisor.

As the testing program is rolled out in September, employees should bring any concerns or difficulties that they face regarding testing to their supervisor, who will in turn forward them to the appropriate District Executive or NYC Chief Clerk. The District Executive and NYC Chief Clerks will collect any concerns or difficulties experienced in their District or Court and refer them to the appropriate Deputy Chief Administrative Judge ("DCAJ"). The DCAJ should forward all such concerns or difficulties to OCA Human Resources for further review/consideration.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT

4

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

September 10, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: Mandatory COVID-19 Vaccination Program

As previously announced, the Unified Court System will require all judges and employees to obtain and submit proof of COVID-19 vaccination by **September 27, 2021** or submit and obtain an approval for a medical or sincerely-held religious exemption.

The program is outlined in this memorandum.

Vaccinations

- All judges must submit proof that they are fully vaccinated for COVID-19. Full vaccination is defined as:
  - Two weeks after a second dose of a two-dose series, such as the Pfizer or Moderna vaccines; or
  - Two weeks after a single-dose vaccine, such as the Johnson and Johnson vaccine.
- Judges must provide proof of vaccination by enrolling in the UCS Revised Mask Policy ("Orange Card") Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021). This proof should be submitted through the UCS SharePoint site at https://nycourts.sharepoint.com/sites/COVID-19/CPV
- Judges must submit proof of at least one dose of a COVID-19 vaccine by September 27, 2021. Those judges who received a vaccine with a two-dose series will be expected to receive and submit proof of the second shot within the medically recommended timeframe.
- Judges who have submitted proof of vaccination by September 27, 2021 but are not yet fully-vaccinated because they must receive a second dose and/or they have to wait an

additional two weeks after their last dose, must continue to submit proof of weekly COVID-19 testing until they are fully-vaccinated.

Exemptions

- Exemptions to the mandatory vaccination requirement will be considered for judges with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and judges with sincerely-held religious beliefs and practices that prohibit them from being vaccinated.

- Judges must apply for an exemption by September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). Completed exemption forms must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading the exemption requests are contained on the portal which will "go live" on September 20, 2021.

- Applications for medical exemptions must be accompanied by documentation from the judge's medical health professional.

- Applications for religious exemption must contain the judge's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination.

- Judges submitting an exemption application will be notified of the decision as soon as practicable. In the alternative, the judge may be notified that more information may be required to process the exemption application.

- Judges whose requests for medical or religious exemption are granted will receive a notification that includes the expiration date of the exemption and notice that they will have to submit weekly proof of testing.

- Those judges whose requests for medical or religious exemption are denied will receive a notification and will have ten business days from the date of the notification to submit proof of their first vaccination. They must subsequently show proof of full vaccination within the medically recommended timeframe.

Weekly Testing

- Judges who fall into the following categories must provide weekly proof of COVID-19 testing:

- Judges who are waiting to receive a second dose of vaccine or are waiting for two weeks after the final shot in a vaccine series;
- Judges who have received an approved religious or medical exemption; or
- Judges who have submitted a request for medical or religious exemption but have not yet received approval.

As circumstances and conditions relating to the pandemic continue to evolve it may be necessary to modify these policies. Thank you for your cooperation with these and other policies. Please be reminded that they are designed to maintain a safe environment for all who work, practice, visit or are otherwise required to enter our facilities.

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR MEDICAL EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting qualified individuals with underlying medical conditions. Upon request, UCS will grant a medical exemption for individuals with underlying medical conditions that makes receiving the COVID-19 vaccine unsafe for them. To request a medical exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form; have a licensed health care provider, not related to the applicant, whose specialty is appropriate to the associated medical condition, prepare the **Certification of Licensed Health Care Provider** form; and return the form, along with any such additional documentation as may be necessary to support the request, to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Medical exemptions are intended for those with underlying medical conditions that render the COVID-19 vaccine unsafe for them.

For the current year, requests for medical exemptions must be received by September 27, 2021. The expiration of the exemption will be based upon the Certification of the Licensed Health Care Provider, which date will be noted in the UCS Approval, but shall be no longer than one year. Individuals may request to renew exemptions upon the expiration of such Approval, but annually no later than October 1 for each year.

Individuals who have timely submitted a request for a medical exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for medical exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals whose requests are denied are permitted to reapply if new documentation and information is later available in support of a new application for medical exemption.

If a judge or employee refuses to provide the information necessary for UCS to review and consider the request for medical exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Medical exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the **Verification and Accuracy** statement;
- Have your Licensed Health Care Provider complete the **Certification of Licensed Health Care Provider** form;
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

In some cases, UCS will need to obtain additional information and/or documentation about your medical condition in support of the request for medical exemption.

STATEMENT OF MEDICAL CONDITION
FOR EXEMPTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I sincerely certify that my medical condition makes it unsafe for me to receive a COVID-19 vaccination, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I certify that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my current medical condition.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.
	I authorize my licensed health care provider to provide UCS with personal health information about my medical condition related to this request for exemption from COVID-19 vaccination and to provide UCS with a Certification of Licensed Health Care Provider. I acknowledge that I may be required to provide additional medical documentation in support of my request for medical exemption.

Verification and Accuracy

I verify that the information I am submitting in support of my request for a medical exemption to the COVID-19 vaccination is true, accurate, and complete to the best of my knowledge. I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Name: _____

Primary Email: _____

Phone: _____

Signature: _____

Date: _____

New York State Unified Court System

Certification of Licensed Health Care Provider

For Request for Medical Exemption from COVID-19 Vaccine

The New York State Unified Court System (UCS) requires all employees to be fully vaccinated for COVID-19.

My patient, _____, is submitting a request for a medical exemption from this COVID-19 vaccination requirement.

In support of that medical exemption, my patient voluntarily requests and authorizes me to prepare this Form, and to provide UCS with personal health information about the patient's medical condition(s) related to this request, including supporting documentation regarding the medical reason that vaccination is contraindicated to the patient's medical condition(s) that render the vaccine unsafe for the patient at this time.

<u>Option 1 - Allergy</u>

☐ A documented history of a severe allergic reaction to any component of a COVID-19 vaccine or to a substance that is cross-reactive with a component. Please specify the allergic components of ALL the following vaccines.

NOTE: since egg-free vaccine is available, history of an egg allergy will not be accepted as an allergic reaction to a COVID component.

- Moderna - List the allergic component(s):
- Pfizer - List the allergic component(s):
- Janssen/Johnson & Johnson - List the allergic component(s):

☐ A documented history of a severe allergic reaction after a previous dose of the COVID-19 vaccine. Please indicate to which vaccine the patient had a reaction, the date of the vaccine, and the severe reaction:

- Moderna - Date of Vaccine & Reaction:
- Pfizer - Date of Vaccine & Reaction:
- Janssen/Johnson & Johnson - Date of Vaccine & Reaction:

Option 2 - Physical Condition/Medical Circumstance

☐ The physical condition or medical circumstances of the patient that render vaccination unsafe or contraindicate COVID-19 vaccination are as follows:

Probable time the physical condition or medical circumstances is expected to render vaccination unsafe or contraindicated to COVID-19 vaccination is: _____

Health Care Provider Certification

I certify that the information contained herein is true, accurate, and complete and I support the patient's request for a medical exemption from the COVID-19 vaccine requirement of UCS.

Health Care Provider Name: _____

Practice/Specialty: _____

License Number: _____

Address: _____

Telephone Number: _____

Email: _____

Signature: _____

Date: _____

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting religious beliefs and practices. Upon request, UCS will grant a religious exemption for sincerely held religious beliefs and practices which prohibit a judge or employee from receiving a COVID-19 vaccine. To request a religious exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form and return it, along with the "Affidavit of Religious Objection to COVID-19 Vaccination", "Personal Statement Form" and such additional documentation as may be necessary/appropriate to support the request to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

For the current year, requests for religious exemptions must be received by September 27, 2021. If approved, the exemption will remain in effect through September 30, 2022. Individuals with approved exemptions may request to renew exemptions annually no later than October 1 for each year.

Individuals who have timely submitted a request for a religious exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for religious exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

If a judge or employee refuses to provide the information necessary for UCS to review and consider their request for religious exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Religious exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete the **Affidavit of Religious Objection to COVID-19 Vaccination;**
- Complete the **Personal Statement Form;**
- Sign before a Notary Public;
- Attach such additional documentation about your faith/beliefs which are contrary to vaccination, including but not limited to the COVID-19 vaccination, as necessary/appropriate to support your request; and
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

Your request must be accompanied by the signed and notarized "**Affidavit of Religious Objection to COVID-19 Vaccination**" and "**Personal Statement Form**" (attached below). In some cases, UCS will need to obtain additional information and/or documentation about your sincerely held religious practice(s) or belief(s). UCS may need to discuss the nature of your religious belief(s)/practice(s) with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exemption.

(Proceed to Following Pages for Affidavit of Religious Objection to COVID-19 Vaccination and Personal Statement)

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I swear or affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I swear or affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

I swear or affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: _____

Print Name: _____

Email: _____

Phone: _____

Sworn and subscribed before me

This _____ day of_____, 2021

_____

Notary Public

My commission expires: _____

ATTACHMENT

5

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 10, 2021

To: All Non-Judicial Personnel

From: Nancy J. Barry
Justin Barry

Re: Mandatory Vaccination Requirement

As previously announced, the Unified Court System will require all judges and non-judicial personnel to be vaccinated by September 27, 2021, unless otherwise approved for an exemption due to medical reasons or sincerely held religious beliefs, as explained more fully below.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Proof of Vaccination

All non-judicial personnel must be fully vaccinated against COVID-19 by September 27, 2021, or as soon thereafter as medically practicable provided they have received at least one dose of a COVID-19 vaccine by such date.[1]

To this end, no later than September 27, 2021, all non-judicial personnel must either submit proof that they: (1) are fully vaccinated; or (2) have received at least one dose of any COVID-19 vaccine. This proof must be submitted through the UCS SharePoint site https://nycourts.sharepoint.com/sites/COVID-19/CPV as outlined in Section (1) of our September 1, 2021 Memorandum (Mandatory Testing Program – Supplemental Information).

[1] Fully vaccinated is defined as: two weeks after receiving a second dose of a two-dose vaccine, such as the Pfizer or Moderna vaccines; or two weeks after receiving a single-dose vaccine, such as the Johnson and Johnson vaccine.

Acceptable proof of having received at least one dose of a COVID-19 vaccine is a copy of the front and back of the employee's vaccination card. For fully vaccinated employees, a screenshot of the employee's Excelsior Pass is also acceptable. Those employees, who submit proof of having received their first dose of a two-dose vaccine, will be required to submit proof of having received the second dose within the medically recommended timeframe, i.e., typically 3 weeks from the first dose, using the same UCS SharePoint site referenced above.

Employees, who have submitted proof of vaccination by September 27, 2021 but are not yet fully vaccinated because they must receive a second dose and/or they must wait an additional two weeks after their last dose, will be subject to the Mandatory Testing Program until such time as they are fully vaccinated.

Exemptions

Exemptions to the mandatory vaccination requirement will be considered for employees with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and employees with sincerely held religious beliefs and practices that prohibit them from receiving a COVID-19 vaccine.

Employees seeking a medical or religious exemption to vaccination must submit their request by 5:00 p.m. on September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). The completed Exemption Request Form must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading these Forms will be available on the Portal, which will "go live" on September 20, 2021.

No exemption requests will be considered unless they are fully completed on the appropriate form and filed through the Portal.

Applications for medical exemptions must be accompanied by documentation from the employee's medical health professional. Applications for religious exemption must contain the employee's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination. Employees submitting an exemption application will be notified, in writing, of the decision [which, if granted, will include the expiration date of the exemption] or, that more information is needed in order to consider the employee's request for an exemption, as soon as practicable after their request is filed.

Employees who timely file a request for exemption will be subject to the Mandatory Testing Program while their request is being reviewed. Those employees who are granted a medical or religious exemption to vaccination will be subject to the Mandatory Testing Program during the specified exemption period.

An employee who receives written notice that their request for medical or religious exemption was denied will have ten workdays from the date of the notification to submit proof of having received

at least one dose of a COVID-19 vaccine and must otherwise comply with the provisions set forth in "Proof of Vaccination" above.

Non-Compliance

Employees who fail to comply with the provisions of this Policy are prohibited from reporting to work and may be considered absent without authorization for which approval to charge accruals may be denied, until they have taken steps to remedy their non-compliance. Continued failure to comply may result in disciplinary action, up to and including termination.

Additional Information

Non-judicial personnel are reminded that they are eligible for Excused Leave and/or Compensatory Time for becoming vaccinated (up to 3.5 hours per appointment upon submission of the requisite proof of same).

Non-judicial personnel must continue to follow all other safety and operational protocols.

We are deeply grateful to our staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves. their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

EXHIBIT A

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR MEDICAL EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting qualified individuals with underlying medical conditions. Upon request, UCS will grant a medical exemption for individuals with underlying medical conditions that makes receiving the COVID-19 vaccine unsafe for them. To request a medical exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form; have a licensed health care provider, not related to the applicant, whose specialty is appropriate to the associated medical condition, prepare the **Certification of Licensed Health Care Provider** form; and return the form, along with any such additional documentation as may be necessary to support the request, to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Medical exemptions are intended for those with underlying medical conditions that render the COVID-19 vaccine unsafe for them.

For the current year, requests for medical exemptions must be received by September 27, 2021. The expiration of the exemption will be based upon the Certification of the Licensed Health Care Provider, which date will be noted in the UCS Approval, but shall be no longer than one year. Individuals may request to renew exemptions upon the expiration of such Approval, but annually no later than October 1 for each year.

Individuals who have timely submitted a request for a medical exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for medical exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals whose requests are denied are permitted to reapply if new documentation and information is later available in support of a new application for medical exemption.

If a judge or employee refuses to provide the information necessary for UCS to review and consider the request for medical exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Medical exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the **Verification and Accuracy statement;**
- Have your Licensed Health Care Provider complete the **Certification of Licensed Health Care Provider** form;
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

In some cases, UCS will need to obtain additional information and/or documentation about your medical condition in support of the request for medical exemption.

STATEMENT OF MEDICAL CONDITION FOR EXEMPTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I sincerely certify that my medical condition makes it unsafe for me to receive a COVID-19 vaccination, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I certify that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my current medical condition.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.
	I authorize my licensed health care provider to provide UCS with personal health information about my medical condition related to this request for exemption from COVID-19 vaccination and to provide UCS with a Certification of Licensed Health Care Provider. I acknowledge that I may be required to provide additional medical documentation in support of my request for medical exemption.

Verification and Accuracy

I verify that the information I am submitting in support of my request for a medical exemption to the COVID-19 vaccination is true, accurate, and complete to the best of my knowledge. I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Name: _____

Primary Email: _____

Phone: _____

Signature: _____

Date: _____

New York State Unified Court System

Certification of Licensed Health Care Provider

For Request for Medical Exemption from COVID-19 Vaccine

The New York State Unified Court System (UCS) requires all employees to be fully vaccinated for COVID-19.

My patient, _____, is submitting a request for a medical exemption from this COVID-19 vaccination requirement.

In support of that medical exemption, my patient voluntarily requests and authorizes me to prepare this Form, and to provide UCS with personal health information about the patient's medical condition(s) related to this request, including supporting documentation regarding the medical reason that vaccination is contraindicated to the patient's medical condition(s) that render the vaccine unsafe for the patient at this time.

<u>Option 1 - Allergy</u>

☐ A documented history of a severe allergic reaction to any component of a COVID-19 vaccine or to a substance that is cross-reactive with a component. Please specify the allergic components of **ALL** the following vaccines.

NOTE: since egg-free vaccine is available, history of an egg allergy will not be accepted as an allergic reaction to a COVID component.

- Moderna - List the allergic component(s):
- Pfizer - List the allergic component(s):
- Janssen/Johnson & Johnson - List the allergic component(s):

☐ A documented history of a severe allergic reaction after a previous dose of the COVID-19 vaccine. Please indicate to which vaccine the patient had a reaction, the date of the vaccine, and the severe reaction:

- Moderna - Date of Vaccine & Reaction:
- Pfizer - Date of Vaccine & Reaction:
- Janssen/Johnson & Johnson - Date of Vaccine & Reaction:

Option 2 - Physical Condition/Medical Circumstance

☐ The physical condition or medical circumstances of the patient that render vaccination unsafe or contraindicate COVID-19 vaccination are as follows:

Probable time the physical condition or medical circumstances is expected to render vaccination unsafe or contraindicated to COVID-19 vaccination is: _____

Health Care Provider Certification

I certify that the information contained herein is true, accurate, and complete and I support the patient's request for a medical exemption from the COVID-19 vaccine requirement of UCS.

Health Care Provider Name: _____

Practice/Specialty: _____

License Number: _____

Address: _____

Telephone Number: _____

Email: _____

Signature: _____

Date: _____

EXHIBIT B

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting religious beliefs and practices. Upon request, UCS will grant a religious exemption for sincerely held religious beliefs and practices which prohibit a judge or employee from receiving a COVID-19 vaccine. To request a religious exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form and return it, along with the "Affidavit of Religious Objection to COVID-19 Vaccination", "Personal Statement Form" and such additional documentation as may be necessary/appropriate to support the request to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

For the current year, requests for religious exemptions must be received by September 27, 2021. If approved, the exemption will remain in effect through September 30, 2022. Individuals with approved exemptions may request to renew exemptions annually no later than October 1 for each year.

Individuals who have timely submitted a request for a religious exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for religious exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

If a judge or employee refuses to provide the information necessary for UCS to review and consider their request for religious exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Religious exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete the **Affidavit of Religious Objection to COVID-19 Vaccination;**
- Complete the **Personal Statement Form;**
- Sign before a Notary Public;
- Attach such additional documentation about your faith/beliefs which are contrary to vaccination, including but not limited to the COVID-19 vaccination, as necessary/appropriate to support your request; and
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

Your request must be accompanied by the signed and notarized "**Affidavit of Religious Objection to COVID-19 Vaccination**" and "**Personal Statement Form**" (attached below). In some cases, UCS will need to obtain additional information and/or documentation about your sincerely held religious practice(s) or belief(s). UCS may need to discuss the nature of your religious belief(s)/practice(s) with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exemption.

(Proceed to Following Pages for Affidavit of Religious Objection to COVID-19 Vaccination and Personal Statement)

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I swear or affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I swear or affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

I swear or affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: _____

Print Name: _____

Email: _____

Phone: _____

Sworn and subscribed before me

This ____ day of_____, 2021

_____

Notary Public

My commission expires: _____

COMMISSION EXHIBIT 37

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

JOSEPH W. BELLUCK, CHAIR
TAA GRAYS, VICE CHAIR
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VICKIE MA
ERIC ARNONE
SENIOR ATTORNEYS

KELVIN S. DAVIS
STELLA E. GILLILAND
ADAM B. KAHAN
STAFF ATTORNEYS

ALAN W. FRIEDBERG
SPECIAL COUNSEL

CONFIDENTIAL

April 12, 2022

Via USPS Priority Mail & Email: [redacted]@nycourts.gov

Hon. Frank M. Mora
Poughkeepsie City Court Judge
62 Civic Center Plaza
Poughkeepsie, New York 12601

Re: File Nos. 2021/N-0723 and 2021/N-1120

Dear Judge Mora:

Pursuant to Article 2-A of the Judiciary Law, the Commission on Judicial Conduct has authorized investigation into two complaints alleging that you have refused to wear a face mask in public areas of the courthouse and in a private business, in violation of the COVID-19 safety protocols of the Unified Court System ("UCS") and New York State's mask mandate.[1]

Copies of the above-referenced complaints are enclosed as Exhibit A and Exhibit B. Also enclosed are UCS Memoranda dated May 29, 2020 (Exhibit C), March 30, 2021 (Exhibit D), June 14, 2021 (Exhibit E) and August 12, 2021 (Exhibit F), Chief Administrative Judge Lawrence K. Marks' Administrative Order 275/2021 (Exhibit G), and a Law360 article

[1] These complaints are in addition to the matter addressed in the Commission's letter to you dated March 30, 2022, regarding file number 2021/N-1176.

dated January 20, 2022, (Exhibit H). For your reference, the Rules Governing Judicial Conduct, the Commission's Operating Procedures and Rules, the Commission's Policy Manual and other documents are available on the Commission's website.[2]

The Commission requests your written reply to the allegations. In your reply, please include answers to the questions below and number your responses to correspond to the questions. We prefer that you respond in the form of a letter attached to a reply email to the Commission at [redacted]@cjc.ny.gov. However, we will accept a reply typed into an email message, faxed to (518) 299-1757, or sent by US mail, UPS or other carrier.

Please note that, pursuant to Section 2.6(D)(3) of the Commission's Policy Manual, if your written reply is submitted by counsel, you must co-sign or submit a separate statement indicating that you have read and adopt it.

Refusal to Comply with OCA Safety Protocols (File No. 2021/N-0723)

1. Are you familiar with Exhibits C, D, E, F, and G, which require, *inter alia,* that all unvaccinated judges and non-judicial personnel who are permitted to enter a UCS courthouse wear face masks in most areas of the courthouse? If so, please indicate when and how you became aware of this requirement.

2. Do you consider that the UCS mask mandate applies to you? If, at any point, you considered that it did not apply to you, please explain the legal or other basis for your belief.

3. Did you consider at any point after May 29, 2020, that you were exempt from UCS's face mask requirement? If so, please explain the basis for that belief.

[2] http://www.cjc.ny.gov/Legal.Authorities/legal.authorities.htm

4. Since May 29, 2020, have you physically appeared in any area of the Poughkeepsie City Court courthouse outside of your private office, or in the presence of another person, without wearing a mask? If so, please indicate all the dates on which you appeared in the courthouse without a mask, describe where in the courthouse you went unmasked on each of those dates, and as to each such occasion, please explain your reason for being without a mask.

5. At any point since May 29, 2020, did you express your disagreement with the UCS mask mandate to any UCS employee or in any written or oral statement to members of the general public? If so, please state the dates on which you did so, indicate with whom you communicated and the substance of your communication. If any such communication was in writing, including email or other electronic communication, please provide a copy with your response.

6. Please review the article attached as Exhibit H and answer the following questions regarding the allegations in the article.

A. Did you physically appear in the Poughkeepsie City Court in or around January 2022? If so, please indicate all of the dates on which you physically appeared at the courthouse.

B. Did you physically appear in the Poughkeepsie City Court, notwithstanding Chief Administrative Judge Lawrence K. Marks' Administrative Order 275/2021 barring unvaccinated judges who have not obtained exemptions from entering or working at courthouses or other court facilities (Exhibit G)? If so, please explain why.

C. As to each date that you that appeared in the Poughkeepsie City Court Courthouse, please indicate whether you wore a mask while inside the courthouse As to any such occasion in which you did not wear a mask, please explain your reason.

D. As to each date you that appeared in the Poughkeepsie City Court Courthouse, please indicate whether you wore a face shield instead of a mask while inside the courthouse. If so, please explain why and answer the following related questions.

i. Do you believe that wearing a face shield complies with the UCS face mask requirement as set forth in Exhibits C, D, E, F, and G? If so, please state the basis for that belief and provide copies of any relevant documentation.

ii. Did you ask your Supervising Judge or any other UCS official whether wearing a face shield complies with the UCS face mask requirement? If so, please indicate with whom you communicated, the date of the communication and the substance of the communication. If any such communication was in writing, including email or other electronic communication, please provide a copy with your response. If you did not inquire whether wearing a face shield complies with the UCS's face mask policy, please explain why not.

iii. Has your Supervising Judge or any other UCS official told you that wearing a face shield does not comply with the UCS's mask policy? If so, please indicate with whom you communicated, the date of the communication and the substance of the communication. If any such communication was in writing, including email or other electronic communication, please provide a copy with your response.

Failure to Comply with NYS Mask Mandate (2021/N-1120)

7. Are you aware that on December 13, 2021, New York State Governor Kathy Hochul issued a mandate requiring that masks be worn at all indoor public places, which includes private businesses?

8. Directing your attention to Exhibit B, in or around December 2021, did you visit the Seeta Eye Center ("Seeta") in Poughkeepsie, New York? If so, please answer the following questions.

A. What was the purpose of your visit to Seeta?

B. Who, if anyone, accompanied you to the visit?

C. Did you see a sign posted at the entrance to Seeta stating that face masks are required for entry?

D. Did you enter Seeta wearing only a face shield, rather than a face mask? If so, please answer the following questions.

i. After you entered Seeta, did an employee request that you put on a mask or leave the premise? If so, did you comply with the request? If you did not comply, please explain why not.

ii. Did Stacey Koch, an optician and office manager at Seeta, ask that you put on a mask? If so, did you comply with her request? If you did not comply, please explain why not.

iii. Please describe your behavior after Ms. Koch asked you to put on a mask. Include as much detail as possible, such as what you said, your tone of voice, any facial expressions or physical gestures you may have made, etc.

iv. Did you tell Ms. Koch, in words or substance, that you had a medical condition that prevented you from

wearing a mask? If so, please describe in detail what you said, including whether you identified your professed medical condition to Ms. Koch, and if so, what medical condition did you tell her you had.

v. Did Ms. Koch ask you to leave the premises because you declined to wear a mask? If so, did you comply with her request? If you did not comply, please explain why not.

vi. Did Ms. Koch tell you that she was calling the police? If so, how did you respond? Specifically, did you tell Ms. Koch, the "police wouldn't come?" Please recount what you said to Ms. Koch on this topic, describe the tone and volume of your voice when you said it, and explain your reason for saying what you did.

vii. Please describe your demeanor during your interaction with Ms. Koch.

viii. Did you leave the premises before the police arrived? If so, please explain why.

ix. Did you consider that by refusing to leave the premises after being asked by Ms. Koch, you may have been committing the offense of criminal trespass? Please explain your answer.

9. Did your chiropractor submit a letter on your behalf to Seeta Eye Center stating that you suffer from a medical condition that prevents you from wearing a mask? If so, please provide a copy of the letter from your chiropractor and answer the following questions.

A. Why was such a letter submitted on your behalf?

B. What medical condition did your chiropractor identify as preventing you from wearing a mask?

C. Why did you seek a medical exemption note from a chiropractor, as opposed to a medical professional who treats respiratory conditions?

D. Have you sought to be excused from the UCS masking requirement on medical grounds? If yes, please state the date on which you sought to be excused, provide a copy of all documentation you sent or received pertaining to your request to be excused on medical grounds and indicate the current status or outcome. If not, please explain why you did not request to be excused on medical grounds, notwithstanding the note from your chiropractor submitted on your behalf to Seeta Eye Center.

10. Apart from your chiropractor, have any physicians advised you that you suffer from a medical condition that exempts you from wearing a mask? If so:

A. Please identify each physician that gave you such advice; and

B. Please provide with your response to this inquiry a letter from each physician that gave you such advice, including when they gave you such advice and the medical basis for their advice.

11. Do you consider that your conduct in failing to comply with the mask mandates of the Unified Court System and New York State is consistent with Section 100.1 of the Rules Governing Judicial Conduct ("Rules"), which requires a judge to maintain and observe high standards of conduct so that the integrity of the judiciary is preserved? Please explain your answer.

12. Do you consider that your conduct in failing to comply with the above mask mandates is consistent with Section 100.2(A) of the Rules, which requires a judge to respect and comply with the law and act at all

times in a manner that promotes public confidence in the integrity of the judiciary? Please explain your answer.

13. Do you consider that your conduct in failing to comply with the UCS's mask mandate is consistent with Section 100.3(C)(1) of the Rules, which requires a judge to cooperate with other judges and court officials in the administration of court business? Please explain your answer.

14. Do you consider that your conduct during the encounter in the Seeta Eye Center was consistent with Section 100.4(A)(2) of the Rules, which requires that a judge conduct his extra-judicial activities so that they do not detract from the dignity of judicial office? Please explain your answer.

Please feel free to include any relevant information or material that you wish the Commission to consider in connection with this matter.

Please respond in writing to this inquiry by April 29, 2022. Thank you for your prompt attention to this matter.

Very truly yours,

Mark Levine
Deputy Administrator

Enclosures

cc: Melissa DiPalo
Senior Attorney

Tracking #: 9402809202121597614608

EXHIBIT A

ADMINISTRATOR'S COMPLAINT

In the Matter of: Frank M. Mora
Poughkeepsie City Court Judge
Dutchess County

Complaint # 2021/N-0723

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Based upon the attached anonymous complaint, it is alleged that Judge Mora has refused to comply with the COVID-19 safety protocols of the Unified Court System, which require *inter alia* that judges and non-judicial staff wear a mask or face covering in public areas of the court or facility, or whenever physical distancing is not possible.

Robert H. Tembeckjian, Administrator

New York, New York

Date Signed: February 11, 2022

Authorized on February 3, 2022

August 20, 2021

Dear ~~Judge St. George~~: Commission

It has come to everyone's attention that Judge Mora, of the City Of Poughkeepsie City Court, refuses to wear any type of protective mask, thereby endangering everyone who works and appears in that court. Apparently, Judge Mora believes he is making a stand, a la Rosa Parks and/or Martin Luther King, Jr. And I am serious about that. Just ask him.

This is obviously a very serious situation. I know that swift disciplinary action would be taken against any civil service employee who refused to wear a mask. Why isn't Judge Mora being disciplined, or suspended without pay ?

Judge Mora sets a very poor example given his position. Why should any City Of Poughkeepsie Court employee wear a mask if the top judicial official doesn't, and is not disciplined for the outrageous disregard of court rules. It is equally disturbing that he compares his refusal to keep court employees and the court-using public safe to the protests of the greatest civil rights icons of our time.

Thank you for your attention to this matter.

A Concerned Court Employee...

I cant sign my name for fear of reprisals.

RECEIVED
AUG 23 2021
NYS COMMISSION ON JUDICIAL CONDUCT
NYS - LEGAL

EXHIBIT B

SCJC- Legal Email 12/29/2021

From: no-reply@weebly.com
To: SCJC
Subject: New Form Entry: Complaint Form
Date: Wednesday, December 29, 2021 2:05:13 PM

You've just received a new submission to your Complaint Form.
Mark as Spam

Submitted Information:

Title
Mrs.

Name
Stacey Koch

M.I.

Phone Number 1
18454541025

Phone Number 2

Email
[redacted]@seetaeye.com

Address Line 1
27 Davis Avenue

Address line 2

City
Poughkeepsie

State

New York

Zip
12603

Are you or were you represented by a lawyer?
No

Lawyer's Name

Lawyer's Phone Number

Lawyer's Address

Lawyer's City

Lawyer's State
New York

Lawyer's Zip

Judge's Name
Frank Mora

Judge's Court
City of Poughkeepsie Court

Judge's County
Dutchess

Date(s) of Incidents(s)
12/28/21

Name of Case (if applicable)

Index Number of Case (if applicable)

In the space below, please describe the alleged misconduct. Include as much detailed information as possible, such as what happened, where and when; the names of witnesses; who said what to whom, and in what tone of voice; etc.
Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police where on their way to our practice. He then had a letter created from Chiropractor G[redacted] M[redacted] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [redacted] year old boy. After receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora.

Today's Date
12/29/21

Judiciary Law § 44 requires that all complaints be signed and in writing. I understand that by clicking “I agree” below I am electronically signing this complaint, which has the same legal effect as my handwritten signature
I agree

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

EXHIBIT C

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

May 29, 2020

To: All Judges and Nonjudicial Personnel of the Unified Court System

From: John W. McConnell JWM
Nancy Barry NJB

Re: Coronavirus – Additional Safety and Operational Protocols

==========

As we continue to address the health and safety concerns created by the COVID-19 pandemic, the following additional safety and operational protocols shall apply to all Unified Court System (UCS) locations for the safety of all judges, nonjudicial personnel and court users. alcohol.[1]

A. Protective Equipment and Hand Sanitizer

1. Face Masks. All judges and nonjudicial personnel working in open workspaces, cubicles, or in areas that are not otherwise partitioned/separated from others, must wear face masks any time they are within six feet of another person. Face masks may be removed in private offices but must be worn whenever those offices are occupied by more than one person, even briefly. All judges and nonjudicial personnel must also wear face masks when in transit around the workplace, in common areas, when dealing directly with the public or when distancing of at least six feet is not otherwise possible. e.g., elevators, hallways, locker rooms, restrooms, etc.

2. UCS-issued Face Masks. All judges and nonjudicial personnel will be provided with a face mask for their use during work hours at no cost. Because the court system's supply

[1] For more information on the protocols addressed in this memorandum and Exh. A, see the New York State Coronavirus (COVID-19) website (https://coronavirus.health.ny.gov/) and the United States Centers for Disease Control and Prevention Coronavirus (COVID-19) website (https://www.cdc.gov/coronavirus/2019-ncov/index.htm).

25 BEAVER STREET, NEW YORK, NEW YORK 10004 • PHONE: 212-428-2120 • FAX: 212-428-2190

of face masks is limited and does not allow for new masks to be issued daily, judges and nonjudicial personnel using UCS-issued face masks are expected to take proper care to allow for reuse of their mask to the fullest extent possible. Generally speaking, face masks should be cleaned or replaced when damaged or soiled, should not be shared, should be properly stored when not in use, and should be safely discarded (in a general trash receptacle) when no longer usable. (See Exh. A, "Mask Guidance," for recommended steps for use and reuse of face masks.)

3. Personal Face Masks. Judges and nonjudicial personnel are permitted to furnish and wear their own face masks, so long as such masks are professional in appearance. (For example, scarves or bandana-type face coverings should not be used.)

4. Gloves and Hand Hygiene. The UCS will maintain a supply of gloves for use by judges and nonjudicial personnel. While all employees are entitled to use gloves, gloves must be worn when opening mail and/or sharing materials such as court files (especially with the public). Frequent hand washing and/or use of hand sanitizer that contains at least 60% alcohol is strongly encouraged. Hand sanitizer meeting this requirement will be available in dispensers throughout the workplace.

5. Removing Gloves: Because the outside of gloves can be contaminated, they must be removed with care by: (1) using a gloved hand, grasping the palm area of the other gloved hand and peel off the first glove; (2) holding the removed glove in the gloved hand; (3) sliding fingers of the ungloved hand under the remaining glove at the wrist; (4) peeling off the second glove over the first glove.

   Judges and nonjudicial personnel should be sure not to touch eyes, nose or mouth while or immediately after removing gloves, and should finish the removal process by washing hands thoroughly with soap and water or, where hand washing stations are not close in proximity, using hand sanitizer that contains at least 60% alcohol.

6. Disposing of Masks and Gloves: Following use (or, in the case of masks, final reuse), masks, gloves and disinfectant wipes should be placed in the trash or household garbage.

B. Physical Distancing

1. Judges and nonjudicial personnel are to make every effort to ensure that a distance of at least six feet is maintained from work colleagues and the public at all times. Where this is not possible, (e.g. while moving prisoners or moving and lifting equipment, or at locations lacking six feet of space for social distancing), face masks must be worn.

2. Employees must not congregate in locker rooms, break rooms, lunchrooms/cafeterias or other confined areas used by multiple people. Crowded elevators should similarly be avoided.

3. Judges and nonjudicial personnel are encouraged to take their lunch break in open outside areas wherever possible.

C. Movement and Commerce

1. To the extent possible, locations for pick-up and delivery of mail, packages, and other items should be designated that minimize foot traffic in the workplace by non-UCS personnel.

2. Public or common areas (e.g. lines, parking areas, conference rooms) should be arranged to maximize social distance among clients and minimize interaction with others in the area.

3. Like all unnecessary court traffic, visitors to court personnel in the workplace for reasons other than necessary in-person court business are strongly discouraged.

4. UCS staff travel will be limited to essential travel only.

D. Hygiene and Cleaning

1. Hand hygiene stations -- including handwashing facilities with soap, water, and disposable paper towels, and/or hand sanitizer containing 60% or more alcohol (for areas where handwashing facilities may not be available or practical) – will be provided for both public and personnel use in all court facilities and should be located in high-traffic areas (elevator locations, central staff locations, etc.).

2. Use of water fountains in UCS facilities is prohibited. Water coolers in the workplace may be used only with clean drinking containers or fresh paper cup.

3. Work locations will be provided with appropriate locally-obtained cleaning/disinfection supplies for use in wiping down frequently touched surfaces in court facilities, e.g. water cooler handles, telephones, chair handles, etc. Judges and nonjudicial personnel (and where appropriate, the public) are encouraged to use these supplies liberally.

4. Regular daily cleaning and disinfection of facilities will continue. More frequent cleaning and disinfection should be performed on high use areas and frequently touched surfaces.

5. In the event of exposure of an area to a person testing positive to COVID-19, such cleaning will include, at a minimum, all heavy transit areas and high-touch surfaces (e.g. vending machines, handrails, bathrooms, doorknobs).

E. Signage and Safety Precautions for Facilities

Appropriate signage will be posted on and throughout UCS facilities memorializing safety concerns and protocols, such as the need to wear face masks, practice social distancing and engage in frequent hand hygiene. Additional safety precautions utilized in UCS facilities may include installation of plexiglass barriers, floor and other markings to denote proper social distancing, reconfiguration of common areas such as conference rooms or workspaces to ensure adequate spacing, and similar steps. All Judges and nonjudicial personnel are asked to adhere to

local guidance and/or safety protocols provided in any of our facilities – for example, signage indicating the maximum number of people that may be in certain areas at a time, floor markings denoting proper distancing, and the like.

F. Testing

While the court system has no independent COVID-19 testing capacity, we highly recommend that court personnel make use of the testing facilities of State, county, and municipal agencies. See, e.g., https://coronavirus.health.ny.gov/covid-19-testing (State); https://www.nychealthandhospitals.org/covid-19-testing-sites/ (New York City); https://www2.monroecounty.gov/health-COVID-19 (Monroe County); https://www.wkbw.com/news/coronavirus/coronavirus-testing-where-to-get-a-covid-19-test-in-western-new-york (Western New York); etc. An internet search should disclose the best available local testing options.

******

The health and safety of our workforce and of the public remain the top UCS priorities as we return to courthouse and office settings around the State in coming days and weeks. If you have any questions about these protocols, please contact the Division of Human Resources. And as always, thank you for your dedication and cooperation in this effort.

c: County Clerks

EXHIBIT A

Mask Guidance

Pursuant to gubernatorial Executive Orders and UCS policy, face masks must be worn by all members of the public in court facilities, as well as by judges and nonjudicial court personnel who are in direct contact with members of the public or are unable to maintain social distancing (six feet) from other court personnel.

A. Rationale for Mask Guidance

This Guidance is designed to provide judges and nonjudicial personnel with the necessary information on proper mask use and reuse, to ensure maximum protection of court personnel and the public, and to ensure optimal use of the Court System's supply of masks.

B. Distribution, Use and Reuse of Masks

The Department of Public Safety will regularly supply each District or court with the appropriate supply of face masks based upon estimated staffing and in accordance with operational needs. Masks will be securely stored at each worksite/location and shall be issued to employees by a uniformed supervisor.

Because the UCS supply of masks is limited, we ask that all UCS judges and nonjudicial personnel make every effort to store and reuse those masks whenever possible – that is, whenever a worn mask has not become visibly soiled, damp or damaged through extensive use during the day. However, soiled, damp or damaged masks should <u>always</u> be replaced by making a request to a uniformed supervisor.

Masks should not be diverted to persons outside the UCS, unless specifically authorized by a uniformed supervisor or otherwise in accordance with established protocols/procedures.

Face masks that are no longer useable should always be discarded in an appropriate receptable, e.g., any garbage can or waste basket, but never the hallway or sidewalk.

Questions about this guidance or mask distribution/use, generally, should be directed to the UCS Department of Public Safety.

C. Removal and Re-Use of Mask

<u>To remove a mask with intent to reuse</u>:

1. **Perform hand hygiene**

2. **Remove mask**
   - Ear-Loop Mask Style: remove mask by holding the ear loops. Because the mask front may be contaminated, remove slowly and carefully.
   - Tie Back: remove mask by untying lower ties FIRST; untie upper ties last. Because the mask front may be contaminated, remove slowly and carefully. Ensure ties do not fall into clean interior side of mask.

3. After removing mask, **visually inspect** for stains, contaminants, tears, or distortion in shape/form. If soiled, torn, or saturated, the mask should be discarded.

4. If the mask is NOT visibly soiled, torn, or saturated, **carefully store in a brown paper (lunch) bag**, or if a bag is not available, a paper envelope labeled clearly with the following information: "face mask", date, your name, and "front" and "back" on the two sides. Insert your mask so that the front of the mask faces the side of the bag/envelope labeled "front."

5. **Perform hand hygiene.**

<u>To re-apply used mask</u>:

1. **Perform hand hygiene**

2. **Grasp mask**
   Pinch mask at the ear loops or grasp upper ties

3. **Place mask over face**
   For ear-loop style mask: secure ear loops behind the ears; secure mask. For tie back style mask: secure upper ties first, behind head; then secure lower ties behind head.

4. **Perform hand hygiene**

******A single mask can be safely worn during several workdays or shifts when these procedures are followed.******

While adherence to these guidelines is expected for UCS-issued masks, employees that are not in direct and/or frequent contact with the public who elect to wear their own mask, including cloth masks, may also find this guidance helpful. <u>Note</u>: personal cloth masks that will be reused by an employee should be laundered at home between each use.

<u>Frequently Asked Questions</u>

Will N95 respirators be provided to UCS personnel?

The UCS supply of N95 respirators is currently out of stock, but we anticipate receiving an additional supply in June. However, N95 respirators are difficult to wear for long periods of time and are impractical for generalized use. Also, because our supply of N95 respirators is anticipated to be much smaller than our supply of surgical and/or cloth masks, a***ny supply of N95 respirators will be reserved for employees with an elevated risk of coming into contact with the virus. (Guidance about the use of N95 respirators will be provided to such employees upon distribution.)***

Should court visitors be wearing face masks?

Yes. Pursuant to the Governor's Executive Order, all visitors must have a face mask/covering in order to enter our courts, offices and/or facilities. Please refer to the *revised* Courthouse Protocols issued on May 15, 2020, for more detailed information and guidance about members of the public and face masks.

How can I eat/drink when I am supposed to wear a mask?

Proceed to an appropriate location where social distancing can be accomplished and you are able to wash your hands or use hand sanitizer. Perform hand hygiene, remove the mask, eat or drink, and then replace your mask following the above guidelines.

May I use my UCS mask for personal use, including commuting to and from work?

UCS-issued masks are intended for use only for court purposes during business hours.

EXHIBIT D

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

March 30, 2021

To: All Judges and Nonjudicial Personnel of the Unified Court System

From: John W. McConnell
Nancy Barry

Subject: Coronavirus – Updated Safety and Operational Protocols

==========

Two recent developments – (1) the extensive COVID-related vaccination program in New York State and around the nation, and (2) the recent change in New York State's quarantine policy for interstate travelers – have necessitated amendment of several Unified Court System protocols addressing access to court facilities by UCS personnel and the public. Part I of this memorandum will briefly summarize those changes; Part II will restate our updated safety and operational protocols in greater detail. This memorandum supersedes the memorandum of May 15, 2020.

I. Recent COVID-Related Developments

A. Vaccinations and Recovery from Prior COVID Infection[1]

New York's vaccination program continues its remarkable progress.[2] To date, close to 3 million New Yorkers are fully vaccinated, and an additional 2.5 million have received the first of a 2-dose injection; effective today, all persons aged 30 years or older, and many others in a range of special categories (including all UCS judicial and nonjudicial personnel), are eligible to receive the vaccine. Notwithstanding this progress, the vaccination program is still in an early stage; the impact of the pandemic upon court operations remains severe; and at present, the practical consequence of vaccination in allowing access to court facilities is limited.

Recently, however, the CDC announced that (1) fully vaccinated persons and (2) persons who have themselves recovered from a COVID infection in the last 3 months will no longer be required to quarantine following a close contact exposure to someone with COVID. As a result, court personnel and court visitors who can demonstrate that they fall under one of these two

[1] *See* March 30, 2021 Memorandum from Division of Human Resources for detailed information regarding the exemptions from quarantine for fully vaccinated individuals and those who have recovered from a previous COVID infection.

[2] That progress may be monitored at https://covid19vaccine.health.ny.gov/covid-19-vaccine-tracker.

exceptions will be permitted to enter court facilities notwithstanding a recent close contact exposure.

B. Travel

1. Travel to U.S. States and Territories: Commencing April 1, 2021, New York State will no longer impose a quarantine upon persons returning to the state following travel to another state or U.S. territory.[3] As a result, domestic travel will no longer pose a basis for restricting access to UCS court facilities.

2. International Travel: Federal and state health authorities continue to impose quarantine requirements upon persons returning to New York from foreign nations (see section II(E) below).

II. Updated Coronavirus - Courthouse Procedures

Effective April 1, 2021, the following procedures shall apply to individuals seeking entry into UCS courts and facilities. Signage reflecting these amended policies and practices will shortly be distributed for posting in court facilities throughout the State. Of course, these practices may be further amended as the public health situation evolves.

A. Persons at Risk Shall be Prohibited from Entering Court Facilities

1. A "Person at Risk" is any individual that:

- has been diagnosed with COVID-19 and has not obtained medical clearance to appear in public; or
- has had close contact with anyone diagnosed with COVID-19 within the last 14 days, and (a) is not exempt from quarantine (as set forth in par. D below) or (b) has not obtained medical clearance to appear in public; or
- has been directed to quarantine, isolate and/or self-monitor due to COVID-19 by any doctor, hospital or public health official/agency and has not obtained medical clearance to appear in public; or
- has traveled internationally in the last 10 days and has not tested-out of quarantine (as set forth in par. E below) or otherwise obtained medical clearance to appear in public; or
- has any COVID-19 symptoms, e.g. cough, sore throat, temperature of 100.0° or higher, shortness of breath.

2. No Person at Risk should enter any UCS court or facility.

[3] The following are U.S. territories: District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. *See* March 17, 2021 Memorandum from the Division of Human Resources for more information regarding travel.

3. Persons at Risk having business before the court should contact the court by telephone or email and follow instructions on how to proceed.

4. Uniformed court personnel may inquire to ensure that court visitors understand and are in compliance with this directive.

B. Persons at Risk Entering Court Facilities (non-UCS Employees)

If a court visitor who self-identifies as a Person at Risk as described in par. A enters a court facility, court personnel shall take the following steps:

1. court uniformed personnel shall be notified; and

2. uniformed personnel shall notify the visitor of the procedure described in par. A, and request that the visitor leave the court facility immediately and call the contact number for further information.

3. If the visitor declines to leave the building, a uniformed supervisor shall assess the situation and take appropriate steps (including contacting local medical assistance).

4. at earliest opportunity, court personnel shall direct appropriate cleaning of areas contacted by the visitor.

C. Persons at Risk (UCS Employees)

1. If a court employee self-identifies as a Person at Risk as described in par. A, **prior to their work shift** the employee:

   a. shall not come to work;

   b. shall notify a work supervisor of the circumstances; and

   c. shall contact a health care provider, and follow the recommendations of that health care professional, e.g. quarantine, testing, return to work.

2. If a court employee self-identifies as a Person at Risk as described in par. A when they are **present at work**:

   a. the employee shall immediately notify a work supervisor of the circumstances and shall go home, contact a health care provider, and follow the recommendations of that health care professional e.g. quarantine, testing, return to work

   b. the supervisor shall immediately notify uniformed court personnel;

   c. at earliest opportunity, court personnel shall direct appropriate cleaning of areas contacted by the employee; and

   d. uniformed personnel shall apprise other appropriate supervisory personnel of steps as directed by health authorities.

3. Leave for Quarantine[4]: Any UCS employee that is experiencing COVID-19 symptoms and seeking a diagnosis from a health care provider; is infected

[4] *See* March 30, 2021 Memorandum from Division of Human Resources.

with COVID-19; or is otherwise required to isolate and/or quarantine by a health care provider or public health official out of concern that he/she is infected with COVID-19, is entitled to have (substantiated) absences covered by paid leave, i.e. *Leave for Quarantine*.
Questions regarding this leave benefit should be referred to the Division of Human Resources at HR-FFCRA@nycourts.gov

D. Exemption to Quarantine–COVID-19 Close Contact: Individuals that have been in close contact with someone that has COVID-19 but can show they are fully vaccinated or that they previously tested positive for COVID-19 but have recovered within the last 3 months are permitted to enter UCS courts and facilities (so long as the fully vaccinated or recovered individual has no COVID-19 symptoms).

- A photocopy or photo of a vaccination card will suffice to demonstrate an individual's full vaccination status.
- A record from a health care provider will demonstrate recent recovery from COVID.
- In either case, personal identification sufficient to substantiate that the vaccination and/or medical record corresponds to the presenting party will be necessary.

E. Testing Out of Quarantine Following International Travel: Individuals that have returned from international travel within the last 10 days but can show that they tested negative on a viral test given between 3 and 5 days from when they returned to the U.S. are permitted to enter UCS courts and facilities (so long as at least 7 days have passed since they returned to the U.S. and they have no COVID-19 symptoms).[5]

- Any hard copy or electronic documentation showing dates of travel as well as the negative test result on either a rapid antigen or PCR test will suffice to show that the individual has tested-out of quarantine.

F. Receipt of Notification of a Confirmed Coronavirus Diagnosis: In the event that the court receives notice that a courthouse visitor or employee has been diagnosed with the coronavirus:

1. Senior uniformed personnel on site shall inform uniformed command outside the courthouse, and shall prepare an Unusual Occurrence Report/Aided Report (UOR) that includes the name of the diagnosed person. Court managerial personnel shall contact the diagnosed person, inquire whether that person consents to the disclosure of his or her identity as part of follow-up health and safety notifications to UCS judges and staff, and note in the UOR whether such consent has been received.

[5] Persons who reside in Canada but work in UCS court facilities may cross the Canadian/U.S. borders daily by land without restriction (https://ca.usembassy.gov/travel-restrictions-fact-sheet/), and may enter court facilities without proof of quarantine.

2. Court personnel shall review records of any court locations contacted by the diagnosed person, and the duration and nature of such contacts over the prior two weeks.

3. Judges and court staff within these contact areas shall be notified immediately about the diagnosis and the contact. If the diagnosed person has given permission for disclosure of his or her identity, that name may be disclosed in the course of such notification. If not, as required by current law, that identity shall not be disclosed: instead, the diagnosed person shall be described in a general fashion (e.g., "an attorney," "a court employee working in_," etc.). In either case, judges and staff shall be provided with all available details about the scope of the diagnosed person's presence, time and whereabouts in the courthouse, instructed to contact their personal physicians to receive medical advice, provided excused leave to seek medical advice if they choose, and directed to notify the court of any further developments or medical directives.

4. Best efforts shall be made immediately to notify all attorneys and other members of the public who were in the contact areas during the relevant periods, while keeping the name of the diagnosed person confidential.

5. Local administrators shall inform other UCS personnel in the courthouse of the incident at earliest opportunity, while keeping the name of the diagnosed person confidential unless granted permission to disclose it (as described in pars. 1 and 4).

6. At earliest opportunity, court personnel shall direct appropriate cleaning of areas contacted by the person diagnosed.

7. A public statement describing the incident, without disclosing the identity of the diagnosed person, shall be posted on the UCS internal and public websites.

In all instances described above, court uniformed personnel shall be notified and an Unusual Occurrence Report/Aided Report shall be prepared. The report shall describe all courthouse areas visited by the Person at Risk, and time of such visits. Copies of court calendars in such visited areas shall be maintained, in the event that court visitors must be notified of the incident. Appropriate public notice shall issue whenever a Person at Risk is determined to be a high or medium risk for coronavirus contagion according to CDC standards. The Department of Public Safety will follow up with reports of suspected diagnosed courthouse visitor cases as circumstances dictate.

G. Other Health and Safety Protocols

All coronavirus health and safety procedures should continue to be closely followed by all individuals in UCS courts and facilities, regardless of vaccination status or recovery from a prior COVID-19 infection.

As a reminder, all judicial and nonjudicial personnel should continue to start each day with temperature check and self-assessment;[6] wear masks in all locations outside of

[6] *See* March 30, 2021 Memorandum from Division of Human Resources.

private offices (and in those offices when more than one person is present); maintain social distancing from colleagues at all times (including during lunch and other informal moments); avoid meetings in pantries, watercoolers, or other pre-COVID favorite gathering sites; avoid close contact (within 6 feet for a total of 15 or more minutes per day) with any work colleague or visitor; and continue to wash hands frequently.[7]

Requests for personal protective equipment (PPE) should be submitted to each court or facility's PPE Coordinator. Noncompliance with any UCS Coronavirus health, safety and/or operational protocols should be reported immediately to the local uniformed command.

* * *

As always, thank you for your assistance in addressing this ongoing public emergency. No doubt, the prospects for ending this crisis have never been brighter since it began more than a year ago. But it remains imperative that we maintain vigilance and resolve in following these protocols for the health and safety of the public and our colleagues, families and friends.

Stay well and stay safe.

[7] See May 29, 2020 Memorandum Re: *Coronavirus – Additional Safety and Operational Protocols*, for detailed information regarding the use of Personal Protective Equipment; Physical Distancing; Movement and Commerce; and Hygiene and Cleaning, a copy of which is attached (Exh. A).

EXHIBIT A

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

May 29, 2020

To: All Judges and Nonjudicial Personnel of the Unified Court System

From: John W. McConnell JWM
Nancy Barry NJB

Re: Coronavirus – Additional Safety and Operational Protocols

==========

As we continue to address the health and safety concerns created by the COVID-19 pandemic, the following additional safety and operational protocols shall apply to all Unified Court System (UCS) locations for the safety of all judges, nonjudicial personnel and court users. alcohol.[1]

A. Protective Equipment and Hand Sanitizer

1. Face Masks. All judges and nonjudicial personnel working in open workspaces, cubicles, or in areas that are not otherwise partitioned/separated from others, must wear face masks any time they are within six feet of another person. Face masks may be removed in private offices but must be worn whenever those offices are occupied by more than one person, even briefly. All judges and nonjudicial personnel must also wear face masks when in transit around the workplace, in common areas, when dealing directly with the public or when distancing of at least six feet is not otherwise possible. e.g., elevators, hallways, locker rooms, restrooms, etc.

2. UCS-issued Face Masks. All judges and nonjudicial personnel will be provided with a face mask for their use during work hours at no cost. Because the court system's supply

[1] For more information on the protocols addressed in this memorandum and Exh. A, see the New York State Coronavirus (COVID-19) website (https://coronavirus.health.ny.gov/) and the United States Centers for Disease Control and Prevention Coronavirus (COVID-19) website (https://www.cdc.gov/coronavirus/2019-ncov/index.htm).

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of face masks is limited and does not allow for new masks to be issued daily, judges and nonjudicial personnel using UCS-issued face masks are expected to take proper care to allow for reuse of their mask to the fullest extent possible. Generally speaking, face masks should be cleaned or replaced when damaged or soiled, should not be shared, should be properly stored when not in use, and should be safely discarded (in a general trash receptacle) when no longer usable. (See Exh. A, "Mask Guidance," for recommended steps for use and reuse of face masks.)

3. Personal Face Masks. Judges and nonjudicial personnel are permitted to furnish and wear their own face masks, so long as such masks are professional in appearance. (For example, scarves or bandana-type face coverings should not be used.)

4. Gloves and Hand Hygiene. The UCS will maintain a supply of gloves for use by judges and nonjudicial personnel. While all employees are entitled to use gloves, gloves must be worn when opening mail and/or sharing materials such as court files (especially with the public). Frequent hand washing and/or use of hand sanitizer that contains at least 60% alcohol is strongly encouraged. Hand sanitizer meeting this requirement will be available in dispensers throughout the workplace.

5. Removing Gloves: Because the outside of gloves can be contaminated, they must be removed with care by: (1) using a gloved hand, grasping the palm area of the other gloved hand and peel off the first glove; (2) holding the removed glove in the gloved hand; (3) sliding fingers of the ungloved hand under the remaining glove at the wrist; (4) peeling off the second glove over the first glove.

   Judges and nonjudicial personnel should be sure not to touch eyes, nose or mouth while or immediately after removing gloves, and should finish the removal process by washing hands thoroughly with soap and water or, where hand washing stations are not close in proximity, using hand sanitizer that contains at least 60% alcohol.

6. Disposing of Masks and Gloves: Following use (or, in the case of masks, final reuse), masks, gloves and disinfectant wipes should be placed in the trash or household garbage.

B. Physical Distancing

1. Judges and nonjudicial personnel are to make every effort to ensure that a distance of at least six feet is maintained from work colleagues and the public at all times. Where this is not possible, (e.g. while moving prisoners or moving and lifting equipment, or at locations lacking six feet of space for social distancing), face masks must be worn.

2. Employees must not congregate in locker rooms, break rooms, lunchrooms/cafeterias or other confined areas used by multiple people. Crowded elevators should similarly be avoided.

3. Judges and nonjudicial personnel are encouraged to take their lunch break in open outside areas wherever possible.

C. Movement and Commerce

1. To the extent possible, locations for pick-up and delivery of mail, packages, and other items should be designated that minimize foot traffic in the workplace by non-UCS personnel.

2. Public or common areas (e.g. lines, parking areas, conference rooms) should be arranged to maximize social distance among clients and minimize interaction with others in the area.

3. Like all unnecessary court traffic, visitors to court personnel in the workplace for reasons other than necessary in-person court business are strongly discouraged.

4. UCS staff travel will be limited to essential travel only.

D. Hygiene and Cleaning

1. Hand hygiene stations -- including handwashing facilities with soap, water, and disposable paper towels, and/or hand sanitizer containing 60% or more alcohol (for areas where handwashing facilities may not be available or practical) – will be provided for both public and personnel use in all court facilities and should be located in high-traffic areas (elevator locations, central staff locations, etc.).

2. Use of water fountains in UCS facilities is prohibited. Water coolers in the workplace may be used only with clean drinking containers or fresh paper cup.

3. Work locations will be provided with appropriate locally-obtained cleaning/disinfection supplies for use in wiping down frequently touched surfaces in court facilities, e.g. water cooler handles, telephones, chair handles, etc. Judges and nonjudicial personnel (and where appropriate, the public) are encouraged to use these supplies liberally.

4. Regular daily cleaning and disinfection of facilities will continue. More frequent cleaning and disinfection should be performed on high use areas and frequently touched surfaces.

5. In the event of exposure of an area to a person testing positive to COVID-19, such cleaning will include, at a minimum, all heavy transit areas and high-touch surfaces (e.g. vending machines, handrails, bathrooms, doorknobs).

E. Signage and Safety Precautions for Facilities

Appropriate signage will be posted on and throughout UCS facilities memorializing safety concerns and protocols, such as the need to wear face masks, practice social distancing and engage in frequent hand hygiene. Additional safety precautions utilized in UCS facilities may include installation of plexiglass barriers, floor and other markings to denote proper social distancing, reconfiguration of common areas such as conference rooms or workspaces to ensure adequate spacing, and similar steps. All Judges and nonjudicial personnel are asked to adhere to

local guidance and/or safety protocols provided in any of our facilities – for example, signage indicating the maximum number of people that may be in certain areas at a time, floor markings denoting proper distancing, and the like.

F. Testing

While the court system has no independent COVID-19 testing capacity, we highly recommend that court personnel make use of the testing facilities of State, county, and municipal agencies. See, e.g., https://coronavirus.health.ny.gov/covid-19-testing (State); https://www.nychealthandhospitals.org/covid-19-testing-sites/ (New York City); https://www2.monroecounty.gov/health-COVID-19 (Monroe County); https://www.wkbw.com/news/coronavirus/coronavirus-testing-where-to-get-a-covid-19-test-in-western-new-york (Western New York); etc. An internet search should disclose the best available local testing options.

******

The health and safety of our workforce and of the public remain the top UCS priorities as we return to courthouse and office settings around the State in coming days and weeks. If you have any questions about these protocols, please contact the Division of Human Resources. And as always, thank you for your dedication and cooperation in this effort.

c: County Clerks

Mask Guidance

Pursuant to gubernatorial Executive Orders and UCS policy, face masks must be worn by all members of the public in court facilities, as well as by judges and nonjudicial court personnel who are in direct contact with members of the public or are unable to maintain social distancing (six feet) from other court personnel.

A. Rationale for Mask Guidance

This Guidance is designed to provide judges and nonjudicial personnel with the necessary information on proper mask use and reuse, to ensure maximum protection of court personnel and the public, and to ensure optimal use of the Court System's supply of masks.

B. Distribution, Use and Reuse of Masks

The Department of Public Safety will regularly supply each District or court with the appropriate supply of face masks based upon estimated staffing and in accordance with operational needs. Masks will be securely stored at each worksite/location and shall be issued to employees by a uniformed supervisor.

Because the UCS supply of masks is limited, we ask that all UCS judges and nonjudicial personnel make every effort to store and reuse those masks whenever possible – that is, whenever a worn mask has not become visibly soiled, damp or damaged through extensive use during the day. However, soiled, damp or damaged masks should <u>always</u> be replaced by making a request to a uniformed supervisor.

Masks should not be diverted to persons outside the UCS, unless specifically authorized by a uniformed supervisor or otherwise in accordance with established protocols/procedures.

Face masks that are no longer useable should always be discarded in an appropriate receptable, e.g., any garbage can or waste basket, but never the hallway or sidewalk.

Questions about this guidance or mask distribution/use, generally, should be directed to the UCS Department of Public Safety.

C. Removal and Re-Use of Mask

<u>To remove a mask with intent to reuse</u>:

1. **Perform hand hygiene**

2. **Remove mask**
   - Ear-Loop Mask Style: remove mask by holding the ear loops. Because the mask front may be contaminated, remove slowly and carefully.
   - Tie Back: remove mask by untying lower ties FIRST; untie upper ties last. Because the mask front may be contaminated, remove slowly and carefully. Ensure ties do not fall into clean interior side of mask.

3. After removing mask, **visually inspect** for stains, contaminants, tears, or distortion in shape/form. If soiled, torn, or saturated, the mask should be discarded.

4. If the mask is NOT visibly soiled, torn, or saturated, **carefully store in a brown paper (lunch) bag**, or if a bag is not available, a paper envelope labeled clearly with the following information: "face mask", date, your name, and "front" and "back" on the two sides. Insert your mask so that the front of the mask faces the side of the bag/envelope labeled "front."

5. **Perform hand hygiene.**

<u>To re-apply used mask</u>:

1. **Perform hand hygiene**

2. **Grasp mask**
   Pinch mask at the ear loops or grasp upper ties

3. **Place mask over face**
   For ear-loop style mask: secure ear loops behind the ears; secure mask. For tie back style mask: secure upper ties first, behind head; then secure lower ties behind head.

4. **Perform hand hygiene**

******A single mask can be safely worn during several workdays or shifts when these procedures are followed.******

While adherence to these guidelines is expected for UCS-issued masks, employees that are not in direct and/or frequent contact with the public who elect to wear their own mask, including cloth masks, may also find this guidance helpful. <u>Note</u>: personal cloth masks that will be reused by an employee should be laundered at home between each use.

<u>Frequently Asked Questions</u>

Will N95 respirators be provided to UCS personnel?

The UCS supply of N95 respirators is currently out of stock, but we anticipate receiving an additional supply in June. However, N95 respirators are difficult to wear for long periods of time and are impractical for generalized use. Also, because our supply of N95 respirators is anticipated to be much smaller than our supply of surgical and/or cloth masks, a***ny supply of N95 respirators will be reserved for employees with an elevated risk of coming into contact with the virus. (Guidance about the use of N95 respirators will be provided to such employees upon distribution.)***

Should court visitors be wearing face masks?

Yes. Pursuant to the Governor's Executive Order, all visitors must have a face mask/covering in order to enter our courts, offices and/or facilities. Please refer to the *revised* Courthouse Protocols issued on May 15, 2020, for more detailed information and guidance about members of the public and face masks.

How can I eat/drink when I am supposed to wear a mask?

Proceed to an appropriate location where social distancing can be accomplished and you are able to wash your hands or use hand sanitizer. Perform hand hygiene, remove the mask, eat or drink, and then replace your mask following the above guidelines.

May I use my UCS mask for personal use, including commuting to and from work?

UCS-issued masks are intended for use only for court purposes during business hours.

EXHIBIT E

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

To: All UCS Judges and Personnel

From: Nancy J. Barry

Date: June 14, 2021

Re: Revised Mask Policy Program

In keeping with Center for Disease Control and Prevention and New York State guidance relaxing mask and physical distancing requirements for individuals fully vaccinated against COVID-19, the Unified Court System will implement a voluntary Revised Mask Policy Program ("Program") for fully vaccinated judges and non-judicial personnel in certain areas of our court facilities. The program will start the enrollment process today.

Eligibility

All fully vaccinated judges and non-judicial personnel are eligible to enroll in the Program. Individuals are considered fully vaccinated for COVID-19:

- Two weeks after their second dose of a two-dose series, such as the Pfizer or Moderna vaccines; or
- Two weeks after a single-dose vaccine, such as the Johnson and Johnson vaccine.

Enrollment

Enrollment in the Program is strictly voluntary. Declining to enroll or participate in the Program will have no impact on an individual's assignment or any other employment decision.

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Starting today, interested and eligible judges and non-judicial personnel may enroll from a computer connected to the UCS network using the Program's share point site (https://nycourts.sharepoint.com/sites/COVID-19/CPV), where they will be asked to enter the date of their last COVID-19 vaccine shot and upload an image of the front and back of their COVID-19 vaccination card or, in the alternative, a screenshot of a "COVID-19 Vaccination" Excelsior Pass from their smartphone.[1]

The information submitted on the share point site will be strictly confidential; maintained separate and apart from personnel records; and used solely to authorize and issue a Program identification card. These records will be maintained and accessed only by authorized Office of Court Administration staff tasked with issuing the Program identification card, monitoring program compliance and maintaining the share point site.

Program Identification Card

Upon approval of the share point application, Department of Public Safety (DPS) staff will issue an orange Program identification card which will contain the UCS Seal, a picture of the judge or employee ("participant"), the participant's name and the Program expiration date for that participant (the last day of the month/year in which the efficacy of the vaccine is set to expire – currently one year).[2] No other information will be placed on the Program identification card.

DPS will send each participant's identification card to the appropriate District Executive, Chief Clerk (NYC Supreme Court), Borough Chief Clerk or Clerk of Court (NYC Citywide Courts) or Office of Court Administration Director with a signature sheet. The manager will distribute the card to the participant, obtain a signature from the participant and return the signature list to DPS.

This identification card will identify the wearer as someone who may remove their mask pursuant to the rules listed below and must be worn on the outermost garment of every participant, including all uniformed personnel, during work hours at any time when their mask has been removed.

Participants must receive, sign for and wear the identification card before they may participate in the Program.

Program

Once enrolled and wearing a Program identification card, participants will be permitted to enter and remain in non-public spaces in UCS courthouses and other facilities without wearing a mask

[1] The screenshot must show an Excelsior "COVID-19 Vaccination" pass with the judge or employee's name and vaccine expiration date. Screenshots of an Excelsior "COVID-19 Test" pass will not be accepted.
[2] The current picture on file for the judge's or employee's official UCS identification card will be used on the Program identification card, so there will be no need to take or submit another picture.

or other face covering when non-UCS court users are not present in those areas. These non-public spaces include:

- Back offices not accessible to court users[3] (Back offices where employees interact with court users only at a window unit that has glass or plexiglass covering the entire length of the window, with only a paper slot and/or "speak-thru" talking hole, are considered "not accessible to court users");
- Chambers;
- Robing rooms;
- Private hallways/corridors, i.e., those not normally accessible to court users;
- Private restrooms;
- Locker rooms;
- Conference rooms not accessible to court users; and
- Any other room not generally accessible to court users.

Participants will continue to be required to wear masks in public spaces in UCS courthouse and other facilities, including:

- Open courtrooms (when a courtroom is locked, e.g., before or after a session, and not accessible to court users, participants may remove their masks);
- Back offices regularly accessible to court users, including those back offices with a window unit without a full-length glass or plexiglass covering;
- Public hallways/corridors/lobbies;
- Holding areas; and
- Any room or location in which a court user is present.

In buildings shared by UCS judges and employees and other agencies, participants may remove their masks on floors or spaces normally frequented only by UCS staff. In shared locations of the building, such as a lobby, public bathroom or elevator, UCS staff must continue to wear a mask. If a court user comes into space normally frequented only by UCS staff, all UCS staff that come in contact with that court user must wear a mask for the duration the court user's stay in that space.

Additional Information

Judges and non-judicial personnel choosing not to participate must continue to wear masks in UCS courthouses and other facilities in compliance with the May 29, 2020 Memorandum – *Additional Safety and Operational Protocols* and the March 30, 2021 Memorandum – *Coronavirus – Updated Safety and Operational Protocols.*

All non-UCS court users, regardless of vaccination status, will continue to be required to wear a mask while in a UCS courthouse or other facility

[3] For the purpose of the Program, "court user" means any person other than a UCS judge or employee.

Participants must continue to follow all other safety and operational protocols.

The science and safety procedures surrounding the coronavirus continue to evolve, sometimes quite rapidly. As the Court System receives additional or modified guidance from the CDC and New York State, the rules of the Program may be modified.

EXHIBIT F

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

August 12, 2021

To: Administrative Judges

From: Nancy J. Barry
Justin A. Barry

Re: Updates to the Revised Mask Policy

As Hon. Lawrence Marks indicated today in his message to all judges and staff, the Centers for Disease Control and Prevention (CDC) recently revised its COVID-19 mask guidance in response to localized increases in coronavirus transmission. Under this new guidance, the CDC recommends that even fully vaccinated individuals wear a mask or face-covering indoors in public in areas of substantial or high transmission, based on a scale of low, moderate, substantial or high. As of today, the majority of New York State is currently listed as an area of substantial or high transmission.

In order to further our ongoing efforts to ensure the health and safety of all employees and court users and in keeping with our commitment to follow the most up to date guidance promulgated by public health authorities, effective Friday, August 13, 2021 and until further notice, the Unified Court System will temporarily suspend the green attorney/agency pass and white visitor pass program and require all court users, regardless of vaccination status, to wear a mask or face covering at all times while present in any of our court facilities. In addition, the orange card program for fully vaccinated judges and non-judicial staff will be modified to require that such card holders wear a mask or face covering in all public areas of the court or facility, as well as any areas and/or situations where physical distancing is not possible. Orange card holders will continue to be able to enter and remain in non-public areas of court facilities without wearing a mask/face covering, being mindful of physical distancing requirements.[1]

Uniformed staff will take steps to ensure any signage reflecting exemptions to mask requirements for fully vaccinated individuals is removed or otherwise not visible, as well as begin enforcing the suspension of the attorney/agency and visitor passes, i.e., masks/face coverings must be worn by court users at all times regardless of vaccination status.

---

[1] Please see Nancy J. Barry's "Revised Mask Policy Program," dated June 14, 2021, for guidance on what constitutes a non-public area of a court facility.

Judges and non-judicial staff with orange cards may continue to enter courts/facilities without having to undergo a temperature screening and continue to be exempt from the daily COVID Self-Assessment. All other court users, including green card holders, must have their temperature taken and undergo the COVID screening before entry. All judges, nonjudicial staff and court users are reminded that they should not report to work or enter any court or facility if they are a "Person at Risk" as set forth in the "Coronavirus – International Travel and Updated Safety and Operational Protocols" memorandum, dated May 5, 2021.

As always, thank you for your patience, assistance and cooperation in addressing this ongoing public emergency. We have seen a great deal of successes in dealing with this crisis in the past months. The upswing in variant cases has led to updated CDC guidance and this response, seemingly on the heels of our general loosening of masking requirements. We continue to follow the latest public health guidance for the health and safety of the public and our colleagues, families and friends.

Stay well and stay safe.

cc: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Edwina G. Mendelson
Linda Dunlap-Miller
Scott Murphy
NYC Chief Clerks
District Executives
Chief Michael Magliano
Chief Howard Metzdorff
Lucian Chalfen
Jennifer DiLallo
Chief Sean Egan
Chief Michael Senese

EXHIBIT G

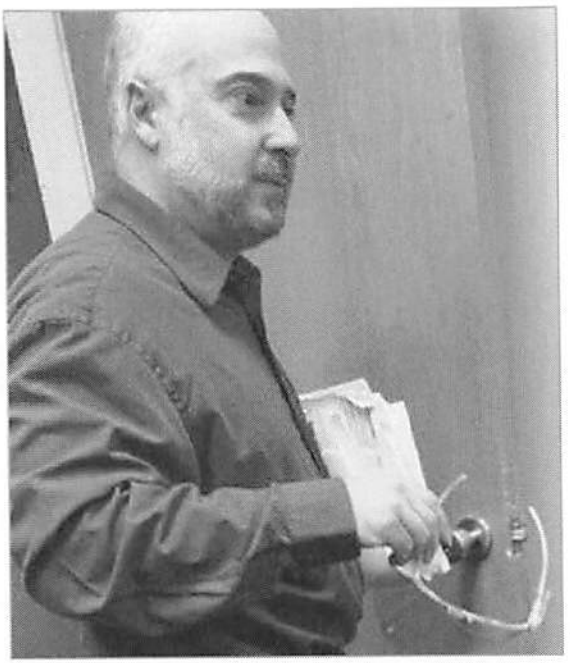
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Unvaxxed NY Judge Defies Courthouse Ban As Others Ousted

By **Frank G. Runyeon**

Law360 (January 20, 2022, 2:30 PM EST) -- An unvaccinated New York state judge barred from his courthouse over COVID-19 concerns has been violating court administrators' orders this month by repeatedly returning maskless while also conducting criminal arraignments by video.



Judge Frank M. Mora is seen in the Poughkeepsie City Court on Tuesday without a mask in violation of the state court's COVID-19 mandates.

The actions of Poughkeepsie City Court Judge Frank M. Mora underscore what critics deem a double standard favoring judges in the enforcement of COVID-19 rules. Even as state officials are poised to fire more than 320 unvaccinated court employees, they say they cannot formally discipline Judge Mora any more than they can Court of Appeals Judge Jenny Rivera, who has continued **handling cases remotely** despite flouting the vaccine mandate.

After refusing to be inoculated and failing to win an exemption this month, Judge Mora was ordered to stay home and preside over his cases remotely. But he returned to the courthouse on an almost daily basis, donning only a face shield, according to two people who work in the building and an attorney who saw him.

State court policy is that masks are mandatory in courthouses. Face shields do little to protect against COVID-19, according to the U.S. Centers for Disease Control and Prevention.

"It's a violation of our policy. You're not supposed to be there," said state courts spokesman Lucian Chalfen, speaking broadly about the policy for unvaccinated judges denied an exemption. "They are

not allowed into the courthouse, into their chambers, or any other nonpublic area."

And while certain criminal matters can be handled remotely by those judges, arraignments cannot be for constitutional and policy reasons, Chalfen said.

The judge directed Law360's inquiries to Chalfen, who declined to comment specifically on Judge Mora's behavior.

On Tuesday morning in Judge Mora's courtroom, he appeared via video link to arraign a young woman dressed in pink scrubs and yellow croc sandals on a single count of criminal mischief. He was later seen inside the courthouse, according to a source and a photograph of the judge taken after the hearing. The photograph shows the judge in the court's back offices not wearing a mask, holding a face shield in one hand and a stack of files in the other, which Mora later said were personal medical files.

It was one of at least four arraignments Judge Mora conducted by video this month, according to court records.

The Dutchess County Public Defender's Office first raised concerns about whether the judge had the authority to hear criminal cases remotely. In a Jan. 7 email to the supervising judge of the city court, the chief public defender for criminal cases said her office had "concerns regarding whether Judge Mora has express permission and authorization to do this."

The supervising judge replied that Judge Mora received special permission to preside over his cases virtually from home, according to the email chain obtained by Law360. But the supervisor did not respond to the public defender's question about whether Judge Mora was authorized to hear pleas.

It is unclear what consequences, if any, await Judge Mora for his actions. Only the New York State Commission on Judicial Conduct is empowered to discipline a state judge, and its investigations usually take more than a year while judges remain on the bench, often drawing six-figure salaries. State records show Judge Mora collected a nearly $190,000 salary in 2021.

Chalfen said "there are repercussions" for judges who flout the administration's orders, "which may well include a referral to the State Commission on Judicial Conduct."

Meanwhile, many nonjudicial employees who sought exemptions are now facing termination. One of them is a court officer who works in the same small courthouse as Judge Mora.

Jermaine Dublin is among 111 court officers statewide who are poised to lose their jobs after failing to get an exemption as of Jan. 13, a court system tally shows.

"The fact that our essential court officer could potentially lose his job over being denied an exemption from the vaccine, while there is no consequence for the judge for requesting the same exemption, exposes a major fallacy in the state's vaccine mandate policy," said Patrick Cullen, president of the New York State Supreme Court Officers Association. "There should not be one standard for judges and another standard for court employees."

Dublin did not respond to a request for comment.

Systemwide, 1,125 employees had requested medical or religious vaccine exemptions as of last week. Of the exemption requests that have been ruled on, about 38% have been denied. Nonjudicial employees have 10 days to comply before they are forced out of the workplace with their vacation days docked until they are terminated.

Unvaccinated employees with an approved exemption can continue working with mandated weekly testing.

Of the 19 judges who requested exemptions from the vaccine requirements, four have requests pending, 10 had exemptions granted, and five had them denied — including Judge Mora.

In the courthouse Tuesday, Judge Mora was told that the local jail remained on lockdown, with

inmates unable to make their mandatory in-person appearances because so many inside had contracted the virus. But the judge appeared to make light of the pandemic.

After the public defender indicated a defendant had tested positive and could not physically appear in the courtroom that day, Judge Mora joked, "Isn't it nowadays that everyone has COVID?"

As of that Tuesday, 35 people had died of COVID-19 in Dutchess County in January, according to county data compiled by The New York Times. Nine more died the next day.

A short while later, Judge Mora was photographed in the office without a mask.

--Editing by Alex Hubbard.

Update: This article has been updated to clarify when the judge was seen following the video arraignment and to include Judge Mora's description of the nature of the files he was seen holding.

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EXHIBIT H

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me and with the approval of the Chief Judge, to protect the health and safety of all judicial and non-judicial personnel, all court users, and the general public from the ongoing COVID-19 pandemic, I hereby direct that all judicial and non-judicial personnel of the Unified Court System comply with the Testing and Mandatory Vaccination Requirements detailed in the memoranda attached hereto as Attachments 1 through 5.

Chief Administrative Judge of the Courts

Dated: September 23, 2021

AO/275/2021

ATTACHMENT

1

State of New York
Unified Court System

Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

August 18, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: COVID-19 Testing Program

As was previously announced, the Unified Court System will be implementing a mandatory weekly COVID-19 testing program for judges and court employees. This new program is fully consistent with the steps that public and private organizations have been taking in New York and across the country.

The mandatory testing program will begin on September 7, 2021. The following are the key elements of the program:

- All judges who are fully vaccinated and who have enrolled in the court system's mask policy program and been issued an orange card are exempt from the mandatory testing program. Fully vaccinated judges who have not enrolled in the program may do so at any time, but to be exempt from the program on the date of implementation (September 7) they must do so by September 3, 2021. Click on the following link for instructions on enrolling in the mask policy program https://nycourts.sharepoint.com/sites/COVID-19/CPV

- Judges not enrolled in the mask policy program must submit proof each week that they have received a COVID-19 test.

- Judges may obtain their COVID-19 test at any licensed facility and should request a proof of test. Locations, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Judges will find a variety of

community testing resources in their areas that are widely available and frequently free of charge.[1] Tests may be either rapid or PCR. At-home tests may not be used.

- Proof of the test conducted by the medical health provider must be uploaded to the UCS Mandatory Testing Program SharePoint site on the day the test was taken. Instructions on accessing and uploading proof of testing will be provided in a separate memorandum that will be distributed prior to the start of the mandatory testing program.

- Judges who work any portion of a workweek must submit proof of testing. Judges on leave for one week or longer are not required to submit proof of testing.

- Judges who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace (e.g., they are likely to test positive because of a recent infection but are no longer contagious) must submit to their Administrative Judge a letter from the medical health provider stating the reason for the determination and how long the restriction is expected to continue.

- While judges are not required to report the results of their test each week, they must continue to follow current UCS protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19. Please note that judges who have COVID-19 symptoms (cough, sore throat, shortness of breath or temperature of 100° or higher) should remain at home even if they receive a negative result from a COVID-19 test.

As circumstances and conditions relating to the coronavirus pandemic continue to evolve, it may be necessary to modify these policies. In the meantime, thank you for your cooperation with our guidance and protocols. This has greatly contributed to keeping judges, their colleagues and all who work and conduct business in our facilities safe and healthy.

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

ATTACHMENT

2

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

August 18, 2021

To: All Non-Judicial Staff

From: Nancy J. Barry
Justin a. Barry

Re: Mandatory Testing Program

In order to maintain the safest environment for everyone who works and conducts business in our court facilities, as previously announced, the Unified Court System will implement a mandatory weekly COVID-19 testing program. Because the Centers for Disease Control and Prevention (CDC) continues to advise that COVID-19 vaccinations protect people from getting sick or severely ill and may also protect people around them, all fully vaccinated judges and non-judicial employees, who have enrolled in the Revised Mask Policy Program and submitted proof of vaccination, will be exempt from this testing program.

This mandatory testing program will commence on September 7, 2021.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Exemption

All non-judicial personnel who have provided proof of vaccination in order to receive an orange card by enrolling in the Unified Court System's (UCS) Revised Mask Policy Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021 for eligibility, enrollment and program description) are exempt from this weekly testing mandate.

Employees may enroll in the orange card program at any time but in order to be exempt from the testing mandate on the date of implementation, they must submit proof of full vaccination by

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September 3, 2021. (Note: Employees will shortly be able to submit proof of vaccination and opt not to receive an orange card).

Mandatory Testing Procedure

Employees must submit proof each week that they have received a COVID-19 test. Personnel will coordinate with their supervisor to schedule a one-hour period during their regularly scheduled workweek in which they will be granted excused leave so that the employee may get a rapid or PCR test. Employees may have the test administered after work hours, but they will not be granted leave or compensatory time, if they choose this option.

Personnel may obtain their test at any licensed medical facility and should ask for a proof of test with the date the test was administered (result is not required). Location, times and descriptions of testing sites may be found at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Employees may find a variety of community testing resources at these websites in their areas, which are widely available and many free of charge.[1] Please note that some testing facilities require appointments, and it is the responsibility of the employee to find appointments during their scheduled weekly testing hour or, if unavailable, coordinate an alternate time during the workweek with their supervisor. Use of at-home tests are not permitted for the purposes of UCS' testing requirement.

Proof of the test provided by the medical health provider administering the procedure should be uploaded to the UCS Mandatory Testing Program Share Point site the same day the test was taken but no later than the next business day. Employees who have not been issued individual desktop or laptop computers may upload the proof of test to the Share Point site using a personal mobile device using their CourtNet identification and password or will be given access to do so on a court-issued computer.[2]

Every morning, the Office of Court Administration's Division of Technology will provide each Kronos supervisor and/or a designated court manager with lists of their employees to compare with their employees' scheduled test hours. These lists will permit the supervisors to review and approve submitted testing documentation.

Those employees who do not submit proof of test to the Share Point site and who have not coordinated an alternate testing date/time within that same week will be designated as unfit for service and will not be permitted to report to work. Employees designated as unfit for service may

[1] In New York State, no-cost testing is available at state and municipal run testing centers, local health centers and select pharmacies: CVS Health, local independent pharmacies (administered by Health Mart, eTrueNorth, and TOPCO), Rite Aid, Walgreens, and Walmart (administered by Quest Diagnostics).

[2] Instructions on accessing and uploading proof of testing to the UCS Mandatory Testing Program Share Point site will be sent under a separate memorandum.

charge annual or compensatory leave accruals. Employees without annual or compensatory leave will have their pay docked.[3]

Personnel who work any portion of a workweek must submit proof of testing. Individuals on extended leave are not required to submit proof of test until they return to work. (Extended leave is defined, in this context, as any leave in which an employee does not report to work during all of a particular workweek).

Exceptions

Those employees, who have been advised by a medical health provider that they should not undergo COVID-19 testing but are cleared to report to the workplace, e.g., they are likely to test positive because of a recent infection but they are no longer contagious, must submit a letter from that medical health provider to their chief clerk or human resources professional indicating the reason for that determination and how long that restriction is expected to extend. Upon review and approval, that employee will not be required to submit proof of testing for the period prescribed by the medical health provider.

Positive Tests

While personnel are not required to report the results of their test each week, they must continue to follow the most current protocols for reporting and quarantine should their medical health provider advise them that they have tested positive for COVID-19 (See Nancy Barry's memorandum, "Coronavirus – Updated Safety and Operational Protocols Related to International Travel, dated May 11, 2021). Please note that all employees who have COVID-19 symptoms (cough, sore throat, shortness of breath, or temperature of 100.0 or higher) should remain at home even if they have received a negative result on a COVID-19 test.

Additional Information

Non-judicial personnel are reminded that compensatory time is available to any employee who submits proof of vaccination appointment(s).

Non-judicial personnel must continue to follow all other safety and operational protocols.

The science and safety procedures surrounding the coronavirus continue to evolve, sometimes quite rapidly. As the Court System receives additional or modified guidance from the CDC and New York State, these policies may be modified.

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[3] If an employee experiences technical difficulty uploading proof of test to the Share Point site, they should notify their supervisor and submit the proof of testing in person either by the end of their shift or on the next day they report to work.

We are deeply grateful to staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves, their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. Vito Caruso
Hon. George Silver
Hon. Edwina Mendelson
Administrative Judges
Linda Dunlap-Miller
Scott Murphy
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT

3

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 1, 2021

To: All Judges and Non-Judicial Staff

From: Nancy J. Barry
Justin Barry

Re: Mandatory Testing Program – Supplemental Information

As announced last month, the Unified Court System will begin its mandatory COVID-19 testing program on September 7, 2021. Fully vaccinated judges and nonjudicial employees, who have submitted proof of vaccination *via* the Revised Mask Policy ("Orange Card") Program will be exempt from this testing program.

As promised, this memorandum will offer detailed information on how judges and employees will submit proof of testing and supplemental information on other aspects of the program.

A copy of the August 18, 2021 memorandum is attached for your information.

Mandatory Testing Procedure

1. Exemption

   To be exempt from weekly testing, judges and nonjudicial employees must submit proof of full vaccination using the UCS share point site – https://nycourts.sharepoint.com/sites/COVID-19/CPV. Individuals uploading proof of vaccination may now select whether they wish to be issued an orange card. The share point site will email confirmation to the applicant when the proof of vaccination is submitted and when it has been approved. Judges and nonjudicial employees must submit proof of fully vaccinated status by the close of business on September 3, 2021. Any judge or nonjudicial employee who has not received an email confirming that their proof of vaccination has been approved by the close of business on September 7, 2021 will be required to begin weekly COVID-19 testing the week of September 13, 2021, as explained further below.

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Nonjudicial employees that received paid leave and/or Compensatory Time ("CT") for attending vaccination appointments are still required to upload proof of fully vaccinated status through the share point site in order to be exempt from weekly testing. Under no circumstances will employees who received paid leave and/or CT for attending vaccination appointments be granted paid leave for purposes of weekly testing.

2. Start of Testing Program

The weekly testing program starts on September 7, 2021. On September 7, 2021 every Kronos supervisor, Administrative Judge and Supervising Judge ("supervisor") will receive an email with a link to the UCS Employee Web Portal ("Portal") which will contain a list of all of the judges or employees ("participants") under their supervision who must submit weekly proof of COVID tests. (Again, judges and nonjudicial employees who have submitted an approved proof of vaccination will be excluded from this list).

While participants will not be required to submit proof of testing during the week of September 7, 2021, they should use this time to coordinate a time with their supervisor to be tested during their regular work hours in the workweek that follows, i.e. the week starting September 13, 2021. Nonjudicial employees will be provided with one (1) hour of paid leave without charge to accruals each week for purposes of undergoing this testing.

Participants must upload proof of testing within one workday from the day they were tested. Supervisors will need to check the Portal each workday to ensure each participant has timely submitted proof of testing.

3. Supervisor Scheduling

Supervisors will be responsible for ensuring that all participants on their September 7, 2021 "Portal" list have coordinated/scheduled a date and time to undergo testing during the week that follows.

To the extent practicable, and subject to the operational needs of the court and the availability of testing appointments, the supervisor and participant may want to coordinate/schedule a set day and time each week for the participant to undergo testing, i.e., establish a recurring testing hour each week. Supervisors should be flexible, where possible, to accommodate a participant's scheduled or unscheduled leave or available testing appointments.

Nonjudicial employees are entitled to one (1) hour of excused leave per week which will be granted upon substantiating that testing was conducted on the date the employee was released from work for their test. Supervisors will make every effort to coordinate/ schedule release time at a mutually convenient time, taking into consideration that some

employees may wish to be tested at a location near their home while others may find it easier to be tested near their workplace.

In order to ensure adequate release time, participants should make every effort to schedule and/or request their one-hour of excused leave with their supervisor by the Wednesday preceding each testing week, e.g., by Wednesday, September 8, 2021 for testing the following week. Supervisors should note and/or keep track of each participant's scheduled hour (by calendar or some other method) that will allow them to confirm that the participant is released for testing and that proof of testing is timely uploaded thereafter.

Nonjudicial employees that are overtime eligible, i.e., required to swipe in/out at the beginning and end of their shift should follow the normal rules for appointments during the workday. That is, only if the employee is not expected to return to work following their test are they required to swipe out, e.g., an overtime eligible employee with regular hours of 9:00 AM to 5:00 PM that is scheduled for a 4:00 PM test is not expected to return to work and therefore, must swipe out when leaving for their test/appointment.

4. Submitting Proof of Test

Upon completion of the test, each participant should be sure to obtain an electronic confirmation (pdf or jpeg) or paper document from the testing facility indicating that they took the test with the date, time, location and facility information. The participant must upload a copy of that confirmation using the Portal, which is accessible anywhere from any device using the following URL - https://portal.nycourts.gov/ucsmtp/.

Upon clicking the Portal URL, the participant will be asked for their UCS user id and password (same user id and password used for Kronos and Outlook) and the date and time of their test for that week. At the bottom of the Portal page, the participant will upload a digital image of their proof of test which must include the location, date, time and type of test.[1]

Instructions for using the Portal in every operating system are contained on the Portal upload page. Nonjudicial employees that do not have regular access to a UCS computer and do not wish to use their personal mobile device to upload proof of testing may request access to a computer at their worksite from their supervisor.

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[1] Acceptable tests include PCR, RT-PCR, ddPCR, Rapid PCR (Polymerase Chain Reaction), NAA / NAAT (Nucleic Acid Amplification), AMP PRB (Amplified Probe), LAMP (Loop-mediated Isothermal Amplification), TMA (Transcription-mediated Amplification), Molecular test brands, such as, but not limited to: Abbott ID NOW, Quidel Lyra PCR, Abbott Realtime PCR, Cobas Qualitative PCR, FTD PCR, Xpert Xpress and Simplexa Direct PCR.

Unacceptable tests include all Antigen (Ag) tests (including Quidel Sophia, Abbott BinaxNOW and Rapid Antigen Tests), all Antibody tests (such as IgG, IgA, IgM and Rapid Antibody Tests), all blood tests (such as fingerstick, venipuncture), all plasma tests, all serum tests and all lateral flow tests.

5. Supervisor Review

Each morning at 10:00 AM, supervisors will receive a combined COVID Self-Assessment and COVID Test Advisory email with a link. The link will take the supervisor to the Portal which will indicate which participants have completed their daily self-assessment and which participants uploaded their proof of test on the previous day.

The supervisor should then compare their participants' schedule of tests for that week to ensure the participants have completed the test as scheduled.

If a participant does not submit a proof of test within one workday of the scheduled hour for that week but reports a valid reason why he/she was unable to submit his/her proof of testing (e.g., the pharmacy canceled their appointment, there was technical trouble uploading the proof, they were sick on the day of the appointment), the supervisor should exercise reasonable discretion in permitting the participant an additional opportunity to be tested and/or upload proof of testing during that workweek.

If the employee does not present mitigating circumstances and/or refuses to comply, the matter must be referred to the District Executive or NYC Chief Clerk, who should exclude the employee from the workplace for their failure to comply with the testing program. As is the case with employees who do not comply with UCS screening and/or self-assessment protocols, employees that are excluded from the workplace for failure to comply with the testing program may be considered absent without authorization for which approval to charge accruals may be denied.

6. Additional Information

Participants can find locations, times and descriptions of testing sites at https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html or https://coronavirus.health.ny.gov/find-test-site-near-you. Testing sites are widely available and many are free of charge. It is the responsibility of each participant to find a location near their home or workplace and schedule their testing time with their supervisor.

As the testing program is rolled out in September, employees should bring any concerns or difficulties that they face regarding testing to their supervisor, who will in turn forward them to the appropriate District Executive or NYC Chief Clerk. The District Executive and NYC Chief Clerks will collect any concerns or difficulties experienced in their District or Court and refer them to the appropriate Deputy Chief Administrative Judge ("DCAJ"). The DCAJ should forward all such concerns or difficulties to OCA Human Resources for further review/consideration.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

ATTACHMENT
4

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

September 10, 2021

To: All UCS Judges and Justices

From: Lawrence K. Marks LM

Subject: Mandatory COVID-19 Vaccination Program

As previously announced, the Unified Court System will require all judges and employees to obtain and submit proof of COVID-19 vaccination by **September 27, 2021** or submit and obtain an approval for a medical or sincerely-held religious exemption.

The program is outlined in this memorandum.

Vaccinations

- All judges must submit proof that they are fully vaccinated for COVID-19. Full vaccination is defined as:

  - Two weeks after a second dose of a two-dose series, such as the Pfizer or Moderna vaccines; or
  - Two weeks after a single-dose vaccine, such as the Johnson and Johnson vaccine.

- Judges must provide proof of vaccination by enrolling in the UCS Revised Mask Policy ("Orange Card') Program (see Nancy Barry's "Revised Mask Policy Program" memorandum, dated June 14, 2021). This proof should be submitted through the UCS SharePoint site at https://nycourts.sharepoint.com/sites/COVID-19/CPV

- Judges must submit proof of at least one dose of a COVID-19 vaccine by September 27, 2021. Those judges who received a vaccine with a two-dose series will be expected to receive and submit proof of the second shot within the medically recommended timeframe.

- Judges who have submitted proof of vaccination by September 27, 2021 but are not yet fully-vaccinated because they must receive a second dose and/or they have to wait an

additional two weeks after their last dose, must continue to submit proof of weekly COVID-19 testing until they are fully-vaccinated.

Exemptions

- Exemptions to the mandatory vaccination requirement will be considered for judges with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and judges with sincerely-held religious beliefs and practices that prohibit them from being vaccinated.

- Judges must apply for an exemption by September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). Completed exemption forms must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading the exemption requests are contained on the portal which will "go live" on September 20, 2021.

- Applications for medical exemptions must be accompanied by documentation from the judge's medical health professional.

- Applications for religious exemption must contain the judge's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination.

- Judges submitting an exemption application will be notified of the decision as soon as practicable. In the alternative, the judge may be notified that more information may be required to process the exemption application.

- Judges whose requests for medical or religious exemption are granted will receive a notification that includes the expiration date of the exemption and notice that they will have to submit weekly proof of testing.

- Those judges whose requests for medical or religious exemption are denied will receive a notification and will have ten business days from the date of the notification to submit proof of their first vaccination. They must subsequently show proof of full vaccination within the medically recommended timeframe.

Weekly Testing

- Judges who fall into the following categories must provide weekly proof of COVID-19 testing:

- Judges who are waiting to receive a second dose of vaccine or are waiting for two weeks after the final shot in a vaccine series;
- Judges who have received an approved religious or medical exemption; or
- Judges who have submitted a request for medical or religious exemption but have not yet received approval.

As circumstances and conditions relating to the pandemic continue to evolve it may be necessary to modify these policies. Thank you for your cooperation with these and other policies. Please be reminded that they are designed to maintain a safe environment for all who work, practice, visit or are otherwise required to enter our facilities.

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR MEDICAL EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting qualified individuals with underlying medical conditions. Upon request, UCS will grant a medical exemption for individuals with underlying medical conditions that makes receiving the COVID-19 vaccine unsafe for them. To request a medical exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form; have a licensed health care provider, not related to the applicant, whose specialty is appropriate to the associated medical condition, prepare the **Certification of Licensed Health Care Provider** form; and return the form, along with any such additional documentation as may be necessary to support the request, to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Medical exemptions are intended for those with underlying medical conditions that render the COVID-19 vaccine unsafe for them.

For the current year, requests for medical exemptions must be received by September 27, 2021. The expiration of the exemption will be based upon the Certification of the Licensed Health Care Provider, which date will be noted in the UCS Approval, but shall be no longer than one year. Individuals may request to renew exemptions upon the expiration of such Approval, but annually no later than October 1 for each year.

Individuals who have timely submitted a request for a medical exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for medical exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals whose requests are denied are permitted to reapply if new documentation and information is later available in support of a new application for medical exemption.

If a judge or employee refuses to provide the information necessary for UCS to review and consider the request for medical exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Medical exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the **Verification and Accuracy** statement;
- Have your Licensed Health Care Provider complete the **Certification of Licensed Health Care Provider** form;
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

In some cases, UCS will need to obtain additional information and/or documentation about your medical condition in support of the request for medical exemption.

STATEMENT OF MEDICAL CONDITION
FOR EXEMPTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I sincerely certify that my medical condition makes it unsafe for me to receive a COVID-19 vaccination, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I certify that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my current medical condition.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.
	I authorize my licensed health care provider to provide UCS with personal health information about my medical condition related to this request for exemption from COVID-19 vaccination and to provide UCS with a Certification of Licensed Health Care Provider. I acknowledge that I may be required to provide additional medical documentation in support of my request for medical exemption.

Verification and Accuracy

I verify that the information I am submitting in support of my request for a medical exemption to the COVID-19 vaccination is true, accurate, and complete to the best of my knowledge. I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Name: _____

Primary Email: _____

Phone: _____

Signature: _____

Date: _____

New York State Unified Court System

Certification of Licensed Health Care Provider

For Request for Medical Exemption from COVID-19 Vaccine

The New York State Unified Court System (UCS) requires all employees to be fully vaccinated for COVID-19.

My patient, _____, is submitting a request for a medical exemption from this COVID-19 vaccination requirement.

In support of that medical exemption, my patient voluntarily requests and authorizes me to prepare this Form, and to provide UCS with personal health information about the patient's medical condition(s) related to this request, including supporting documentation regarding the medical reason that vaccination is contraindicated to the patient's medical condition(s) that render the vaccine unsafe for the patient at this time.

Option 1 - Allergy

☐ A documented history of a severe allergic reaction to any component of a COVID-19 vaccine or to a substance that is cross-reactive with a component. Please specify the allergic components of **ALL** the following vaccines.

NOTE: since egg-free vaccine is available, history of an egg allergy will not be accepted as an allergic reaction to a COVID component.

- Moderna - List the allergic component(s):
- Pfizer - List the allergic component(s):
- Janssen/Johnson & Johnson - List the allergic component(s):

☐ A documented history of a severe allergic reaction after a previous dose of the COVID-19 vaccine. Please indicate to which vaccine the patient had a reaction, the date of the vaccine, and the severe reaction:

- Moderna - Date of Vaccine & Reaction:
- Pfizer - Date of Vaccine & Reaction:
- Janssen/Johnson & Johnson - Date of Vaccine & Reaction:

Option 2 - Physical Condition/Medical Circumstance

☐ The physical condition or medical circumstances of the patient that render vaccination unsafe or contraindicate COVID-19 vaccination are as follows:

Probable time the physical condition or medical circumstances is expected to render vaccination unsafe or contraindicated to COVID-19 vaccination is: _____

Health Care Provider Certification

I certify that the information contained herein is true, accurate, and complete and I support the patient's request for a medical exemption from the COVID-19 vaccine requirement of UCS.

Health Care Provider Name: _____

Practice/Specialty: _____

License Number: _____

Address: _____

Telephone Number: _____

Email: _____

Signature: _____

Date: _____

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting religious beliefs and practices. Upon request, UCS will grant a religious exemption for sincerely held religious beliefs and practices which prohibit a judge or employee from receiving a COVID-19 vaccine. To request a religious exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form and return it, along with the "Affidavit of Religious Objection to COVID-19 Vaccination", "Personal Statement Form" and such additional documentation as may be necessary/appropriate to support the request to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

For the current year, requests for religious exemptions must be received by September 27, 2021. If approved, the exemption will remain in effect through September 30, 2022. Individuals with approved exemptions may request to renew exemptions annually no later than October 1 for each year.

Individuals who have timely submitted a request for a religious exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for religious exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

If a judge or employee refuses to provide the information necessary for UCS to review and consider their request for religious exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Religious exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete the **Affidavit of Religious Objection to COVID-19 Vaccination;**
- Complete the **Personal Statement Form;**
- Sign before a Notary Public;
- Attach such additional documentation about your faith/beliefs which are contrary to vaccination, including but not limited to the COVID-19 vaccination, as necessary/appropriate to support your request; and
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

Your request must be accompanied by the signed and notarized "**Affidavit of Religious Objection to COVID-19 Vaccination**" **and** "**Personal Statement Form**" (attached below). In some cases, UCS will need to obtain additional information and/or documentation about your sincerely held religious practice(s) or belief(s). UCS may need to discuss the nature of your religious belief(s)/practice(s) with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exemption.

(Proceed to Following Pages for Affidavit of Religious Objection to COVID-19 Vaccination and Personal Statement)

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I swear or affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I swear or affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

I swear or affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: _____

Print Name: _____

Email: _____

Phone: _____

Sworn and subscribed before me

This _____ day of_____, 2021

_____

Notary Public

My commission expires: _____

ATTACHMENT
5

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 10, 2021

To: All Non-Judicial Personnel

From: Nancy J. Barry
Justin Barry

Re: Mandatory Vaccination Requirement

As previously announced, the Unified Court System will require all judges and non-judicial personnel to be vaccinated by September 27, 2021, unless otherwise approved for an exemption due to medical reasons or sincerely held religious beliefs, as explained more fully below.

This memorandum will outline the program as it relates to non-judicial personnel. The Chief Administrative Judge will outline the program for judges in a separate document.

Proof of Vaccination

All non-judicial personnel must be fully vaccinated against COVID-19 by September 27, 2021, or as soon thereafter as medically practicable provided they have received at least one dose of a COVID-19 vaccine by such date.[1]

To this end, no later than September 27, 2021, all non-judicial personnel must either submit proof that they: (1) are fully vaccinated; or (2) have received at least one dose of any COVID-19 vaccine. This proof must be submitted through the UCS SharePoint site https://nycourts.sharepoint.com/sites/COVID-19/CPV as outlined in Section (1) of our September 1, 2021 Memorandum (Mandatory Testing Program – Supplemental Information).

[1] Fully vaccinated is defined as: two weeks after receiving a second dose of a two-dose vaccine, such as the Pfizer or Moderna vaccines; or two weeks after receiving a single-dose vaccine, such as the Johnson and Johnson vaccine.

Acceptable proof of having received at least one dose of a COVID-19 vaccine is a copy of the front **and** back of the employee's vaccination card. For fully vaccinated employees, a screenshot of the employee's Excelsior Pass is also acceptable. Those employees, who submit proof of having received their first dose of a two-dose vaccine, will be required to submit proof of having received the second dose within the medically recommended timeframe, i.e., typically 3 weeks from the first dose, using the same UCS SharePoint site referenced above.

Employees, who have submitted proof of vaccination by September 27, 2021 but are not yet fully vaccinated because they must receive a second dose and/or they must wait an additional two weeks after their last dose, will be subject to the Mandatory Testing Program until such time as they are fully vaccinated.

Exemptions

Exemptions to the mandatory vaccination requirement will be considered for employees with underlying medical conditions that make receiving the COVID-19 vaccine unsafe for them and employees with sincerely held religious beliefs and practices that prohibit them from receiving a COVID-19 vaccine.

Employees seeking a medical or religious exemption to vaccination must submit their request by 5:00 p.m. on September 27, 2021 using the appropriate exemption form (see attached Exhibit A – Medical Exemption Request Form and Exhibit B – Religious Exemption Request Form). The completed Exemption Request Form must be scanned and uploaded through the UCS Employee Web Portal located at https://portal.nycourts.gov/ExemptionCOVID19Vaccination/. Instructions for uploading these Forms will be available on the Portal, which will "go live" on September 20, 2021.

No exemption requests will be considered unless they are fully completed on the appropriate form and filed through the Portal.

Applications for medical exemptions must be accompanied by documentation from the employee's medical health professional. Applications for religious exemption must contain the employee's written, signed and notarized statement detailing the religious basis for his/her objection to COVID-19 vaccination and the religious principle(s) that guide the objections to COVID-19 vaccination. Employees submitting an exemption application will be notified, in writing, of the decision [which, if granted, will include the expiration date of the exemption] or, that more information is needed in order to consider the employee's request for an exemption, as soon as practicable after their request is filed.

Employees who timely file a request for exemption will be subject to the Mandatory Testing Program while their request is being reviewed. Those employees who are granted a medical or religious exemption to vaccination will be subject to the Mandatory Testing Program during the specified exemption period.

An employee who receives written notice that their request for medical or religious exemption was denied will have ten workdays from the date of the notification to submit proof of having received

at least one dose of a COVID-19 vaccine and must otherwise comply with the provisions set forth in "Proof of Vaccination" above.

Non-Compliance

Employees who fail to comply with the provisions of this Policy are prohibited from reporting to work and may be considered absent without authorization for which approval to charge accruals may be denied, until they have taken steps to remedy their non-compliance. Continued failure to comply may result in disciplinary action, up to and including termination.

Additional Information

Non-judicial personnel are reminded that they are eligible for Excused Leave and/or Compensatory Time for becoming vaccinated (up to 3.5 hours per appointment upon submission of the requisite proof of same).

Non-judicial personnel must continue to follow all other safety and operational protocols.

We are deeply grateful to our staff for their collaboration in the ever-evolving guidance surrounding COVID-19 and their commitment to keeping themselves, their colleagues and all who conduct business in our facilities safe.

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Edwina Mendelson
Hon. Norman St. George
Administrative Judges
NYC Chief Clerks
District Executives
OCA Directors
Chief Michael Magliano

EXHIBIT A

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR MEDICAL EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting qualified individuals with underlying medical conditions. Upon request, UCS will grant a medical exemption for individuals with underlying medical conditions that makes receiving the COVID-19 vaccine unsafe for them. To request a medical exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form; have a licensed health care provider, not related to the applicant, whose specialty is appropriate to the associated medical condition, prepare the **Certification of Licensed Health Care Provider** form; and return the form, along with any such additional documentation as may be necessary to support the request, to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Medical exemptions are intended for those with underlying medical conditions that render the COVID-19 vaccine unsafe for them.

For the current year, requests for medical exemptions must be received by September 27, 2021. The expiration of the exemption will be based upon the Certification of the Licensed Health Care Provider, which date will be noted in the UCS Approval, but shall be no longer than one year. Individuals may request to renew exemptions upon the expiration of such Approval, but annually no later than October 1 for each year.

Individuals who have timely submitted a request for a medical exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for medical exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals whose requests are denied are permitted to reapply if new documentation and information is later available in support of a new application for medical exemption.

If a judge or employee refuses to provide the information necessary for UCS to review and consider the request for medical exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Medical exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the **Verification and Accuracy** statement;
- Have your Licensed Health Care Provider complete the **Certification of Licensed Health Care Provider** form;
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

In some cases, UCS will need to obtain additional information and/or documentation about your medical condition in support of the request for medical exemption.

STATEMENT OF MEDICAL CONDITION
FOR EXEMPTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I sincerely certify that my medical condition makes it unsafe for me to receive a COVID-19 vaccination, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I certify that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my current medical condition.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.
	I authorize my licensed health care provider to provide UCS with personal health information about my medical condition related to this request for exemption from COVID-19 vaccination and to provide UCS with a Certification of Licensed Health Care Provider. I acknowledge that I may be required to provide additional medical documentation in support of my request for medical exemption.

Verification and Accuracy

I verify that the information I am submitting in support of my request for a medical exemption to the COVID-19 vaccination is true, accurate, and complete to the best of my knowledge. I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Name: _____

Primary Email: _____

Phone: _____

Signature: _____

Date: _____

New York State Unified Court System

Certification of Licensed Health Care Provider

For Request for Medical Exemption from COVID-19 Vaccine

The New York State Unified Court System (UCS) requires all employees to be fully vaccinated for COVID-19.

My patient, _____, is submitting a request for a medical exemption from this COVID-19 vaccination requirement.

In support of that medical exemption, my patient voluntarily requests and authorizes me to prepare this Form, and to provide UCS with personal health information about the patient's medical condition(s) related to this request, including supporting documentation regarding the medical reason that vaccination is contraindicated to the patient's medical condition(s) that render the vaccine unsafe for the patient at this time.

Option 1 - Allergy

☐ A documented history of a severe allergic reaction to any component of a COVID-19 vaccine or to a substance that is cross-reactive with a component. Please specify the allergic components of **ALL** the following vaccines.

NOTE: since egg-free vaccine is available, history of an egg allergy will not be accepted as an allergic reaction to a COVID component.

- Moderna - List the allergic component(s):
- Pfizer - List the allergic component(s):
- Janssen/Johnson & Johnson - List the allergic component(s):

☐ A documented history of a severe allergic reaction after a previous dose of the COVID-19 vaccine. Please indicate to which vaccine the patient had a reaction, the date of the vaccine, and the severe reaction:

- Moderna - Date of Vaccine & Reaction:
- Pfizer - Date of Vaccine & Reaction:
- Janssen/Johnson & Johnson - Date of Vaccine & Reaction:

Option 2 - Physical Condition/Medical Circumstance

☐ The physical condition or medical circumstances of the patient that render vaccination unsafe or contraindicate COVID-19 vaccination are as follows:

Probable time the physical condition or medical circumstances is expected to render vaccination unsafe or contraindicated to COVID-19 vaccination is: _____

Health Care Provider Certification

I certify that the information contained herein is true, accurate, and complete and I support the patient's request for a medical exemption from the COVID-19 vaccine requirement of UCS.

Health Care Provider Name: _____

Practice/Specialty: _____

License Number: _____

Address: _____

Telephone Number: _____

Email: _____

Signature: _____

Date: _____

EXHIBIT B

STATE OF NEW YORK - UNIFIED COURT SYSTEM

REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION

The Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19. However, to further its commitment to provide equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation, UCS complies with all laws protecting religious beliefs and practices. Upon request, UCS will grant a religious exemption for sincerely held religious beliefs and practices which prohibit a judge or employee from receiving a COVID-19 vaccine. To request a religious exemption from UCS' COVID-19 vaccination requirement, judges and employees must complete this Form and return it, along with the "Affidavit of Religious Objection to COVID-19 Vaccination", "Personal Statement Form" and such additional documentation as may be necessary/appropriate to support the request to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

For the current year, requests for religious exemptions must be received by September 27, 2021. If approved, the exemption will remain in effect through September 30, 2022. Individuals with approved exemptions may request to renew exemptions annually no later than October 1 for each year.

Individuals who have timely submitted a request for a religious exemption and are awaiting approval, and individuals with an approved exemption, will be required to comply with COVID-19 testing and other preventive requirements, as determined by UCS. In the event of an outbreak, individuals with exemptions may be excluded from entering UCS courts/facilities as may be necessary to protect all unvaccinated members of the UCS community, until the outbreak is declared to be over.

UCS will carefully review all requests for religious exemptions, however, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

If a judge or employee refuses to provide the information necessary for UCS to review and consider their request for religious exemption, they will be required to comply with UCS COVID-19 Vaccination mandate.

Religious exemption process:

- Read the CDC COVID-19 Vaccine Information;
- Complete the **Affidavit of Religious Objection to COVID-19 Vaccination;**
- Complete the **Personal Statement Form;**
- Sign before a Notary Public;
- Attach such additional documentation about your faith/beliefs which are contrary to vaccination, including but not limited to the COVID-19 vaccination, as necessary/appropriate to support your request; and
- Submit all completed documents to https://portal.nycourts.gov/ExemptionCOVID19Vaccination/.

Incomplete submissions will not be reviewed -- be sure all forms and documentation are submitted at one time.

Your request must be accompanied by the signed and notarized "**Affidavit of Religious Objection to COVID-19 Vaccination**" and "**Personal Statement Form**" (attached below). In some cases, UCS will need to obtain additional information and/or documentation about your sincerely held religious practice(s) or belief(s). UCS may need to discuss the nature of your religious belief(s)/practice(s) with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exemption.

(Proceed to Following Pages for Affidavit of Religious Objection to COVID-19 Vaccination and Personal Statement)

AFFIDAVIT OF RELIGIOUS OBJECTION TO COVID-19 VACCINATION

1. I understand that the Unified Court System ("UCS") requires all judges and employees to be fully vaccinated against COVID-19 and to provide documented proof of same by September 27, 2021.

2. I swear or affirm that vaccination is contrary to my sincerely held religious beliefs and practices, and that my objections to this vaccination are not based solely on grounds of personal concerns, preferences, or beliefs; or inconvenience; or intellectual beliefs or philosophy.

3. I understand that by initialing each statement below I swear or affirm that each statement is true and accurate, and I accept the conditions set forth:

	I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.
	I understand and assume the risks of non-vaccination.
	I understand that as I am not vaccinated, in order to protect my own health and the health of the UCS community, I will comply with COVID-19 testing requirements and other preventive guidance as may be established by UCS.
	I understand that in the event of a COVID-19 outbreak or threatened outbreak, I may be temporarily excluded from UCS courts/facilities. I agree to comply with these restrictions and accept responsibility for communicating with supervisors and/or human resources administrators, as appropriate to allow compliance with health and safety requirements for unvaccinated individuals.
	Should I contract COVID-19, I will immediately report it to UCS and comply with UCS policy regarding isolation, quarantine and/or other safety precaution procedures, including recommendations by my health care provider, and I will leave and/or not return to any UCS court/facility until such time as my health care provider certifies that I am not a risk to the health or safety of others.
	I acknowledge that I have read the CDC COVID-19 Vaccine Information.
	I understand and agree to comply with and abide by all UCS COVID-19 policies and procedures.
	I understand that, if approved, this exemption is provisional based on the current UCS COVID-19 vaccination policy and is subject to change based on any necessary amendments to UCS COVID-19 policies.
	I understand that this exemption may be revoked, and I may be subject to appropriate administrative, remedial and/or disciplinary action if any of the information I provided in support of this exemption is false.

Request for Religious Exemption from COVID-19 Vaccine Personal Statement Form

In the space below, please provide a personal written and signed statement detailing the religious basis for your vaccination objection, explaining why you are requesting this religious exemption, the religious principle(s) that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination. Attach additional pages, if needed, along with any documentation you submit in support of your request.

I swear or affirm that my **Affidavit of Religious Objection to COVID-19 Vaccination** and my **Request for Religious Exemption from COVID-19 Vaccine Personal Statement** above are true, accurate, and complete, and that I have a sincerely held religious belief and practice that prohibits me from receiving the COVID-19 vaccination.

I acknowledge that false statements intentionally made herein may be punishable as class A misdemeanor under PL 210.05.

Signature: _____ Date: _____

Print Name: _____

Email: _____

Phone: _____

Sworn and subscribed before me

This ____ day of_____, 2021

_____

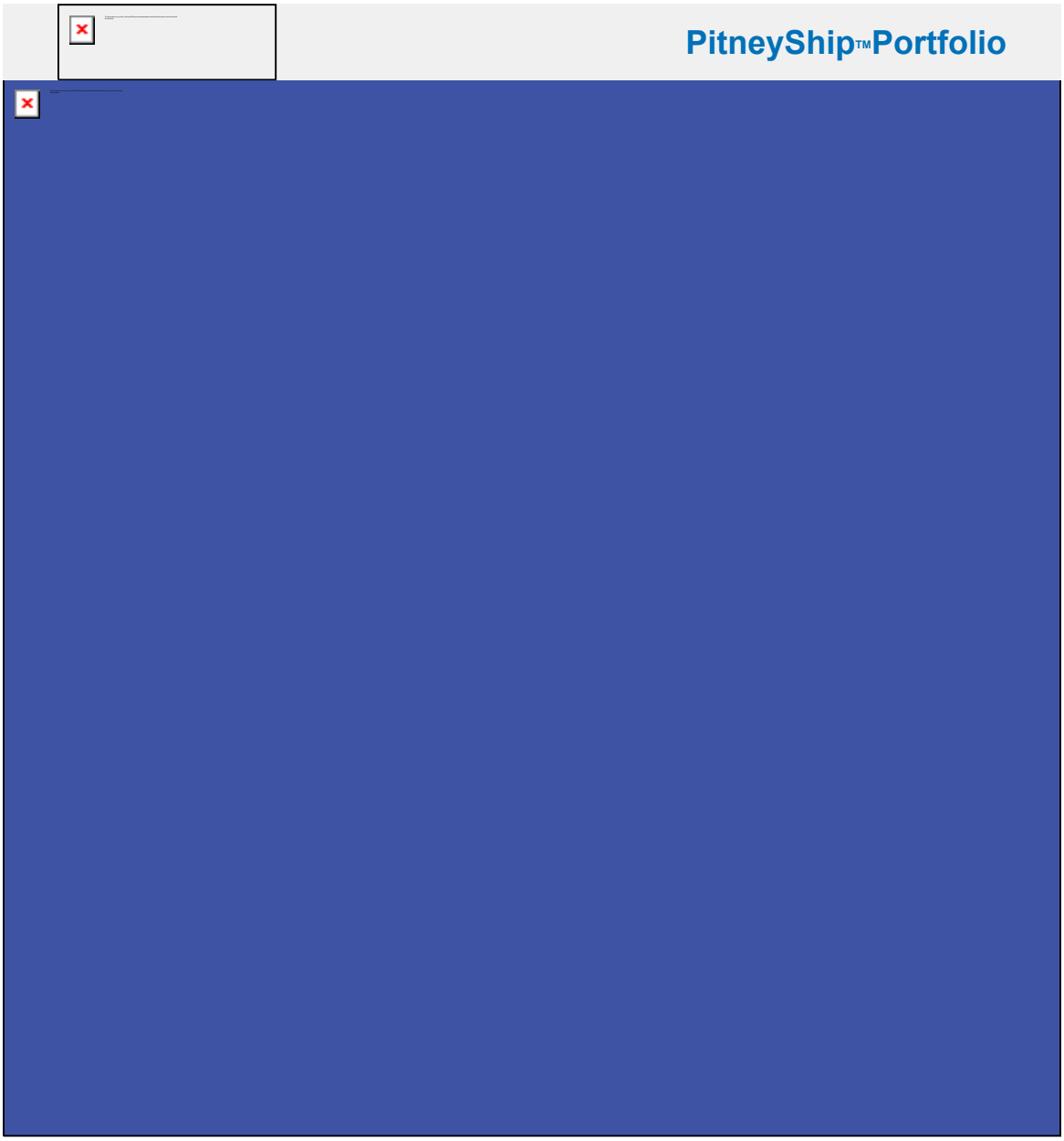
Notary Public

My commission expires: _____

Laura Soto

From: no-reply@sendpro360.pitneybowes.com
Sent: Tuesday, April 19, 2022 7:38 AM
To: Laura Soto; Laura Soto; Laura Soto
Subject: Shipment Delivered

Follow Up Flag: Follow up
Flag Status: Flagged



Shipment Delivered - USPS111146763198977

This shipment has been sent using PitneyShip™Portfolio

TRACKING NUMBER	DELIVERED ON
USPS 9402809202121597614608	2022-04-13

Delivered on	2022-04-13
Delivery Location	62 Civic Center Plz Poughkeepsie NY 12601-2411 US
Shipped on	2022-04-12
Carrier	USPS
Service	Priority Mail®

For more information, click on the tracking number above.



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