UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DAVID EVAN SCHORR,

Plaintiff,

-- against --

A. GAIL PRUDENTI, in her official capacity as Chief Administrative Judge of the Courts of New York State; **JORGE DOPICO**, in his official capacity as Chief Counsel of the First Judicial Department Disciplinary Committee in New York State; **ERNEST J. COLLAZO**, in his official capacity as Chairman of the First Judicial Department Disciplinary Committee in New York State.

Defendants.

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AMENDED COMPLAINT

Civil Action No.
15-cv-4054 (RWS) (FM)

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff David Schorr ("**Plaintiff**"), proceeding *pro se*, hereby submits this amended complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) and alleges the following claims against A. Gail Prudenti ("**Chief Administrative Judge Prudenti**"), Jorge Dopico ("**Mr. Dopico**"), and Ernest J. Collazo ("**Mr. Collazo**") (collectively, "**Defendants**"):[1]

[1] Defendants moved to dismiss the original complaint on July 17, 2015.

NATURE OF THE CASE

1. Plaintiff has been admitted to practice law in the State of New York since 2000. Until the events discussed below, Plaintiff had never been the subject of any action or investigation by any disciplinary or licensing body, or any other body, in New York State or any other jurisdiction.

2. Plaintiff represented himself *pro se* in his divorce action, Schorr v. Schorr, Index No. 305587/2011 (Sup. Ct. N.Y. Cnty.) (the "**Divorce Action**"), before New York County Supreme Court Justice Deborah A. Kaplan ("**Justice Kaplan**").[2]

3. At a court appearance on October 9, 2013, Plaintiff found himself facing, *inter alia*, an imminent threat of assault and false arrest, by Justice Kaplan and her court personnel. In self-defense and out of necessity, Plaintiff recorded the appearance on his iPhone. As discussed, *infra*, the First Judicial Departmental Committee has tacitly acknowledged the truthfulness of Plaintiff's assertion that he made the recording in self-defense and out of necessity.

4. As a result of the ensuing assault and attempted false arrest of Plaintiff, and after she subsequently testified falsely about the incident under oath, Justice Kaplan was forced to recuse herself from the Divorce Action, and was also removed from consideration as the next Civil Administrative Judge for New York County. Shortly thereafter, Justice Kaplan was effectively terminated as a matrimonial judge altogether for ordering, *inter alia*, the assault and battery of another litigant.

5. Defendants retaliated against Plaintiff for, *inter alia*, exercising the following constitutionally protected actions: (i) stating truthfully that Justice Kaplan had attempted to orchestrate his false arrest; (ii) initiating an action in New York's Court of Claims regarding the

[2] The matter is ongoing before Justice Ellen F. Gesmer. As discussed, *infra*, Justice Kaplan was forced to recuse herself due to the events discussed herein.

incident; (iii) causing Justice Kaplan to be deposed in the Court of Claims action, (iv) stating truthfully that Justice Kaplan had given false testimony at her Court of Claims deposition; and (v) bringing about Justice Kaplan's recusal in the Divorce Action.

6. As part of that retaliation, Defendants caused a disciplinary investigation to be initiated against Plaintiff by the First Judicial Departmental Disciplinary Committee (the "**Disciplinary Committee**"). During the course of the investigation, Plaintiff complied fully with all Disciplinary Committee directives, requests and deadlines.

7. After informing Plaintiff that it had "completed" its investigation, the Disciplinary Committee issued Plaintiff with a Private Admonition based on two false grounds.

8. The Disciplinary Committee admonished Plaintiff falsely for "covertly introducing a private recording system into the courtroom." However, as discussed, *infra*, Plaintiff did not bring his iPhone – the "private recording system" in question – "covertly" into the courtroom. iPhones and other smartphones are permitted, as a matter of course, in the courtrooms of New York County Supreme Court.

9. In addition, the Disciplinary Committee admonished Plaintiff falsely for "deliberately disregard[ing]" and perpetrating an "intentional violation" of New York court rule 22 NYCRR § 29.1, which prohibits, *inter alia*, recording court proceedings without prior authorization. However, as the Disciplinary Committee itself tacitly acknowledged, *infra*, Plaintiff had recorded the court appearance in self-defense and out of necessity, *i.e.*, because he faced an imminent threat of assault, false arrest and falsification of the record. Having tacitly conceded the truthfulness of Plaintiff's explanation for the October 9 Recording, its assertion that Plaintiff had "deliberately" violated 22 NYCRR § 29.1 was false.

10. After Plaintiff rejected the admonishment – thereby causing it to be automatically vacated – and exercised his right to demand formal proceedings before a referee, the Disciplinary Committee purported to "reopen" its "completed" investigation in contravention of, *inter alia*, its own Rules and Procedures. Pursuant to its "reopened" investigation, the Disciplinary Committee demanded that Plaintiff sit for an examination under oath – something that it had never asked him to do during its actual investigation – and threatened to serve him with a subpoena and, in the words of its Principal Staff Attorney, "move to suspend" him from the practice of law if Plaintiff did not comply with that subpoena. Following this threat, Plaintiff filed his original complaint in the above-captioned action. To date, the Disciplinary Committee has not served Plaintiff with a subpoena, or instituted formal proceedings against Plaintiff regarding the two false charges in its vacated admonishment.

11. Plaintiff seeks, *inter alia*, declaratory relief that it would be unlawful for the Disciplinary Committee to: (i) reopen its completed investigation against Plaintiff; (ii) require Plaintiff by subpoena or otherwise to sit for an examination under oath pursuant to that "reopened" investigation; and (iii) bring formal charges against Plaintiff for the two false charges in its vacated admonishment.

JURISDICTION AND VENUE

12. Plaintiff alleges deprivation of rights secured by the First, Fifth and Fourteenth Amendments of the United States Constitution as protected by 42 U.S.C. § 1983. Jurisdiction is vested in this Court by 28 U.S.C. §§ 1331, 2201 and 2202.

13. Venue is proper in this District under 28 U.S.C. § 1391(b) on the grounds that some or all of the conduct at issue took place in the Southern District of New York.

14. This Court is authorized to grant Declaratory Judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 implemented through Rule 57 of the Federal Rules of Civil Procedure.

15. This Court is authorized to grant Plaintiff's prayer for relief regarding costs, including a reasonable attorney's fee, under 42 U.S.C. §1988.

THE PARTIES

16. Plaintiff is a citizen of the United States of America and a resident of New York, New York.

17. A. Gail Prudenti is the Chief Administrative Judge of the Courts of New York State. (According to the New York Law Journal, the Honorable Lawrence Marks will replace Chief Administrative Judge Prudenti on July 31, 2015.) In her official capacity, she is charged with overseeing the administration and operation of the statewide court system – the New York Unified Court System. Chief Administrative Judge Prudenti has the power and authority to prevent and enjoin improper disciplinary proceedings against attorneys admitted to practice law in New York State. In all her actions and omissions alleged herein, Chief Administrative Judge Prudenti acted under color of state law.

18. Jorge Dopico and Ernest J. Collazo are, respectively, the Chief Counsel and Chairman of New York's First Judicial Department Disciplinary Committee. In their official capacities, they are charged with overseeing the administration and operation of the First Judicial Department's Disciplinary Committee. They have the power and authority to prevent and enjoin improper disciplinary proceedings against attorneys admitted to practice law in New York State. In all their actions and omissions alleged herein, Mr. Dopico and Mr. Collazo acted under color of state law.

FACTUAL ALLEGATIONS

iPhones And Other Smartphones Are Permitted In The Courthouse And Courtrooms of New York County Supreme Court

19. On information and belief, all individuals are permitted, as a matter of course, to bring their iPhones and other smartphones into the courthouse and courtrooms of New York County Supreme Court. On the day in question, *infra*, as on all other court appearances before Justice Kaplan, Plaintiff brought his iPhone into the courtroom in the normal course. Other than a prohibition on making or receiving phone calls in the courtroom, Plaintiff is not aware of any other prohibitions on the use of smartphones in the courtroom. In Plaintiff's experience, individuals openly and routinely check emails and texts on their smartphones while in the courtroom – even while sitting at counsels' table. Having been in Justice Kaplan's courtroom on many occasions, Plaintiff has never seen any individual reprimanded for such practices.

20. Other than his iPhone, which Plaintiff did not bring "covertly" into the courtroom, Plaintiff did not bring – covertly or otherwise – any "private recording system" into Justice Kaplan's courtroom on the day in question, *infra*, or on any other day.

Plaintiff Records The Court Appearance At Issue In Self-Defense And Out Of Necessity

21. As the Disciplinary Committee itself subsequently tacitly acknowledged, *infra*, Plaintiff recorded the court appearance at issue in self-defense and out of necessity.

22. Prior to the day in question, *infra*, Plaintiff had participated in numerous court appearances before Justice Kaplan and/or her law clerks. Other than on the day in question, *infra*, Plaintiff has never before or since recorded any court proceedings – whether in Justice Kaplan's courtroom or in any other courtroom in New York County Supreme Court, or in any other courthouse.

23. On October 9, 2013, a conference was held in Justice Kaplan's courtroom in New York County Supreme Court (the "**October 9 Conference**") to discuss, ostensibly, custody and access issues concerning the parties' minor child.

24. At the outset of the October 9 Conference, the following individuals attended: Justice Kaplan; Plaintiff David Schorr; Plaintiff's wife Bari Yunis Schorr; Louis Newman of *Newman & Denny P.C.*, counsel for Plaintiff's wife ("**Mr. Newman**"); Andrew Coyle, assistant law clerk to Justice Kaplan ("**Mr. Coyle**"); Jeffrey Katz, Court Officer to Justice Kaplan ("**Officer Katz**")[3]; Peter Cedeño ("**Mr. Cedeño**"), Attorney for the Child; and a court reporter.

25. While Plaintiff was waiting in the gallery of Justice Kaplan's courtroom, Justice Kaplan ordered the court reporter to leave the courtroom and to take her equipment with her. The court reporter complied with Justice Kaplan's request, which left no one to record and/or transcribe the October 9 Conference.

26. Immediately thereafter, Justice Kaplan directed Mr. Cedeño to leave the courtroom. Justice Kaplan stated to Mr. Cedeño that the parties would first be discussing financial issues, which was not the intent or purpose of the October 9 Conference when it was originally calendared by Justice Kaplan. Thus, Justice Kaplan left no neutral third-party observer in the courtroom with the exiting of Mr. Cedeño.

27. By way of background, Justice Kaplan exhibited extreme antipathy towards Plaintiff throughout the Divorce Action. This antipathy became particularly intense in the time leading up to the October 9 Conference. For example, the prior court conference had originally been scheduled for July 31, 2013, but had been cancelled because Plaintiff's father had died unexpectedly on that day. Despite knowing that Plaintiff's father had just died, Justice Kaplan

[3] Officer Katz has been Justice Kaplan's court officer for the past six years since she first became a matrimonial judge in New York County Supreme Court.

intentionally issued a decision on August 1, 2013 – the day after Plaintiff's father's death – that was designed to require and did require Plaintiff to engage immediately in extensive and unnecessary motion practice. In addition, while Plaintiff's father was on his deathbed, Justice Kaplan denied a request by Plaintiff that he be permitted to submit a reply affidavit without a notary stamp. Though Plaintiff specifically undertook to have the affidavit notarized at a later date, Justice Kaplan denied the request, which required Plaintiff to leave his father's deathbed in order to get the affidavit notarized.

28. By October 9, 2013, the acrimony had reached such a level that Plaintiff feared that Justice Kaplan might engage in behavior designed to severely distort the record. Furthermore, during numerous other proceedings before Justice Kaplan, Plaintiff felt threatened by Officer Katz who, on multiple occasions, had attempted to physically intimidate Plaintiff at Justice Kaplan's behest. Thus, when Justice Kaplan asked both the court reporter and Mr. Cedeño to exit the courtroom – rather than sit in the empty courtroom gallery – Plaintiff became so concerned for his safety and protection (as well as for preservation of the record with no court reporter or impartial witness present) that he determined he had no choice but to record the off-the-record proceeding using his iPhone (hereinafter the "**October 9 Recording**").[4]

29. With the departure of the court reporter and Mr. Cedeño, Justice Kaplan's courtroom (including the gallery) was completely empty with the exception of Plaintiff, Plaintiff's wife, Mr. Newman, Mr. Coyle, Officer Katz and Justice Kaplan.

30. Rather than conduct the October 9 Conference herself in this very contentious divorce action, or have her Principal Law Clerk do so, Justice Kaplan assigned her newly-appointed and inexperienced 28-year-old assistant law clerk, Mr. Coyle, to conduct the

[4] Given the circumstances, Plaintiff was compelled to record the October 9 Conference held off-the-record in order to protect himself.

conference. At the time in question, Mr. Coyle had been Justice Kaplan's assistant law clerk for only two or three weeks.

31. Rather than discuss the "financial issues" in the Divorce Action, as had been stated to Mr. Cedeño by Justice Kaplan, Mr. Coyle instead focused on two procedural issues regarding two pending motions.

32. Justice Kaplan's courtroom does not have separate counsel tables as found in traditional courtrooms. Rather, the courtroom contains one large conference table / counsels' table where the parties, their counsel and, at times, Justice Kaplan and her law clerks, sit.

33. At the October 9 Conference, the seating configuration around counsels' table was as follows: Mr. Newman sat across from Mr. Coyle, Plaintiff's wife sat in the chair immediately to Mr. Newman's right and Plaintiff sat two chairs over from Mr. Newman's left (*i.e.*, there was an empty chair between Plaintiff and Mr. Newman).

34. Justice Kaplan watched the conference while standing near the bench for a little more than five minutes as if waiting for something to happen. She then went to her robing room directly behind the bench, but left the door to her robing room open. Officer Katz stood approximately nine feet in front of Plaintiff to Plaintiff's left and remained there until his ensuing assault, discussed *infra*.

35. For the first 16 minutes and 38 seconds of the October 9 Conference,[5] the exchanges between Plaintiff and Mr. Newman were characterized by Officer Katz as "a little tense," but "nothing eventful … occurred."[6] During this time, Officer Katz did not move from

[5] Incorrectly estimated by Officer Katz, at his deposition, as approximately 10 minutes. However, as per the October 9 Recording, Officer Katz did not purport to find anything objectionable in Plaintiff's conduct until 16:39 minutes into the conference.

[6] Ex A, 6/11/2014 Dep. Tr. of Officer Jeffrey Katz ("Katz Dep.") at 14:2-3; *see also* Katz Dep. Tr. at 17:10-15 (stating that Plaintiff did nothing "objectionable" and did not violate court decorum in any way).

his position approximately nine feet in front of Plaintiff.[7] He did not make any physical movements of any kind, kept his facial expressions neutral at all times and did not speak.

36. 16 minutes and 48 seconds into the October 9 Conference, Officer Katz lunged at Plaintiff suddenly and with extreme force.[8] He went from standing nine feet away from Plaintiff to within one foot (by Officer Katz's own admission)[9] of Plaintiff's person in a matter of seconds and without any warning of any kind.

37. Officer Katz later characterized his conduct as an "intervention," but no such "intervention" was necessary. For an eight-second period between the elapsed time of 16:39 and 16:47 of the October 9 Conference, Plaintiff spoke in a slightly elevated voice in response to assertions proffered from Plaintiff's wife and her counsel.[10] At no time during this elapsed period did Plaintiff cause a disturbance of any kind in the courtroom, nor did Plaintiff pose a threat to anyone in attendance. In fact, passionate disagreements between counsel, particularly in matrimonial actions, are commonplace.

38. While Officer Katz stood over Plaintiff after lunging at him, Plaintiff remained calm and motionless as reflected on the audio recording, and remained fully seated at all times.

39. After it was clear that Officer Katz's abrupt encroachment and continued invasion of Plaintiff's personal space was not going to cause Plaintiff to react, Officer Katz suddenly lunged at Plaintiff again as if to physically grab and attack Plaintiff. Upon information and

[7] Mr. Newman estimated that Officer Katz stood five to nine feet away from Plaintiff. (Ex. D, 7/24/2014 Dep. Tr. of Louis Newman ("Newman Dep.") at 10:15-17.) Mr. Coyle estimated "six to eight feet away." (Ex. E, 6/12/2014 Dep. Tr. of Andrew Coyle ("Coyle Dep.") at 23:9-10.) It is Plaintiff's belief that Officer Katz stood no closer than eight feet away from him, otherwise Plaintiff would have immediately objected and raised issue with the court.

[8] Officer Katz's assault can plainly be heard on the aforementioned recording. A forensic audio expert who prepared a report, discussed *infra*, measured Officer Katz's voice at 20 decibels above normal speaking range. *See* Ex. B, Forensic Audio Report of Paul Ginsburg at 8.

[9] *See* Ex. A, Katz Dep. Tr. at 68:11-15.

[10] Plaintiff's voice "peaks" during the October 9 Conference can be seen in a chart to the Forensic Audio Report. *See* Ex. B, Forensic Audio Report at Plot 4.

belief, Officer Katz's assault on Plaintiff was an attempt to provoke a reaction and instigate an altercation in order to falsely arrest and detain Plaintiff. As indicated by Plaintiff telling Officer Katz "Please!" – as in "Please Stop!" – which is heard at the 16 minute 54 second mark on the October 9 Recording, Officer Katz's actions placed Plaintiff in immediate fear of bodily harm.[11]

40. On information and belief, Justice Kaplan then phoned the courthouse's central command security office from the robing room to report Plaintiff for purportedly causing a disturbance (even though the October 9 Recording shows that the only person she heard causing any kind of disturbance was Officer Katz). Thereafter, at 17 minutes and 54 seconds into the October 9 Conference,[12] Lieutenant Christopher Mazzella ("**Lt. Mazzella**") entered Justice Kaplan's courtroom. He remained there in front of the gallery until the conclusion of the proceeding. Other than being present in Justice Kaplan's courtroom after Officer Katz's assault on Plaintiff, Lt. Mazzella did not involve himself in the proceeding. However, Lt. Mazzella later testified that, from the time he entered the courtroom until Plaintiff was escorted to the elevator bank, he saw nothing more than Plaintiff sitting in his chair at counsels' table with a "frown" on his face, without any trace of agitation of any kind.[13] Lt. Mazzella summarized what he had seen and heard as a "non-incident."[14]

41. It is inconceivable that Plaintiff went from the screaming out-of-control individual at 16 minutes and 48 seconds into the proceeding later described by Officer Katz to the entirely calm and controlled individual seen by Lt. Mazzella a little more than one minute later at 17 minutes and 54 seconds into the proceeding.

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[11] *See* Ex. C, October 9 Recording.

[12] *See id*.

[13] *See* Ex. F, 6/11/2014 Dep. Tr. of Lt. Christopher Mazzella ("Mazzella Dep.") at16:4-10, 17:23-18:2.

[14] *See id*. at 26:11.

42. At approximately 18 minutes and 21 seconds into the proceeding,[15] Justice Kaplan entered the courtroom from her robing room. She proceeded to end the October 9 Conference falsely citing Plaintiff's "disruptive" behavior. Shortly thereafter, Plaintiff was escorted out of the courtroom, down the hallway and to the elevator bank by Officer Katz. While being escorted down the hallway to the elevator bank, Plaintiff was in plain view of Mr. Cedeño.

The Forensic Audio Report Of The October 9 Recording

43. Plaintiff retained forensic audio expert Paul Ginsburg to review the October 9 Recording and to issue a report (the "**Forensic Audio Report**"). A copy of Mr. Ginsberg's report is attached hereto as Exhibit B.

44. Mr. Ginsburg has served as a forensic audio consultant and expert for numerous federal agencies, including the Central Intelligence Agency, the Federal Bureau of Investigation and the Department of Homeland Security. He has been a commentator of CNN and Fox News, and has participated in over 1,750 trials in 36 Federal Districts. Mr. Ginsburg has been qualified as an expert and given testimony in litigation on more than 175 occasions.

45. After reviewing the October 9 Recording, Mr. Ginsburg concluded "to a reasonable degree of scientific certainty" that:

- Plaintiff's October 9 Recording is authentic and continuous and that it is a fair and accurate recording of the proceedings as they occurred;
- Plaintiff never raised his voice above normal conversational tone and volume;
- The only individual observed on the October 9 Recording to be yelling, screaming or otherwise raising his voice above normal conversational level was Officer Katz; and

[15] *See* Ex. C, October 9 Recording.

- At the time of the alleged "outburst" by Plaintiff (the time preceding 17 minutes elapsed in the proceeding), Plaintiff did not flail or wave his arms, or make any pronounced physical motions or movements of any kind, as alleged by Officer Katz.[16]

(*See* Ex. B, Forensic Audio Report at 8.)

Plaintiff's Basis For His Belief That Justice Kaplan Orchestrated His Assault And Attempted False Arrest At The October 9 Conference

46. At a court appearance before Justice Kaplan on July 1, 2014, Plaintiff stated his belief that Justice Kaplan had attempted to orchestrate his false arrest at the October 9 Conference. Plaintiff based his belief on, *inter alia*, the following facts and circumstances:

- Justice Kaplan's unusual and unorthodox behavior of sending the court reporter and Mr. Cedeño out of the courtroom just prior to the commencement of the October 9 Conference;

- Justice Kaplan's placing her newly appointed and extremely inexperienced assistant law clerk in charge of the conference;

- The unwarranted conduct of Justice Kaplan's Court Officer, Jeffrey Katz;

- Lt. Mazzella's entering the courtroom "out of the blue" to focus on Plaintiff;[17]

[16] Officer Katz alleged, somewhat incredibly, that in the span of the eight-second "outburst," Plaintiff reached over an empty chair between himself and Mr. Newman (while continuing to remain seated (Katz Dep. Tr. at 19:15-18)), violently flailed his arms and subsequently began "pointing" his finger at Mr. Newman's face. (*See* Ex. A, Katz Dep. Tr. at 19:15-18 and 24:22-25.) Mr. Ginsburg's analysis of the October 9 Recording directly contradicts Officer Katz's assertions.

[17] Lt. Mazzella testified that he came into the courtroom because a Lt. O'Malley (who Plaintiff has been unable to locate as a Court Officer) told Lt. Mazzella that he heard "loud voices" emanating from the courtroom and that Lt. Mazzella should "check it out." (*See* Ex. F, Mazzella Dep. Tr. at 10:3-4.) Lt. Mazzella's recitation of events is suspect. First, had Lt. O'Malley heard disturbing noises emanating from Justice Kaplan's courtroom, he would have himself immediately gone into the courtroom to investigate. It defies logic that a Court Officer would return to the central command room and ask another officer to check out a disturbance.

Second, Mr. Cedeño – who was sitting outside in the hallway during the entire proceeding – testified that he never heard any noises, much less loud voices, coming from Justice Kaplan's courtroom. (*See* Ex. G, 6/24/2014 Dep. Tr. of Peter Cedeño ("Cedeño Dep.") at 7:13-15.)

Finally, Lt. Mazzella's behavior was suspect as he was focused solely upon Plaintiff when entering the courtroom. (*See* Ex. C, October 9 Recording at 18:00.) Lt. Mazzella had not heard the purported loud voices himself. (*See* Ex. F, Mazzella Dep. Tr. at 10:12-13.) Also, nowhere does Lt.

- Justice Kaplan – who was not present during the majority of the October 9 Conference, and in particular not present during Officer Katz's assault on Plaintiff – terminating the conference due to Plaintiff's "disruptive" behavior. The October 9 Recording and Forensic Audio Report make clear that the only person Justice Kaplan could have possibly heard screaming was Officer Katz – not Plaintiff; and

- Officer Katz's contrived performance in escorting Plaintiff out of the courtroom, down the hallway and to the elevator bank.

47. Justice Kaplan refused to recuse herself from the case for months, instead effectively bringing the Divorce Action to a halt and prejudicing the conclusion of the Divorce Action.

Plaintiff Sues Officer Katz In New York's Court Of Claims
And Seeks To Depose Justice Kaplan

48. On or about October 18, 2013, Plaintiff initiated an action against the State of New York (the "**State**") in New York's Court of Claims alleging that Officer Katz assaulted him at the October 9 Conference ("**Court of Claims Action**").[18]

49. On or about December 1, 2013, Plaintiff served the State with a Notice of Deposition, listing those State witnesses that Plaintiff requested be deposed prior to trial in the Court of Claims Action. A copy of the Notice of Deposition is attached hereto as Exhibit H. Because Justice Kaplan was a witness to the events in question at the October 9 Conference, Plaintiff sought to depose her in the Court of Claims Action.

50. On December 19, 2013, Judge Faviola A. Soto ordered that Justice Kaplan be deposed in the Court of Claims Action. The State then proceeded to attempt to prevent Plaintiff

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Mazzella describe who Lt. O'Malley stated was shouting in Justice Kaplan's courtroom. Knowing nothing about the proceeding, why did Lt. Mazzella focus on Plaintiff? Upon information and belief, Lt. Mazzella entered the courtroom at Justice Kaplan's direction after having made a call from her robing room, thereby strongly suggesting that the altercation was pre-planned and orchestrated.

[18] Schorr v. State of New York, Index No. 123362 (N.Y. Ct. of Claims 2013).

from taking Justice Kaplan's testimony. First, the State sought re-argument of Judge Soto's order. (*See* Ex. I.) Next, the State filed – some five months after the filing of the Court of Claims Action – a motion to dismiss alleging various technical deficiencies in Plaintiff's complaint. Judge Soto denied the State's motion *sua sponte*. (*See* Ex. J.)

51. On June 26, 2014, Judge Soto again ordered Justice Kaplan to sit for her deposition in the Court of Claims Action. In doing so, Judge Soto made clear to the State's attorney, Assistant Attorney General John M. Hunter ("**AAG Hunter**"), that Justice Kaplan would be held in contempt of court if she continued to refuse to appear.

52. In spite of Judge Soto's directives, at a hearing in the Divorce Action on July 1, 2014, Justice Kaplan denied having any knowledge of Judge Soto's order that she sit for a deposition in the Court of Claims Action. (*See* Ex. K, July 1, 2014 Divorce Action Tr. at pp. 32-33.)

53. Despite being given every courtesy by Judge Soto, including granting the State's request to prevent the videotaping of the deposition and limiting the scope of questioning, Justice Kaplan continued to delay sitting for her deposition for months. It was not until September 19, 2014 that Plaintiff was finally able to depose Justice Kaplan in the Court of Claims Action.

Justice Kaplan Gives Extensive False Testimony Under Oath
At Her Court Of Claims Deposition

54. At her deposition in the Court of Claims Action on September 19, 2014, Justice Kaplan knowingly gave false testimony under oath regarding the October 9 Conference. Specifically, Justice Kaplan gave false testimony concerning Plaintiff's behavior that conflicts with Plaintiff's October 9 Recording, the Forensic Audio Report and the testimony of other witnesses.

55. Plaintiff's October 9 Recording indicated that Justice Kaplan entered her courtroom from her robing room at approximately 18 minutes and 21 seconds into the October 9 Conference. This was 27 seconds after Lt. Mazzella entered Justice Kaplan's courtroom at 17 minutes and 54 seconds into the proceeding. This was confirmed by both Justice Kaplan and Lt. Mazzella at their depositions in the Court of Claims Action.[19]

56. Whereas Lt. Mazzella saw nothing more than Plaintiff's sitting in his chair at counsels' table without a trace of agitation of any kind, Justice Kaplan testified to seeing and hearing something entirely different:

SCHORR: Your Honor, can you tell me how it is that you came to exit the robing room?

KAPLAN: I heard you screaming, Mr. Schorr.

SCHORR: How loudly was I screaming, Judge Kaplan?

KAPLAN: Very loud.

SCHORR: For how long?

KAPLAN: I heard you screaming for, I don't know, at least three or four minutes before I came out of the robing room.

SCHORR: Just so we're clear, when you say screaming, you mean that in the true dictionary sense of the word?

HUNTER: It was asked and answered.

SCHORR: What was I screaming?

KAPLAN: I'm going to sue you, I'm gonna sue you now, I'm gonna sue your for slander. Words to that effect.

SCHORR: Anything else?

[19] *See* Ex. F, Mazzella Dep. Tr. at 15:12-15; Ex. L, Dep. Tr. of Justice Deborah Kaplan ("Kaplan Dep.") at 25:15-18 ("SCHORR: Was [Lt.] Mazzella in the [court]room at that point? KAPLAN: Lieutenant Mazzella was in the [court]room when I came out.")

KAPLAN: I came out, Mr. Schorr.

SCHORR: What did you see when you came out?

KAPLAN: I saw you turn . . . towards Mr. Newman, who was standing next to you. You were pointing your finger and your hand in his face and you were screaming at him that you were going to sue him for slander, that you paid your child support. Words to that effect. That he was lying. Your face was red and contorted.

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SCHORR: Was I sitting?

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KAPLAN: You were standing.

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SCHORR: Where was I standing in relation to the other parties?

KAPLAN: Next to Mr. Newman.

SCHORR: How close?

KAPLAN: I just told you, you were right next to Mr. Newman.

(Ex. L, Kaplan Dep. Tr. at pp. 19-25.)

57. Justice Kaplan further testified under oath that:

KAPLAN: [Lieutenant] Mazzella said, is this conference over, and you were still screaming, and it was clear to me that you couldn't be clear thinking because you were so angry and yelling and I need you to be clear thinking and focused when I want to talk to you about your son, and you were not, and the lieutenant said, is this conference over, and I said, yes, and then you started to yell towards me, why is this – You're smiling at me again, Mr. Schorr and making faces.

SCHORR: I am because you're committing perjury.

HUNTER: Don't sit here and make – If you say it again or anything like that, we're going to end the deposition. You understand?

SCHORR: Okay. Yes. Please continue, Your Honor.

KAPLAN: I said we're ending the conference, because I wanted you to be clear thinking and be able to talk about matters, your son. You kept yelling and I said, the conference is over – Keep making faces, Mr. Schorr. I said the conference was over and you started screaming why, and I said, because you're being disruptive, or words to that effect, and then I said we would send you another date and an Order when to appear, and then I exited the courtroom and returned to the robing room and went upstairs to my office.

(*See id*. at 30-31.)

58. Justice Kaplan's testimony was directly at odds with Lt. Mazzella's testimony, as demonstrated below:

- Whereas Lt. Mazzella – and all of the other witnesses – testified that Plaintiff was fully seated at all times, she saw Plaintiff "standing" (*see* Ex. L, Kaplan Dep. at 23:21);[20]

- Whereas Lt. Mazzella testified that he saw nothing more than Plaintiff sitting in his chair, she testified that she saw Plaintiff "pointing [his] finger and [his] hand in [Mr. Newman's face]" *(see* Ex. L, Kaplan Dep. at 20:20-21); and

- Whereas Lt. Mazzella testified that Plaintiff was entirely calm without any trace of agitation of any kind, she testified that Plaintiff's face was "red and contorted" (*see* Ex. L, Kaplan Dep. at 20:24-25).

59. Justice Kaplan's testimony also directly conflicted with the October 9 Recording and the Forensic Audio Report. At her deposition under oath, Justice Kaplan falsely stated that:

- She heard Plaintiff "screaming" while she was in the robing room, which is directly in conflict with the Forensic Audio Report's finding that Plaintiff never raised his voice above normal conversational level (*see* Ex. L, Kaplan Dep. at 19:11);

- The eight-second "outburst" by Plaintiff lasted "for at least three to four minutes" (*see* Ex. L, Kaplan Dep. at 19:16-18);

[20] The only individual who testified that Plaintiff was standing was Justice Kaplan. All other individuals testified that Plaintiff was sitting during the entire conference. (*See, e.g.*, Ex. A, Katz Dep. Tr. at 68:16-19, Ex. E, Coyle Dep. Tr. at 79:9-11.)

- She saw Plaintiff screaming at Mr. Newman, which is inconsistent with the October 9 Recording (which contains no trace of any such screaming) and Lt. Mazzella's testimony (*see* Ex. L, Kaplan Dep. at 20:21-22);

- Plaintiff was "screaming" when Lt. Mazzella asked whether the October 9 Conference was over, which is inconsistent with the October 9 Recording and Lt. Mazzella's testimony (*see* Ex. L, Kaplan Dep. at 30:12-13); and

- Plaintiff "started screaming" after she stated that the proceeding "was over," which again is inconsistent with the October 9 Recording and Lt. Mazzella's testimony (*see* Ex. L, Kaplan Dep. at 30:20-21).

60. Accordingly, Justice Kaplan's testimony at her deposition in the Court of Claims Action was materially and knowingly false. Not only did Justice Kaplan testify to seeing and hearing things that she never saw or heard, but her testimony was directly at odds with the October 9 Recording, the Forensic Audio Report, and the testimony in particular of Lt. Mazzella.

Justice Kaplan Recuses Herself "Sua Sponte" From The Divorce Action

61. Following her deposition on September 18, 2014, Plaintiff gave Justice Kaplan the October 9 Recording as well as the Forensic Audio Report. Immediately thereafter, Justice Kaplan issued an order *sua sponte* recusing herself from the Divorce Action. Chief Administrative Judge Prudenti was well aware of Justice Kaplan's recusal in the Divorce Action and the circumstances that led to it.[21] Upon information and belief, Justice Kaplan was pressured by Chief Administrative Judge Prudenti and other administrative judges in the New York Unified Court System to recuse herself from sitting on the matter.

[21] For instance, as made clear by the dossier prepared by Chief Administrative Judge Prudenti and sent by her to the First Judicial Department Disciplinary Committee (*see infra*).

In Tacit Recognition Of The Truthfulness Of Plaintiff's Allegations, Justice Kaplan Is Removed From Consideration As Civil Administrative Judge In New York County

62. Upon information and belief, on or around the time she was deposed in the Court of Claims Action and when she recused herself from the Divorce Action, Justice Kaplan was in line to replace Justice Sherry Klein Heitler as the Civil Administrative Judge for New York County. On information and belief, as a result of Justice Kaplan's misconduct and knowingly false testimony in the Court of Claims Action, Justice Kaplan did not receive the position. On March 2, 2015, Justice Peter H. Moulton – rather than Justice Kaplan – was appointed to replace Justice Klein Heitler as Civil Administrative Judge of New York County.

In Tacit Recognition Of The Truthfulness Of Plaintiff's Allegations, Chief Administrative Judge Prudenti Effectively Terminates Justice Kaplan As A Matrimonial Judge

63. On April 30, 2015, a little more than four (4) months after Judge Soto's decision in the Court of Claims Actions (discussed *infra*) another complaint was filed in New York's Court of Claims against Officer Katz and Justice Kaplan for assault and battery, false arrest/imprisonment and civil conspiracy. *See* Zappin v. State, Claim No. 126063 (N.Y. Ct. of Claims 2015), attached hereto as Exhibit V.

64. In great detail, the claimant (also an attorney representing himself *pro se* before Justice Kaplan)[22] alleged that, on April 24, 2015 after the conclusion of a hearing before Justice Kaplan, Officer Katz, acting at Justice Kaplan's behest and direction, "shoved [him] in [his] back causing him to stumble forward," "grabbed and twisted [his] arm with extreme force and pulled [him] to the front of the courtroom," pushed him through a door into a small area, "grabbed [him] and slammed [him] against the wall" and kept him falsely confined for approximately 20

[22] Except, ironically, on the day in question when he was represented by counsel.

minutes in a tiny hallway near the jury room. Officer Katz refused to permit the claimant to use his cell phone, speak with counsel or leave the courthouse.[23]

65. As a result of the attack, the claimant alleged that he "suffered bruising and swelling to his hip, ribs and arm as well as large cuts to his elbow." These injuries were depicted in photographs attached to the complaint. The claimant also extensively documented the injuries in medical records.

66. The Attorney General received Mr. Zappin's complaint (filed April 30, 2015), on May 6, 2015. Immediately thereafter, Justice Kaplan was removed from the Zappin matrimonial case and, on information and belief, prohibited from hearing any new cases.[24] She was then stripped of 90% of her caseload and, on June 3, 2015, it was officially announced that she had been transferred to a strictly administrative and non-supervisory position as a "Coordinating Judge" doing a "comprehensive review" of family violence and elder abuse cases.

67. On information and belief, Chief Administrative Judge Prudenti effectively terminated Justice Kaplan as a matrimonial judge due to her misconduct in the Schorr and Zappin cases. Putting aside that the New York State Attorney General's office acknowledged this during the ongoing Zappin matter, it is inconceivable that Chief Administrative Judge Prudenti would have terminated Justice Kaplan as a matrimonial judge based upon the mere filing of Mr. Zappin's complaint had she not believed in the veracity of Plaintiff's prior allegations.

[23] Upon information and belief, Justice Kaplan has an intense personal animus towards this *pro se* litigant due to his filing of an Article 78 proceeding against her. Justice Kaplan has gone so far as to interfere in judicial proceedings involving the litigant's mother in West Virginia.

[24] For instance, based on a review of eCourts, Justice Kaplan appears to have held no preliminary conferences from May 7, 2015 onwards.

Chief Administrative Judge Prudenti Orders Mr. Dopico To Retaliate Against Plaintiff By Opening A Disciplinary Investigation For, *Inter Alia*, Speaking Out Against Justice Kaplan

68. Upon information and belief, immediately following Justice Kaplan's recusal, Justice Kaplan and Chief Administrative Judge Prudenti acted in concert to put together a package of documents purporting to document Plaintiff's commission of various acts of "attorney misconduct" to present to the Disciplinary Committee (the "**Schorr Dossier**").[25] Upon information and belief, Chief Administrative Judge Prudenti and Justice Kaplan prepared the Schorr Dossier in retaliation for, *inter alia*, Plaintiff: (i) stating on the record and during the course of the Court of Claims Action that Justice Kaplan had attempted to orchestrate his false arrest by Officer Katz at the October 9 Conference; (ii) stating that Justice Kaplan had knowingly made materially false statements under oath during her deposition in the Court of Claims Action; (iii) initiating an action in the Court of Claims; (iv) causing Justice Kaplan to be deposed in the Court of Claims Action; and (v) bringing about Justice Kaplan's recusal in the Divorce Action as a result of bringing to light the aforementioned misconduct by Justice Kaplan.

69. On October 20, 2014 – less than one month after Justice Kaplan's recusal from the Divorce Action – John W. McConnell, Chief Administrative Judge Prudenti's counsel, submitted the Schorr Dossier to Mr. Dopico for submission to the Disciplinary Committee. The

[25] The Schorr Dossier consists of the following documents: (i) letter, dated September 23, 2014, from Plaintiff to Administrative Judge Klein Heitler with Chief Administrative Judge Prudenti, Justice Kaplan, and Messers Newman and Cedeño copied, (ii) letter, dated October 6, 2014, from AAG Hunter to Justice Ellen F. Gesmer with Plaintiff and Mr. Newman copied, (iii) a copy of the Court of Claims Action, dated October 18, 2013, (iv) letter, dated October 29, 2013, from Plaintiff to Administrative Judge Klein Heitler, with Justice Kaplan, Inspector General Sherrill Spatz and Mr. Newman copied, (v) Transcript of Schorr v. Schorr court appearance, dated July 1, 2014, (vi) Transcript of Justice Kaplan's Court of Claims deposition, dated September 19, 2014, (vii) letter from Plaintiff to Justice Kaplan, dated September 19, 2014 with Messers. Newman, Cedeño and AAG Hunter copied, (viii) letter from Plaintiff to Justice Kaplan, dated September 24, 2014, with Bari Yunis Schorr and Messers. Newman, Cedeño and AAG Hunter copied, (ix) miscellaneous press clippings, and (x) miscellaneous Divorce Action court decisions.

Schorr Dossier was accompanied by a letter from Mr. McConnell (on the joint letterhead of Chief Administrative Judge Prudenti and Mr. McConnell) requesting that Mr. Dopico take "whatever further steps you [Mr. Dopico] may deem appropriate" "relating to the conduct of attorney David E. Schorr." (*See* Ex. M.) The McConnell letter and Schorr Dossier were subsequently sent to Plaintiff by the Disciplinary Committee on or about November 20, 2014.

70. An "Index to Documents" accompanied the Schorr Dossier and set forth various false insinuations and inferences of attorney misconduct, the crux of which was that Plaintiff had committed attorney misconduct by: (i) stating that Justice Kaplan had knowingly made materially false statements under oath during her deposition in the Court of Claims Action; (ii) stating at an appearance before Justice Kaplan in the Divorce Action on July 1, 2014 that Justice Kaplan had attempted to orchestrate Plaintiff's false arrest at the October 9 Conference; and (iii) recording the October 9 Conference – in self-defense to Justice Kaplan's extremely suspicious actions – without authorization in apparent violation of 22 NYCRR 29.1. (*See* Ex. N, Index to Documents.)

Chief Administrative Judge Prudenti Appears to Have Improperly Influenced The Outcome Of The Court of Claims Action

71. Upon information and belief, from at least the time Justice Kaplan recused herself from the Divorce Action, Chief Administrative Judge Prudenti began pressuring Judge Soto, who was presiding over the Court of Claims Action, to rule against Plaintiff at the trial that took place on November 10, 2014.

72. Prior to the trial, Judge Soto had shown little patience for the State's conduct, such as its refusal to offer Justice Kaplan for deposition. As discussed *supra*, Judge Soto had *sua sponte* denied the State's motion to dismiss Plaintiff's complaint and had threatened to hold Justice Kaplan in contempt of court.

73. In a 28-page decision dated December 16, 2014, Judge Soto ruled that Plaintiff had "failed to prove his claim [for assault] by a preponderance of the evidence." (*See* Ex. O, Dec. 16, 2014 Decision in Court of Claims Action at 27.) This was despite the fact that the October 9 Recording was entered into evidence and clearly demonstrated that Officer Katz had threatened immediate bodily harm to Plaintiff as signified by Plaintiff telling Officer Katz "Please!" – as in "Please Stop!" (Ex. C, October 9 Recording at 16:54.)

74. It was not Judge Soto's ultimate decision that is troubling. Rather, it is the reasoning in the decision that would seem to suggest that Judge Soto was unduly pressured to dispose of the Court of Claims Action by Chief Administrative Judge Prudenti. For instance, although Judge Soto admitted into evidence the October 9 Recording, the transcript of the October 9 Recording and the Forensic Audio Report, Judge Soto then excluded the evidence "as the fruit of the poisonous tree" in her decision despite the fact that the State never made or preserved that objection at any point in the Court of Claims Action. (*See* Ex. P, Court of Claims Trial Tr. at pp. 3-5, 15, 30-31, 36; *see also* Ex. O, Dec. 16, 2014 Decision in Court of Claims Action at 22.) Judge Soto's declaration that the October 9 Recording was "fruit of the poisonous tree" coincided with the allegation in the Schorr Dossier that the October 9 Recording constituted attorney misconduct.

75. Furthermore, Chief Administrative Judge Prudenti's influence over the Court of Claims Action decision was evident in Judge Soto's finding that Officer Katz was a "credible" witness. (*See* Ex. O, Dec. 16, 2014 Decision in Court of Claims Action at 27.) Officer Katz's testimony in the Court of Claims Action was directly at odds with the October 9 Recording. For example, at his deposition in the Court of Claims Action, Officer Katz made multiple false statements of material fact. Among other things, he testified that: (i) he "intervened" on at least

two occasions at the October 9 Conference – rather than once as demonstrated by the October 9 Recording – in response to two "outbursts," and that he had given Plaintiff an initial warning to "calm down," which is not contained on the October 9 Recording; and (ii) Plaintiff had "screamed" – first for 5 to 10 seconds, and then several minutes later, for "twenty seconds," which is contrary to the October 9 Recording and the Forensic Audio Report that Plaintiff's voice was never raised above normal conversational level. Officer Katz repeated this false testimony to Judge Soto at trial in the Court of Claims Action. (*See* Ex. P, Court of Claims Trial Tr. at pp. 42-46.)

76. Upon information and belief, Chief Administrative Judge Prudenti exerted undue influence and coercion on Judge Soto to manufacture an outcome favorable to the State in the Court of Claims Action. Upon information and belief, Chief Administrative Judge Prudenti threatened to remove Judge Soto from sitting by designation on the Criminal Term in Bronx County, or otherwise negatively impact Judge Soto's case assignments on the Criminal Term, if Judge Soto did not dismiss the Court of Claims Action.

In Compliance with Chief Administrative Judge Prudenti's Effective Order, The Disciplinary Committee Opens A "*Sua Sponte*" Disciplinary Investigation Of Plaintiff

77. In correspondence to Plaintiff dated November 13, 2014[26] and November 20, 2014,[27] Mr. Dopico informed Plaintiff that the Disciplinary Committee had commenced a disciplinary investigation as a result of the Schorr Dossier and accompanying letter from Chief Administrative Judge Prudenti's office.

[26] *See* Ex. W, Nov. 13, 2014 Ltr. to D. Schorr.

[27] *See* Ex. X, Nov. 20, 2014 Ltr. to D. Schorr.

78. The Disciplinary Committee effectively adopted the Schorr Dossier as a "Complaint" and directed Plaintiff, in a letter dated November 20, 2014, to respond with a signed answer within 20 days of the date of the letter.

Plaintiff's Response To The Disciplinary Committee

79. Over the course of the Disciplinary Committee's investigation, Plaintiff complied fully with all Disciplinary Committee directives, requests and deadlines. During the investigation, the Disciplinary Committee never asked Plaintiff to sit for an examination under oath and never served him with any subpoenas.

80. Within the deadline set by the Disciplinary Committee, and in accordance with its directives, Plaintiff provided the Disciplinary Committee with a 20-page answer ("**Answer**"). In Plaintiff's Answer, he set forth, *inter alia*, the evidentiary basis for his statements that Justice Kaplan had attempted to orchestrate his false arrest at the October 9 Conference and that she had made materially false statements at her deposition in the Court of Claims Action. (*See* Ex. Q, Dec. 10, 2014, Schorr Answer to Disciplinary Committee.) In response to, and in compliance with, a request from the Disciplinary Committee,[28] Plaintiff also provided a Supplemental Answer.[29]

81. With respect to the allegation that Plaintiff's October 9 Recording had been "unauthorized," Plaintiff noted that the recording was legally justified by the defense of necessity. Specifically, Plaintiff stated that:

> The recording was necessitated by the imminent threat of assault, false arrest and falsification of the record. But for that imminent threat, I would never have made the recording.

[28] See Ex. Y, Feb. 25, 2015 Ltr. to D. Schorr.

[29] *See* Ex. R, Mar. 25, 2015, Supplemental Schorr Answer to Disciplinary Committee.

> I recorded the conference because I believed that my self-protection required it. The sincerity of that belief is made clear by the fact that I had never before or since recorded any court proceeding. And as indicated by subsequent events,[30] that belief proved to be warranted and reasonable.
>
> Very respectfully, I also note that the recording prevented the very "injury" that 22 NYCRR § 29.1 presumably seeks to protect against, i.e., falsification of the record. But for the recording, the false testimony of the other witnesses would have stood as the "record" of what occurred that day.

(*See* Ex. R, Mar. 25, 2015, Supplemental Schorr Answer to Disciplinary Committee at p. 2); *see also* Ex. Q, Schorr Answer to Disciplinary Committee at p. 16).

The Disciplinary Committee Privately Admonishes Plaintiff

82. In a letter dated April 17, 2015, the Disciplinary Committee informed Plaintiff that it had "completed" its investigation and proceeded to issue Plaintiff with a Private Admonition based on two false grounds.[31]

The Disciplinary Committee Admonishes Plaintiff Falsely For "Covertly Introducing A Private Recording System Into The Courtroom"

83. The Disciplinary Committee admonished Plaintiff falsely for "covertly introducing a private recording system into the courtroom." However, as discussed, *supra*, Plaintiff had done no such thing. There was nothing "covert" about Plaintiff's bringing his iPhone into the courtroom. iPhones and other smartphones are permitted, as a matter of course, in the courtrooms of New York County Supreme Court.

[30] "Including a court officer so threatening my physical safety that I was forced to tell him "Please!" as in "Please stop!" Transcript at 16."

[31] *See* Ex. S, Apr. 17, 2015 Ltr. of Admonition to D. Schorr.

Although The Disciplinary Committee Tacitly Acknowledges That Plaintiff Recorded The October 9 Conference In Self-Defense And Out Of Necessity, It Admonishes Plaintiff Falsely For "Deliberately" Violating A Court Rule Prohibiting Recordings Without Prior Authorization

84. In addition, the Disciplinary Committee admonished Plaintiff falsely for having "deliberately disregarded" and perpetrated an "intentional violation" of New York court rule 22 NYCRR § 29.1, which prohibits, *inter alia*, recording court proceedings without prior authorization. However, as the Disciplinary Committee itself tacitly conceded, *infra*, Plaintiff had made the October 9 Recording in self-defense and out of necessity, *i.e.*, because he faced an imminent threat of assault, false arrest and falsification of the record. Having tacitly conceded the truthfulness of Plaintiff's explanation for the October 9 Recording, its assertion that Plaintiff had "deliberately" violated 22 NYCRR § 29.1 was false.

85. In its April 17, 2015 letter, the Disciplinary Committee did not dispute Plaintiff's assertion that he had faced an imminent threat of assault, false arrest and falsification of the record. Furthermore, the Disciplinary Committee did ***not*** find Plaintiff guilty of – much less make any mention of or reference to – any of the other "misconduct" alleged by Chief Administrative Judge Prudenti or Justice Kaplan in the Schorr Dossier, including the proffered assertions that Plaintiff had committed attorney misconduct by alleging that Justice Kaplan had attempted to orchestrate his false arrest and given materially false testimony under oath. Accordingly, the Disciplinary Committee's Private Admonition represented, *ipso facto*, a tacit admission and acknowledgment that Plaintiff's statements regarding Justice Kaplan's judicial misconduct had – at the very least – a substantial basis in fact.[32]

[32] Had the Disciplinary Committee believed that Plaintiff's statements regarding Justice Kaplan's misconduct and knowingly false testimony were not grounded in fact, there is absolute certainty that it would have at least moved to suspend Plaintiff from the practice of law and more likely to disbar Plaintiff. *See, e.g.*, *Matter of Dinhofer*, 257 A.D.2d 326 (1st Dept. 1999) (Suspending attorney from practice of law for three months for calling judge "corrupt" on telephone conference call, deeming it "derogatory," "undignified" and "inexcusable.")

86. The Disciplinary Committee's letter of Private Admonition further expressly stated Plaintiff's legal rights regarding the Private Admonition. Specifically, it stated that:

> Pursuant to the Committee's Rules and Procedures, you may within thirty (30) days, request reconsideration of this Admonition or demand that formal proceedings be instituted before a referee. 22 NYCRR 605.8
>
> If you demand that formal proceedings be instituted, this Admonition will be vacated and formal charges will be presented. The referee who conducts the hearing will not be bound by this Admonition, but may take any appropriate action authorized by the Committee's Rules and the Rules of the Appellate Division, First Judicial Department, including a reprimand or referral to the Court for possible public discipline.

(Ex. S, Apr. 17, 2015 Ltr. of Admonition to D. Schorr.)

Plaintiff Rejects The Disciplinary Committee's Admonition And Requests Formal Proceedings Before A Referee

87. After a great deal of thought, Plaintiff rejected the Private Admonition and requested that formal proceedings be instituted before a referee pursuant to the Disciplinary Committee's letter of April 17, 2015 and 22 NYCRR 605.8. Putting aside the falsity of the allegations, Plaintiff believed that the Disciplinary Committee's refusal to address his defense of necessity regarding the October 9 Recording demanded that a formal hearing be held. Specifically, he responded to the Disciplinary Committee on May 6, 2015 stating:

> Very respectfully, I note that the Committee implicitly acknowledged, *inter alia*, that I faced, on the day in question [October 9, 2013], an imminent threat of assault, false arrest and falsification of the record by the Court and its personnel. Under such circumstances, I find myself unable to accept the Committee's admonition.

(Ex. T, May 6, 2015 Ltr. from D. Schorr to Disciplinary Committee.)

The Disciplinary Committee Purports To "Reopen" Its Investigation Rather Than Institute Formal Proceedings Based On Plaintiff's Rejection Of The Admonition

88. Despite the Disciplinary Committee's statement of Plaintiff's legal rights in its April 17, 2015 letter of Private Admonition that formal proceedings before a referee would be instituted, the Disciplinary Committee's Principal Staff Attorney Kevin Doyle informed Plaintiff via e-mail that, "[g]iven your rejection of the admonition and your request for a formal proceeding, the Committee has re-opened its investigation." (Ex. U, May 14, 2015 at 4:12 p.m., E-mail from K. Doyle to D. Schorr.) The Disciplinary Committee's purported "re-opening" of the investigation, rather than simply bringing formal proceedings against Plaintiff for the October 9 Recording, appears to be designed to enable the Disciplinary Committee to go on a fishing expedition – in violation of its own Rules and Procedures – in retaliation against Plaintiff for, *inter alia*, (i) exercising his legal right to reject admonishment, (ii) his statements against Justice Kaplan, (iii) deposing Justice Kaplan in the Court of Claims Action, and (iv) causing Justice Kaplan's recusal from the Divorce Action. To date, Plaintiff has not received any letter or other formal communication from the Disciplinary Committee stating that it intends to reopen the investigation against Plaintiff.

89. Mr. Doyle also requested that Plaintiff sit for an examination under oath pursuant to the Disciplinary Committee's "re-opening" of the investigation. (*See* Ex. U, May 14, 2015 at 3:41 p.m., E-mail from K. Doyle to D. Schorr.) It is important to note that during the course of its investigation prior to the April 17, 2015 letter of Private Admonition, the Disciplinary Committee never requested that Plaintiff sit for an examination under oath.

90. When Plaintiff respectfully pointed out to Mr. Doyle that the April 17, 2015 letter of Private Admonition, as well as 22 NYCRR 605.8, contains nothing about the Disciplinary Committee having the authority to "re-open" a "completed" investigation or subject Plaintiff to

an examination under oath (other than requiring Plaintiff to testify at a formal hearing before a referee) after completion of an investigation, Mr. Doyle stated that:

> I will only tell you that, should you require a subpoena to appear here for examination under oath, you will be served with one. Should you not honor the subpoena, I will move to suspend you for failure to cooperate with the Committee.

(Ex. U, May 14, 2015 at 4:48 p.m., E-mail from Doyle to D. Schorr.)

91. As of the date hereof, the Disciplinary Committee has yet to bring formal charges against Plaintiff for his "deliberate" violation of 22 NYCRR § 29.1, or for "covertly introducing a private recording system into the courtroom."

FIRST CLAIM FOR RELIEF
(42 U.S.C. § 1983 and First Amendment)

92. Plaintiff repeats and re-alleges by reference paragraphs 1 through 91 as if fully set forth herein.

93. Plaintiff engaged in the following constitutionally protected conduct and speech: (i) stating that Justice Kaplan had attempted to orchestrate his false arrest by Officer Katz at the October 9 Conference; (ii) stating that Justice Kaplan had knowingly made materially false statements under oath during her deposition in the Court of Claims Action; (iii) initiating an action in the Court of Claims; (iv) causing Justice Kaplan to be deposed as a witness in the Court of Claims Action; (v) bringing about Justice Kaplan's recusal in the Divorce Action as a result of bringing to light the aforementioned judicial misconduct and materially false testimony; and (vi) exercising his right to demand that he have an impartial judge preside over his Divorce Action.

94. Acting under color of state law, Defendants are engaged in retaliating against Plaintiff for his constitutionally protected conduct and speech by, *inter alia*, seeking to have the Disciplinary Committee: (i) unlawfully "reopen" its completed investigation against Plaintiff; (ii)

subject Plaintiff to an unlawful examination under oath pursuant to that "reopened" investigation; and (iii) bring formal charges against Plaintiff for protecting himself against, *inter alia*, assault and false arrest, by making the October 9 Recording.

95. In addition, and as part of their retaliation, Defendants are seeking to put an unconstitutional construct on 22 NYCRR 29.1 by purporting to assert, as per the Disciplinary Committee's Private Admonition, that recordings are prohibited in courtrooms even when done solely to protect against, *inter alia*, imminent assault and false arrest by court personnel. Such a construct would, not only under the facts and circumstances of this case be unlawfully retaliatory, but result in an unreasonable time, place and manner restriction on Plaintiff's First Amendment right to gather information where he faces, *inter alia*, imminent assault and false arrest by State employees.

96. Retaliating against Plaintiff for his constitutionally protected conduct and speech is, at the very least, a substantial or motivating factor behind Defendants' unlawful actions against Plaintiff.

97. Plaintiff will suffer irreparable harm to his law license and ability to practice law if relief is not granted.

SECOND CLAIM FOR RELIEF
(42 U.S.C. § 1983 and Fifth and Fourteenth Amendments)

98. Plaintiff repeats and re-alleges by reference paragraphs 1 through 97 as if fully set forth herein.

99. At the October 9 Conference, Plaintiff faced imminent harm by State employees (namely Justice Kaplan and Officer Katz). The State's creation of that danger, much less its failure to protect Plaintiff against that state-created danger, forced Plaintiff to take his own measures to protect himself, *i.e.*, by recording the conference on his iPhone.

100. The attempt by Defendants, under color of state law, to use 22 NYCRR 29.1 to punish Plaintiff for exercising his constitutional right of self-defense against a state-created danger violates due process.

101. Further, due process requires that the doctrine of necessity apply both to 22 NYCRR 29.1, and to the making of the recording.

102. Additionally, Defendants are violating due process by punishing Plaintiff for (i) exercising his right to reject the Private Admonition in favor of formal hearings before a referee, and (ii) having asserted his due process right to have an impartial judge preside over his Divorce Action.

103. Also, assuming *arguendo*, that it is somehow the case that the Disciplinary Committee's Rules and Procedures do permit the "reopening" of a completed investigation, then Defendants violated due process by falsely notifying Plaintiff in the Private Admonition that the Disciplinary Committee's only recourse upon Plaintiff rejecting Private Admonition would be the bringing of formal charges against him only with respect to 22 NYCRR 29.1 and the October 9 Recording.

104. The actions of Defendants reflect an arbitrary abuse of government power and deliberate indifference to the rights of Plaintiff and/or shock the conscience.

105. Plaintiff will suffer irreparable harm to his law license and ability to practice law if relief is not granted.

JURY TRIAL DEMANDED

Plaintiff demands a jury on all issues that may be properly tried by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff David Schorr prays that the Court:

(a) Render Declaratory Judgment that it is unlawful for Defendants to: (i) reopen the completed investigation against Plaintiff; (ii) subject Plaintiff to an examination under oath pursuant to any such "reopened" investigation; (iii) issue a subpoena to Plaintiff ordering him to sit for such examination under oath; (iv) bring formal charges against Plaintiff for the October 9 Recording and/or for his "covertly introducing" his smartphone into a New York County Supreme Court courtroom; and (v) bring any "new" investigation, *sua sponte* or otherwise, with respect to any purported attorney misconduct covered by the completed investigation or touched upon in any way by, or in, the Schorr Dossier;

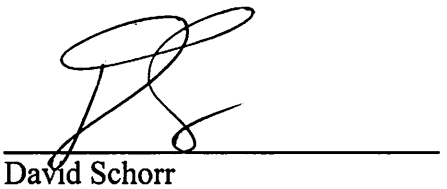
(b) That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order;

(c) Award Plaintiff the reasonable costs and expenses of this action, including attorney's fees, in accordance with 42 U.S.C. §1988; and

(d) Order such other relief that the Court deems just and reasonable.

Dated: July 30, 2015

Respectfully submitted,



David Schorr
Pro se
115 E. 87th Street, 6A
New York, NY 10128
(917) 756-5983
deschorr@schorr-associates.com