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Matter of Court's Discharge of Its Responsibilities Pursuant to 22 NYCRR § 100.3 (D) (2) (3)

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2023 NY Slip Op 23258
Decided on August 23, 2023
Supreme Court, Kings County
Maslow, J
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In the Matter of the Court's Discharge of Its Responsibilities Pursuant to 22 NYCRR § 100.3 (D) (2), (3).

Index No XXXXX

Aaron D Maslow, J

Introduction

This decision and order is written in fulfillment of this Court's obligations pursuant to the Rules of Judicial Conduct pertaining to disciplinary responsibilities of judges, as set forth in the Rules of the Chief Administrator of the Courts, located at 22 NYCRR 100 3 (D)

This Court regrets that it had to expend time on the within matter, but nonetheless was obligated to do so in light of what transpired in the case at bar on one of its Motion Calendar Days To provide background to the incident, this Court herewith explains that its practice with respect to motions since it began serving as a Justice of the Supreme Court in Kings County effective January 1 of this year has been to prepare in advance This Court's two law clerks have assisted a great deal in this endeavor by preparing bench memoranda In the days preceding a Motion Calendar Day, this Court reviews the memoranda and the papers submitted by the proponents and opponents of the motions Research as necessary into case law is performed A lot of time is expended in becoming familiar with the motions in advance The foregoing has taken place concomitantly with this Court's responsibilities to prepare for trials and preside over them

Earlier this year, this Court expanded upon this practice by occasionally directing attorneys appearing before it on selected motions to conference them with a law clerk so as to flesh out the arguments of the respective parties After these conferences were held in the Court's robing room, the law clerk would apprise this Court of the parties' arguments which they would be making in court The attorneys were then given the opportunity to address this Court de novo, and the motions were determined either from the bench or after having reserved decision

When this Court was advised by supervisory personnel within the court system that it was traditional for judges to retain law school students as judicial interns for the summer, this Court undertook to do so, with two goals in mind One goal was to have additional staff who could assist in preparing bench memoranda This would somewhat relieve the burden faced in preparing the motions This Court's other purpose in mind was to mentor future attorneys and provide them with the opportunity to experience litigation under the supervision of itself and the law clerks from the behind-the-scenes perspective of a judge's chambers Thus, this Court [*2]retained several law students (and a college student applying for law school) as interns for this summer In retaining the interns, this Court abided by principles of diversity by encouraging applications from population sectors who historically were underrepresented in the legal profession Advocating for diversity has been an undertaking of this Court even in the decades before assuming the bench

Having been a practicing attorney for over 40 years prior to commencing service as a judge, this Court has personally observed discrimination, bias, and mistreatment of various constituent groups of attorneys in the legal profession It stepped in personally as it saw necessary This included advocating for women attorneys who were instructed to return to work prematurely after having given birth, gay and lesbian attorneys about whom pejorative remarks were made, Jewish and Muslim attorneys who were not being provided with kosher and halal food respectively at organized events, Jewish attorneys who could not be present for events scheduled for religious holidays, and an attorney of the Baha'i faith who needed to leave early due to sunrise-to-sunset fasting in the spring As an Accredited Provider of Continuing Legal Education, this Court presented no-fee Continuing Legal Education courses about accommodations for and tolerance of religious and cultural minorities in arbitration and about discrimination against and harassment of women in the legal profession

With the foregoing background information, this Court now relates what transpired in the instant case

Incident Under Review

With the benefit of having additional staff this summer in the person of the interns who were retained, this Court determined that it would be useful for them to conduct pre-motion argument conferences together with a law clerk for the purpose of reviewing the issues being raised During the conferences, the intern assigned to the motion would simultaneously prepare a memo encompassing the parties' respective positions That way, this Court could review the memo just before the attorneys presented oral argument These conferences were not designed to replace oral argument but to supplement them It also was an opportunity for the law clerks and interns to familiarize themselves with the arguments in case they were assigned to draft post-argument decisions for this Court to edit, finalize, and submit

The within action being one for personal injuries allegedly resulting from an accident, a motion for summary judgment was made This Court determined that an intern and a law clerk would conduct a pre-oral argument conference in the robing room with the attorneys appearing for the parties, with other interns being present to observe The conference was held, this Court was provided with the respective intern's pre-argument memo, and oral argument was had on the summary judgment motion

At the conclusion of the motion calendar, this Court was informed by the law clerk who participated in the conference that one of the attorneys ("the Attorney" hereinafter) had engaged in inappropriate behavior I instructed the law clerk to prepare a memo immediately while the matter was still fresh in his memory and that of the interns who were present

Among the comments attributed to the Attorney in the robing room were as follows:

- He stated that "if I were younger I would flirt" with the intern assigned to the case
- He made a comment about her physical appearance
- He claimed that he could covet her because she was unmarried [FN1]
- The Attorney referred to opposing counsel as "darling," and then corrected himself by saying that he was not allowed to use sexist terms to refer to women
- After opposing counsel identified herself as being Ukrainian, the Attorney used certain terms to refer to people of Polish and Ukrainian descent
- He commented that he was a "*juris* doctor," not a *Jewish* doctor
- The Attorney attempted to engage in unsolicited conversation with another intern as to his Judaic belief system

• He questioned the law clerk as to whether the latter's first name should be pronounced in a more ethnic manner (and, after being told no in the robing room, he used the more ethnic variation upon his return to the courtroom)

Two days after the above incident, this Court sent an email to the attorneys who appeared on the motion to attend a hearing concerning the matter Several days later the hearing was conducted The heretofore described Attorney appeared as did opposing counsel, who was accompanied by a partner from her firm

During the hearing, this Court related the remarks attributed to the Attorney He did not deny making the remarks His adversary confirmed, "Your Honor, based on my recollection, the remarks that were addressed to me, the record of the remarks is accurate The results are true that I am not personally complaining against [name redacted] " (Transcript at 16)

This Court notes that at the hearing, the Attorney apologized profusely many times and attributed his lapse in judgment to several factors The Attorney did not contest having said the foregoing:

• "I am far from disputing it (*id.* at 11) "

• "I thought I was adding some levity to the room" (*id.* at 13)

• "The thing that is what I do People who know me know that I like to make people laugh and smile, and I do so without any kind of malice" (*id.* at 11)

• The remarks were made in a conference and not in the courtroom, and "I tried to bring some humor to a boring proceeding, I apologize" (*id*)

• The remarks were made in "fun and laughing," and not to be derogatory; the intern was smiling (*id.*)

• "As far as the biblical story[,] I told the rabbi, and it has to do with coveting" (*id.* at 9-10); the rabbi considered this funny (*id.* at 10)

• He did not mean to be disrespectful to anybody (*id.* at 11)

• He came from a different generation and "things are changing" (*id.* at 9)

• The law clerk's name has a "ch" sound in it[FN2] and it is hard for people not from the area [*3]to pronounce it; there was no intent to insult him (*id.* at 10)

• The ethnic terms dated back to childhood days and were not intended to be derogatory (*id.* at 9)

• "This will not happen again I have learned my lesson Things change and I have to change with them if I want to continue practicing law" (*id.* at 14)

• "At the time that the conference went on, I, as a diabetic was very low on my sugar, and I don't know if that caused me to be more lax and to be more - - but the truth of the matter is I should be more alert today I should be more alert today [about] the humor [and] forget about the comedy clubs The humor that might not [have] been offensive years ago is offensive I should be aware of that and conduct myself accordingly " (*Id.* at 17)

Discussion

The Rules of Judicial Conduct enjoin that "A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action" (Rules Governing Jud Conduct [22 NYCRR] § 100 3 [D] [2]) "Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties" (*id.* § 100 3 [D] [3])

The Rules of Professional Conduct for attorneys provide, "In appearing as a lawyer before a tribunal, a lawyer shall not: engage in undignified or discourteous conduct" (Rules of Prof Conduct [22 NYCRR 1200 0], rule 3 3 [f] [2]) Additionally, "A lawyer or law firm shall not: engage in conduct in the practice of law that the lawyer or law firm knows or reasonably should know constitutes: harassment, whether or not unlawful, on the basis of one or more of the following protected categories: sex, religion, national origin, ethnicity, marital status " (*id.* rule 8 4 [g] [2]) " 'Harassment' for purposes of this Rule, means physical contact, verbal conduct, and/or nonverbal conduct such as gestures or facial expressions that is: directed at an individual or specific individuals; and derogatory or demeaning" (*id.* rule 8 4 [g] [3]) " 'Conduct in the practice of law' includes: representing clients; interacting with court personnel, lawyers, and others, while engaging in the practice of law" (*id.* rule 8 4 [g] [5] [a], [b])

Clearly, when the Attorney made these remarks, he was representing a party to this action and interacting with court personnel and another attorney (his adversary) Therefore the above quoted provisions of Rule 8 4 (g) relating to harassment govern his conduct Although the pre-oral argument conference was not before a "tribunal," this Court construes the term broadly to include a judge's staff The provision regarding undignified or discourteous conduct likewise applies

The inquiry undertaken by this Court into the incident was mandated by the above-quoted rule (*see supra* at 4) that "A judge who receives information indicating a substantial [*4]likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct shall take appropriate action" (Rules Governing Jud Conduct [22 NYCRR] § 100 3 [D] [2]) This is a two-part endeavor First, the judge must determine whether there is a substantial likelihood that something possibly in violation of the Rules of Professional Conduct took place In the instant situation, there was no question but that the Attorney made the statements heretofore described, based on the report from the law clerk and the confirmation from the interns who were present Eventually this was confirmed by opposing counsel at the hearing The Attorney conceded that the incident took place In conducting the said hearing and undertaking further inquiry, this Court believes it complied appropriately with the Rules Governing Judicial Conduct

The second phase of the judge's duties in this situation is to assess whether there was "a substantial violation of the Rules of Professional Conduct," i e , whether the attorney's honesty, trustworthiness or fitness as a lawyer is implicated (Advisory Comm on Jud Ethics Op 04-74 [2004])

New York Advisory Committee on Judicial Ethics Opinion 19-35 at 3 (2019) (citing Op 17-07) provides further guidance regarding an attorney's alleged misconduct:

A judge who receives information indicating a "substantial likelihood" that an attorney [ ] committed a substantial violation of the Rules of Professional Conduct must take "appropriate action " However, the judge has *no obligation* to investigate the truth of the allegations of misconduct, or to investigate its severity or seriousness

Determination of whether the "substantial likelihood" prong is met is ordinarily left to the judge's discretion, as the judge is ordinarily in the best position to evaluate and assess all relevant and known circumstances, including the information's reliability, which is especially important where the information is based solely on hearsay

If the "substantial likelihood" prong is not met, the judge is not ethically required to take any action, although he/she may do so in his/her discretion

Conversely, if the judge concludes, in his/her sole discretion, that the "substantial likelihood" prong is met, he/she must then consider whether the "substantial violation" prong is also met Again, whether the second prong is met is up to the judge to determine in his/her discretion since he/she is in the best position to evaluate and assess all relevant, known circumstances In making this determination, the judge may consider a wide variety of factors including, but not limited to, "the experience level of the attorney, whether the violation appears to have been inadvertent or willful, whether it appears to be part of a larger pattern of improper behavior or an isolated incident, whether it reflects adversely on the individual's honesty, trustworthiness, and fitness as a lawyer, and whether the violation, if it occurred as described, is likely to undermine public confidence in lawyers if not investigated [by the appropriate authority] or addressed "

If the judge is not certain that the conduct violates the applicable rules of conduct or concludes that the alleged misconduct is not substantial, the judge need not take further action, although the judge may do so, in his/her discretion

If the judge concludes that both prongs of the Rule are met, the judge must determine what action is "appropriate" under the known, relevant circumstances This determination is ordinarily left to the judge's discretion Reporting the misconduct is not [*5]mandatory *unless* the judge concludes "the alleged misconduct is so egregious that it seriously calls into question the attorney's honesty, trustworthiness or fitness as a lawyer " If the judge concludes the conduct reaches that threshold, the only appropriate action is to report the attorney

The foregoing affords discretion to the judge in assessing the facts and circumstances of the conduct and how to accordingly respond Nonetheless there are certain situations where confirmed misconduct is so egregious that the attorney's honesty, trustworthiness or fitness has been documented and, as such, reporting of the matter to the respective attorney disciplinary committee is mandatory These instances included: "an attorney 'engaged in a deliberate deception, intended to perpetrate a fraud and deceive the parties and/or the court' (Opinion 02-85), 'admitted under oath that he/she committed perjury' (Opinion 07-129), or falsely advised a client a lawsuit had been settled when, in fact, the attorney discontinued the suit and paid the settlement out of their own funds (*see* Opinion 13-77) Moreover, where a judge 'concludes that an attorney deliberately sought to deceive the court and acted extremely unprofessionally in defiance of court directives' concerning the attorney's numerous failures to appear, we said the judge must report the attorney (Opinion 09-142) " (*Id.* Op 22-123 at 2 [2022]) Reporting is also mandatory when "an attorney 'has attempted to unduly influence the judge's decisions and has acted extremely unprofessionally' (Opinion 05-37); and when a plaintiff claims eight months after trial that his/her attorney never informed plaintiff of a substantial settlement offer (Opinion 02-129)" (*id.* Op 09-142 at 1 [2009])

In appropriate circumstances, the judge may conclude that reporting the attorney to a disciplinary committee is not called for but rather some other discipline is "The judge instead may reprimand or admonish the lawyer; impose sanctions, if available (see Opinions 06-107; 02-85); or take other appropriate action such as counseling the lawyer as an interim or final measure" (*id.* Op 08-08 at 1)

Research by this Court into available published opinions and decisions for the purpose of locating a comparable situation as the one described here yielded no exact duplicate The closest this Court came was in locating Opinion 22-249 at 1-2 (2022) of the Advisory Committee on Judicial Ethics:

> At a court appearance before the inquiring judge, one party and their Spanish-language interpreter failed to appear That party's attorney remarked that their client's absence created a "Mexican standoff," in what the judge describes as "a failed attempt at humor" that may have been inspired by the client's ethnicity or national origin In response, the judge "admonished the attorney on the record that such language was 'not appropriate" (*cf* 22 NYCRR 100 3[B][5] "[A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, creed, color, [or] national origin , against parties, witnesses, counsel or others "]) The judge now asks if they are ethically required to "take a further step, such as asking the attorney whether [the attorney] should consider withdrawing from the representation "
>
> A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100 2) and must always act to promote public confidence in the judiciary's integrity and [*6]impartiality (*see* 22 NYCRR 100 2[A]) Thus, a judge who has information indicating a "substantial likelihood" that a lawyer has committed a "substantial violation" of the Rules of Professional Conduct must take "appropriate action" (22 NYCRR 100 3[D][2])
>
> The determination of whether there is a substantial likelihood that an attorney has committed a substantial violation of the Rules of Professional Conduct ordinarily rests within the discretion of the judge, who is "in the best position to evaluate and assess all relevant, known circumstances" (Opinion 18-58)
>
> If the judge concludes that this two-prong test is met, then the judge must take some action, but what action is "appropriate" under the circumstances is usually left to the discretion of the judge (*see e.g* Opinions 21-78; 19-90; 10-85) Only in those few instances where a judge also concludes that the alleged misconduct is so egregious that it seriously calls into question the attorney's honesty, trustworthiness or fitness to practice law is a judge required to report the attorney to the appropriate grievance committee (*see e.g* Opinion 20-213) Otherwise, the judge has full discretion to determine what constitutes "appropriate action" upon the judge's own evaluation of all relevant and known circumstances
>
> The inquiring judge has already taken action in response to the misconduct, having admonished the attorney on the record that the remark was inappropriate We conclude that the judge has full discretion to take, or not take, any further action (*see e.g* Opinion 21-78)
>
> As the matter is left entirely to the judge's discretion, we reach no conclusion as to the judge's options, other than to articulate the general guidelines stated That is, the judge has discretion to take further action, but is not required to do so

It appears that the judge in Opinion 22-249 acted appropriately in admonishing the attorney involved In the situation this Court is confronted with, the Attorney did more than make one ethnic remark He made several references to ethnicity and religion, but engaged in what this Court views as more inappropriate behavior by attempting to inject levity at the expense of a law school intern attempting to assiduously perform her work and by using an inappropriate endearing term to his adversary

Certainly the Attorney's remarks were undignified and discourteous This Court notes, however, that the Attorney fashioned himself as a comedian who has performed before audiences in less formal venues than a courthouse He thought he was entertaining his adversary and this Court's staff In actuality he was acting boorishly in the wrong location Buffoonery does not belong in a courthouse As this Court stated at the hearing, "Your adversary, members of my staff [and] I [are] not patrons of a comedy club In a comedy club people will pay to go in, and they can expect remarks that the comedian might feel is humorous, but may not be, but nonetheless, they are there voluntarily going into a comedy club subjecting themselves to whatever the comedian will say The courthouse is not a comedy club My robing room is not a comedy club This courtroom is not a comedy club " (Transcript at 13)

The remarks which the Attorney made did not reflect any serious intent on his part to actually flirt with the intern or opposing counsel The Attorney himself is Jewish and explained his references to Judaism as discussing a common ground with an intern sharing in this faith, believing the related jokes to be humorous and not realizing the discomfort it caused The references to other ethnicities, he explained, were based on high school experiences, and were not meant to be derogatory The Attorney's honesty, trustworthiness, and fitness as a lawyer are [*7]not implicated; he did not lie to this Court or to anyone, there was no financial impropriety, and this did not involve a client

This Court takes into account that opposing counsel was "not personally complaining against [name redacted]" (Transcript at 16) The intern to whom the Attorney made the first three referenced statements (*see supra* at 3) does not wish to have the Attorney charged before the respective disciplinary committee However, this Court stated at the hearing, "I just want [you] to know that it is not whether the person who was the target [had his or her] feelings offended What this Court deems important is whether I am offended " (*Id.* at 16) Indeed, considering the efforts this Court made over the decades to advocate for those who were the objects of discrimination, bias, and mistreatment and to disseminate information regarding the need for tolerance and diversity, the Attorney's conduct struck this Court as lacking an understanding of the trials and tribulations of various segments of our legal community

None of the situations related in published opinions of the Advisory Committee on Judicial Ethics where referral to a disciplinary committee was deemed mandatory are present here This Court takes into account the numerous apologies of the Attorney at the hearing Indeed he has realized that what was once deemed humorous is no longer When this Court stated, "It boggles my mind that in the year 2023 in a courthouse, an attorney would make a comment directed to women and [i]t is not funny," the Attorney noted "what my mother went through as a teacher[,] I know what my ex-wife went through as a computer professional, and I have been in the progressive ranks since the 60s and 70s[,] fighting for everything I was involved in the civil rights movement way back when " (*Id.* at 15)

Looking at this situation with an objective gaze, this Court does note, however, the discomfiture in which the Attorney placed those present in the robing room Most were law school interns who did not expect to hear an attorney make these remarks; they were quite startled They did not know what to do — whether to lecture the Attorney, laugh, complain, inform the judge immediately, or inform the judge later They should not have been placed in this quandary In fact, this Court doubts they — especially the intern who was at her first conference — will ever forget this incident It is unfortunate that they will have to recall this as part of their early legal training

"It is well established that courts have an obligation, if they become aware of an ethical breach, to report the attorney who committed the ethical breach or fashion an *alternative sanction* Judges can take appropriate steps to regulate the conduct of lawyers appearing before them, short of formal discipline (see Matter of First Natl Bank of E Islip v Brower, 42 NY2d 471, 474 [1977]) " (*People v Perez*, 37 Misc 3d 272, 292 [2012] [emphasis added]) Not every attorney indiscretion requires referral to the disciplinary committee (*e.g. 100 East 21st Street Equities LLC v Cummings-Sharpe*, 15 Misc 3d 1132[A], 2007 NY Slip Op 50948[U] [Civ Ct, Kings County 2007])

While this Court finds that the Attorney did not commit a substantial violation taking into account the totality of the circumstances, it finds that it "may reprimand or admonish the lawyer; impose sanctions; or take other appropriate action such as counseling the lawyer as an interim or final measure" (Advisory Comm on Jud Ethics Op 08-08 at 1) Indeed, at the hearing, the Attorney, who was quite contrite, was admonished quite severely and this Court did counsel him Notwithstanding said contrition, this Court finds that "appropriate action" (Rules Governing Jud Conduct [22 NYCRR] § 100 3 [D] [2]) is called for due to the Attorney having engaged in undignified and discourteous conduct (*see* Rules of Prof Conduct [22 NYCRR 1200 0], rule 3 3 [*8][f] [2])

Therefore, this Court orders the Attorney to take eight credits' worth of Continuing Legal Education courses in the categories of (a) Ethics and Professionalism (which specifically address

proper attorney decorum in representing clients) and (b) Diversity, Inclusion and Elimination of Bias, combined, by December 31, 2023; attendance at lectures concerning women's experiences in the legal profession shall also be deemed to constitute compliance with this directive [FN3] At least three of the eight credits shall be in each of said categories This is not a punishment It is remedial action whose purpose is to enable the Attorney to reacquaint himself with proper standards of decorum and the need for tolerance [FN4] Proof of completion of the courses by said deadline shall be submitted to this Court

In reaching this determination, this Court is of the view that it has discharged its responsibilities pursuant to the Rules Governing Judicial Conduct (*see* 22 NYCRR § 100 3 [D] [2], [3]) To the extent that there was a violation of the particular rules governing attorney conduct, this Court is of the opinion that it has taken "appropriate action" (*see id.*; *Grasso v Grasso*, 26 Misc 3d 1206[A], 2009 NY Slip Op 52675[U] [Sup Ct, Nassau County 2009])

Should either attorney who appeared on the motion desire to enter this Decision and Order, for example for purposes of appeal, they are free to do so In the absence of this Decision and Order being entered, any publication of it shall redact the parties' names and the index number, in order to avoid identifying the particular staff members and opposing counsel who were the objects of the Attorney's boorish behavior [FN5] If this Decision and Order is published it is [*9]hoped that the public is made aware that the judiciary takes seriously its attorney disciplinary responsibilities Moreover, even at the present stage of society's development in which women and minority groups have advanced in the legal profession, the bar needs to be cognizant that such advancement should not be accompanied by failed attempts at humor of yore Dealings with opposing counsel and court staff can be accomplished with professionalism, courtesy, and respect — and even with certain light-hearted bantering unrelated to gender, identity, race, ethnicity, religion, or other protected category and which does not demean or offend anyone But causing discomfiture to people is not the way to make people laugh and smile and, moreover, the institution of the court jester, a feature of monarchial households, has no place in 21st century halls of justice

Conclusion

Accordingly, IT IS HEREBY ORDERED that the Attorney obtain a total of eight credits' worth of Continuing Legal Education courses in the categories of (a) Ethics and Professionalism (which specifically address proper attorney decorum in representing clients) and (b) Diversity, Inclusion and Elimination of Bias, combined, by December 31, 2023; attendance at lectures concerning women's experiences in the legal profession shall also be deemed to constitute compliance with this directive At least three of the eight credits shall be in each of said categories

Dated: August 23, 2023
Brooklyn, New York
AARON D MASLOW
Justice of the Supreme Court

Footnotes

Footnote 1: This was based on the biblical prohibition against coveting thy neighbor's wife, and the Attorney's observation of a lack of a wedding ring on the intern

Footnote 2: The heth, sometimes written as chet, but more accurately pronounced as the pharyngeal sound et, is a letter of the Semitic abjads, including Phoenician, Hebrew, Aramaic, Syriac, and Arabic; it is also known as a fricative, a type of consonant made by the friction of breath in a narrow opening (see *Heth*, Wikipedia, available at https://en wikipedia org/wiki/Heth#:~:text=Heth%2C%20sometimes%20written%20Chet%2C%20but,%DC%9A%2C%20and%20Arabic%20%E1%B8%A5%C4%81%CA%BE%20%D8%AD [last accessed July 23, 2023])

Footnote 3: Any inquiries regarding compliance should be addressed to this Court's chambers

Footnote 4: This Court takes note that in other situations where attorneys engaged in inappropriate conduct, attendance at CLE courses as a corrective measure was ordered (*e.g. Phillips Auctioneers LLC v Grosso*, 2023 NY Slip Op 31051[U] [Sup Ct, NY County 2023]; *Hindlin v Prescription Songs LLC*, 2022 NY Slip Op 32601[U] [Sup Ct, NY County 2023]

Footnote 5: This is not a situation where facts are withheld from a party The purpose of the redaction is to protect opposing counsel and this Court's staff — the objects of the described conduct — from being identified and subjected to harassment in this era of social media doxxing If the caption and index number were disclosed the identity of those who were the objects of the behavior described is but one step away from enterprising researchers The public's interest is served by being advised that a situation arose which was dealt with by this Court in accordance with the rules governing judicial conduct This does not involve the sealing of a record — merely the redaction of certain information Still, this Court finds relevant the following:

> Since confidentiality is the exception, the court must make an independent determination of whether to seal court records in whole or in part for "good cause" (*Matter of Hofmann*, 284 AD2d 92, 93-94 [2001]) This task involves weighing the interests of the public against the interests of the parties (*see Danco Labs. v Chemical Works of Gedeon Richter, supra*). The party seeking to seal documents must demonstrate compelling circumstances (*see Coopersmith v Gold*, 156 Misc 2d 594, 606 [1992]) A finding of "good cause" presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant (*cf. Press-Enterprise Co. v Superior Court of Cal., supra* at 510), and that no alternative to sealing can adequately protect the threatened interest (*see Application of The Herald Co.*, 734 F2d 93, 100 [1984]) However, since there is no absolute definition, good cause, in essence, "boils down to the prudent exercise of the court's discretion" (*Coopersmith v Gold, supra* at 606), and thus a case-by-case analysis is warranted (*see Matter of Twentieth Century Fox Film Corp., supra*).

(*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499 [2d Dept 2007])

Just as certain attorney disciplinary proceedings remain confidential so too should this disciplinary matter "To preserve the confidentiality provided for by New York law in matters relating to grievances against an attorney prior to final resolution, this decision has been redacted for purposes of publication to remove the names of the parties and caption it anonymously (See, In re Morgan, 225 BR 290, 291 [ED NY 1998], vacated on other grounds sub nom In re Nunez, 2000 WL 655983, 2000 US Dist LEXIS 12078 [ED NY 2000]; see also, Doe v Federal Grievance Comm , 847 F2d 57 [2d Cir 1988]; Doe v Apfel, 1999 WL 182669, 1999 US Dist LEXIS 4030 [ED NY 1999]; Doe v Rosenberry, 152 F Supp 403 [SD NY 1957])" (*Doe v Roe*, 190 Misc 2d 517, 519 n [Dist Ct, Nassau County 2002])