UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DORIS L. SASSOWER,

Plaintiff,

-against-

Hon. GUY MANGANO, PRESIDING JUSTICE OF THE APPELLATE DIVISION, SECOND DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK, and the ASSOCIATE JUSTICES THEREOF, GARY CASELLA and EDWARD SUMBER, Chief Counsel and Chairman, respectively, of the GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, GRIEVANCE COMMITTEE FOR NINTH JUDICIAL DISTRICT, Does 1-20, being present members thereof, MAX GALFUNT, being a Special Referee, and G. OLIVER KOPPELL, Attorney General of the State of New York, all in their official and personal capacities,

Defendants.

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94 Civ. 4514 (JES)
Pro Se

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

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TABLE OF CONTENTS

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Preliminary Statement

This memorandum is submitted on behalf of defendants, Honorable Guy Mangano, Presiding Justice of the Appellate Division, Second Department of the Supreme Court of the State of New York, and the Associate Justices thereof (defendant "Justices"), Gary Casella and Edward Sumber, Chief Counsel and Chairman, respectively, of the Grievance Committee for the Ninth Judicial District, the Grievance Committee for the Ninth Judicial District

("Grievance Committee"), and the present members thereof, Special Referee Max Galfunt (defendant "referee"), and G. OLIVER KOPPELL, former Attorney General of the State of New York (collectively "State defendants"), in support of their motion for judgment on the pleadings.

Statement of the Case

Plaintiff pro se brings this action under 42 U.S.C. § 1983, claiming that defendants deprived her of her constitutional rights by acting, individually and in concert, and with improper motive, to suspend her professional license to practice law during an underlying disciplinary proceeding pending against her. Complaint ("Compl."), ¶¶ 1 and 26. Plaintiff seeks to have this Court declare as null and void the alleged "interim" suspension order and all other disciplinary orders rendered against her by defendants, as well as the statutory provisions and court rules by which those orders were procured against her. Compl., ¶ 2. These provisions include 22 N.Y.C.R.R. § 691.4 (particularly §§ 691.4(l)(1) and 691.13(b)(1)) and Judiciary Law §§ 90(2) and 90(10), as written and applied. Id. Plaintiff also seeks an order declaring her a member of the bar of the State of New York in good standing and restoring all rights, privileges and immunities with respect to her license to practice law. Id. Plaintiff also seeks compensatory and punitive damages, attorney's fees and costs. Compl., at "Wherefore" Clause.

According to the complaint, which for the purpose of this motion is assumed to be true, plaintiff has been served with three

disciplinary petitions, dated February 6, 1990, January 28, 1993 and March 25, 1993. Compl., ¶¶ 59, 151 and 162. By "decision and order on motion," dated June 14, 1991, defendant Second Department suspended plaintiff "based upon ... [her] failure to comply with the October 18, 1990 order of this court," which directed that she be "examined by a qualified medical expert, ... to determine whether ... [she] is incapacitated from continuing to practice law ...." Id., ¶ 93 and Plaintiff's Exh. A.

Plaintiff's complaint is largely a compilation of her unsuccessful challenges to orders and decisions of defendant Second Department regarding prosecution of disciplinary petitions by defendant Grievance Committee and her "interim" suspension from the practice of law. Compl., passim. On June 12, 1991 defendant Second Department denied plaintiff's motion to vacate its October 18, 1990 order and to discipline defendant Casella. Id. at ¶¶ 85 and 91. On July 15, 1991, defendant Second Department denied plaintiff's motion to vacate and/or modify its June 14, 1991 suspension order. Id., ¶¶ 97 and 98. On September 10, 1991, the New York State Court of Appeals denied plaintiff's motion for leave to appeal from the June 14, 1991 suspension order. Id. at ¶ 117. By order, dated July 31, 1992, defendant Second Department denied plaintiff's June 16, 1992 motion to vacate the June 14, 1991 suspension order and plaintiff's request for leave to appeal to the Court of Appeals. Id. at ¶ 143. By order, dated November 18, 1991, the Court of Appeals dismissed plaintiff's appeal of the June 14, 1991 suspension order "as of right." Id. at ¶¶ 144 and 145.

On April 28, 1993, plaintiff brought an Article 78 proceeding against Honorable Guy Mangano, as Presiding Justice of the Appellate Division, Second Department, Honorable Max Galfunt, as Special Referee, and Edward Sumber and Gary Casella, as Chairman and Chief Counsel respectively of the Grievance Committee for the Ninth Judicial District, seeking to stay prosecution of disciplinary proceedings under the February 6, 1990 Petition and transfer to another department. Id. at ¶¶ 166 and 167. The Attorney General, on behalf of the above-named respondents moved for dismissal. Id. at ¶ 168. By order, dated September 20, 1993, defendant Second Department granted respondents' motion to dismiss plaintiff's Article 78 petition, and denied all of plaintiff's relief requested in her cross-motion. Id. at ¶¶ 182 and 183. "By decision dated May 12, 1994, the Court of Appeals dismissed plaintiff's appeal taken from defendant Second Department's dismissal of the Article 78 proceeding and denial of her cross-motion for lack of finality and upon the ground that no substantial constitutional question is directly involved." Id. at ¶ 209.

On May 24, 1993, defendant Second Department denied plaintiff's motions to vacate the January 28, 1993 and March 17,(sic) 1993 Petitions. Id. at ¶ 171. And on September 20, 1993, defendant Second Department denied plaintiff's June 14, 1993 motion for reargument/renewal of defendant Second Department's May 24, 1993 order. Id. at ¶ 185.

On November 19, 1993, plaintiff moved for "dismissal/summary judgment of the three disciplinary petitions

against her, dated February 6, 1990, January 28, 1993, and March 25, 1993; discovery of defendant Grievance Committee's "ex parte" reports, dated July 31, 1989, July 8, 1992, and December 17, 1992; and for appointment of a special referee to investigate and report as to plaintiff's complaints of prosecutorial and judicial misconduct in connection with all of the disciplinary proceedings against her." Id. at ¶ 189. Plaintiff's dismissal/summary judgment motion also sought transfer to another judicial department. Id. at ¶ 190. Defendant Second Department, by order dated January 28, 1994, denied plaintiff's November 19, 1993 dismissal/summary judgment motion. Id. at ¶ 201.

By her complaint in the present action, plaintiff pleads four causes of action. Plaintiff's first cause of action is for a judgment declaring 22 N.Y.C.R.R. §§ 691.4(l)(1) and 691.2 unconstitutional on their face, and as applied. Compl., p.61. Plaintiff seeks a judgment further declaring that the "interim" suspension order entered against her on June 14, 1991 is null and void, and that the Second Department's Rules Governing the Conduct of Attorneys are unconstitutional, "as set forth in particular in 22 N.Y.C.R.R. § 691.2, § 691.4(l)(1)(2), and § 691.13(b)." Id. at ¶ 226. Plaintiff argues that the absence of "findings" to support her "interim" suspension from the practice of law "has been in violation of her constitutional rights and to retaliate against her for exercising her First Amendment rights ..., which have been totally without redress in the state court system ...." Compl., ¶ 228.

Plaintiff's second cause of action alleges that defendants acted with improper motive and under color of state law to deprive her of various constitutional rights, and rights secured by New York State law, which, along with the June 14, 1991 interim suspension Order, directly and proximately caused her to suffer damages. Compl., ¶¶ 236-45. Plaintiff's third cause of action is for conspiracy, under 42 U.S.C. § 1983. Compl., p.68. Plaintiff alleges that "[h]eretofore, and on or about July 31, 1989, the Defendants herein conspired together and maliciously and wilfully entered into a scheme to deprive plaintiff of her constitutional rights and her professional license to practice law ... in order that she be silenced as a voice speaking out against judicial corruption by judges and lawyers in the Second Judicial Department of the Supreme Court of the State of New York." Compl., ¶¶ 247 and 248. Plaintiff's fourth cause of action is for intentional infliction of emotional distress. Compl., ¶ 251.

In addition to declaratory and equitable relief, plaintiff seeks damages, compensatory and punitive, attorney's fees, costs and "such other and further relief as this Court shall deem just and equitable to redress the constitutional torts and other wrongs done to Plaintiff as hereinabove set forth. Compl., ¶ 1, "Wherefore" Clause, pp.70-1.

POINT I

THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO SET FORTH A SHORT AND PLAIN STATEMENT OF HER CLAIM

"Fed.R.Civ.P. 8(a)(2) requires that a complaint set forth 'a short plain statement of the claim showing that the pleader is entitled to relief.' Furthermore, '[e]ach averment of a pleading shall be simple, concise, and direct.' Fed.R.Civ.P. 8(e)(1)." Levine v. County of Westchester, 828 F. Supp. 238 (S.D.N.Y. 1993), aff'd, 22 F.3d 1090 (2d Cir. 1994). Here, plaintiff's complaint consists of two-hundred and fifty-one paragraphs stretched over 71 pages. It rehashes motions and arguments made in prior state proceedings, castigating the decisions therein, and alleges a factually unsupported litany of violations of her rights under state and federal law. Compl., passim. It is, in short, one of those "'complaints which ramble, which needlessly speculate, accuse and condemn, and which contain circuitous diatribes far removed from the heat of the claim do not comport with these goals and this system' and must be dismissed." Levine, 828 F. Supp. at 241 (S.D.N.Y. 1993).

POINT II

THIS ACTION IS BARRED BY THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The Eleventh Amendment to the United States Constitution bars a suit in a Court of the United States by a citizen of a state against that state, or one of its agencies, absent its consent to such a suit or an express statutory waiver of immunity. Pennhurst

State School & Hospital v. Halderman, 465 U.S. 89 (1984). It is well settled that the State of New York has not consented to suit in federal court, Trotman v. Palisades Interstate Park Commission, 557 F.2d 35, 38-40 (2d Cir. 1977), and that the provisions of the Civil Rights Act, including 42 U.S.C. § 1983, were not intended to override a state's immunity. Quern v. Jordan, 440 U.S. 322, 343 (1979). Thus, the Eleventh Amendment absolutely bars suit against the State or one of its agencies for monetary relief, as well as suits, such as here, seeking declaratory and injunctive relief. Missouri v. Fiske, 290 U.S. 18, 27 (1933); Alabama v. Pugh, 438 U.S. 781 (1978); Cory v. White, 457 U.S. 85, 91 (1982); Rapoport v. Departmental Disciplinary Committee for the First Judicial Department, n.o.r., 88 Civ. 5781, 1989 WL 146264 (S.D.N.Y. Nov. 21, 1989)(Lowe, J)(the Disciplinary Committee is an arm of the state for Eleventh Amendment purposes)(Weinstein Affidavit at Exhibit A).

The Eleventh Amendment immunity described above extends also to damage actions against state officials sued in their official capacities if the state is the real party in interest. Farid v. Smith, 850 F.2d 917, 921 (2d Cir. 1988). As the Supreme Court ruled in Kentucky v. Graham, 473 U.S. 159, 169 (1985):

> This [Eleventh Amendment] bar remains in effect when state officials are sued for damages in their official capacity. Cory v. White, 457 U.S. 85, 90 (1982); Edelman v. Jordan, 415 U.S. 651, 663 (1974). That is so because, as discussed above, "a judgment against a public servant 'in his official capacity' imposes liability on the entity that he represents..." Brandon [v. Holt, 469 U.S. 464] at 471.

(footnote omitted). See also Al-Jundi v. Estate of Rockefeller,

885 F.2d 1060, 1065 (2d Cir. 1989); Eng. v. Coughlin, 858 F.2d 889, 894 (2d Cir. 1988).

Here, the complaint alleges that at all times mentioned in the complaint all of the defendants were acting in their "official capacities" as well as individually. See Complaint, Caption and ¶ 25. Where, as here, "the State is the real substantial party in interest", Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 464 (1945), the Eleventh Amendment bars the suit.

In any event, as to defendant Grievance Committee, there is no subject matter jurisdiction because, in Will v. Michigan Department of State Police, 491 U.S. 58 (1989), the Supreme Court concluded that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983" and no action for money damages against them may lie. Id. at 71. Accordingly, this official capacity suit for money damages against the Grievance Committee, which is "part of the judicial arm of the State of New York", Zuckerman v. Appellate Division, 421 F.2d 625, 626 (2d Cir. 1970), cannot be maintained. Rapoport v. Departmental Disciplinary Committee for the First Judicial Department, n.o.r., 88 Civ. 5781, 1989 WL 146264 (S.D.N.Y. Nov. 21, 1989)(Weinstein Affidavit at Exhibit A).

POINT III

THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S CLAIMS UNDER THE ROOKER-FELDMAN DOCTRINE

By this action, plaintiff seeks to have this Court collaterally review the judgments and orders of the state courts by which she claims to be aggrieved. (Compl., passim). However, this Court lacks the subject matter jurisdiction to do so.

"The jurisdiction possessed by the District Court is strictly original." Rooker v. Fidelity Trust Company, 263 U.S. 413, 416 (1923). As such, the district courts have no power to review state court proceedings. The only permissible review is by the superior state court and/or the Supreme Court. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-84 and n.16 (1983), citing Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296 (1970) ("Lower federal court possesses no power whatever to sit in direct review of state court decisions."); Levine v. County of Westchester, 828 F. Supp. 238, 242 (S.D.N.Y. 1993)("Plaintiff's claims brought under the Civil Rights Act, 42 U.S.C. § 1983, to the extent that they arise out of or are based upon allegedly incorrect or erroneous decisions in the state courts, are not properly within the jurisdiction of this Court."), affirmed 22 F.3d 1090 (1994). Accord, Tang v. Appellate Division of New York Supreme Court, First Department, 487 F.2d 138, 141-143 (2d Cir. 1973), cert. denied, 416 U.S. 906 (1974).

In Feldman, supra, plaintiffs attempted a constitutional

challenge to the refusal by the District of Columbia Court of Appeals, the highest court in the District of Columbia, to waive a rule requiring bar applicants to graduate from a law school approved by the American Bar Association. The Supreme Court held that this determination was the result of a judicial proceeding, 460 U.S. at 476-79, and that "review of final judgments by a state court in judicial proceedings ... may be had only in [the Supreme Court]." 460 U.S. at 482. See also Tang v. Appellate Division of the New York Supreme Court, First Dept., 487 F.2d at 141.

Although the challenged judgment in Feldman was made by the highest state court, the Supreme Court included, in its Feldman opinion, a long footnote on review of state court decisions generally. Feldman, 460 U.S. at n. 16. In that footnote, the Court commented:

> "If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the state-court decision. This the District Court may not do."

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 n. 16 at 483-84 (1983) (emphasis added), citing Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296 (197)) ("Lower federal courts possess no power whatever to sit in direct review of state court decisions.").

Here, plaintiff is seeking to overturn the orders of the state courts, which denied her various claims for relief concerning

the prosecution of disciplinary petitions and her "interim" suspension. Since the state courts failed to accept her legal arguments, she now claims that they have deprived her of constitutional rights, by conspiring with the other defendants who either prosecuted or presided over disciplinary petitions, or opposed her by defending state clients, all of which allegedly resulted in her "interim" suspension from the practice of law. (Compl., passim).

Plaintiff is dissatisfied, to say the least, with the adverse state court orders cited in her complaint. However, it is not the role of the federal courts to sit in review of these findings. Indeed, to permit plaintiff's attempted collateral attack on the New York State court orders would violate the principles enunciated in the Rooker-Feldman doctrine and discredit the authority of the state courts. Even though plaintiff claims that the orders resulted in her unlawful suspension from the practice of law, this alleged claim is "inextricably intertwined" with the merits of the orders rendered in the state court. As such, "the district court is in essence being called upon to review the state court decision[s]. This the district court may not do." District of Columbia Court of Appeals v. Feldman, 460 U.S. at 483-484, n. 16. Plaintiff clearly pursued her remedies in state court, up through the state's highest court, the Court of Appeals. Accordingly, the complaint must be dismissed for lack of subject matter jurisdiction.

POINT IV

THIS COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER THIS ACTION

The doctrine of abstention enunciated in Younger v. Harris, which was made applicable to civil proceedings in Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), counsels against a federal court's involvement in areas that are committed to the jurisdiction of state bodies, and is derived from fundamental principles of federalism and comity. The doctrine applies, absent extraordinary circumstances, where three prerequisites are met; namely, (1) where there is a state court proceeding pending at the time of the filing of the federal suit, (2) involving a matter of significant state concern, and (3) where the federal plaintiff has or will have the opportunity to litigate the federal issues in state court. Christ the King Regional High School v. Culvert, 815 F.2d 219, 224 (2d Cir. 1986), cert. denied, 484 U.S. 830 (1987).

In Middlesex County Ethics Committee v. Garden State Bay Association, 457 U.S. 423 (1982), the Court applied Younger abstention to state disciplinary proceedings of attorneys, the exact circumstance in which defendants ask this Court to apply the doctrine. See also Erdmann v. Stevens, 458 F.2d 1205 (2d Cir. 1972), cert. denied, 409 U.S. 889 (1972)(also holding that the discipline and investigation of an attorney's alleged misconduct is a judicial, rather than an administrative, function). Younger abstention applies to require dismissal of this action even where the proceedings against plaintiff are still in the investigatory

stage. Matter of Anonymous v. Association of the Bar of the City of New York, 515 F.2d 427 (2d Cir.), cert. denied, 423 U.S. 863 (1975); Mason v. Departmental Disciplinary Committee, n.o.r., No. 89 Civ. 3598, 1989 WL 99809, (S.D.N.Y. Aug. 21, 1989)(Sprizzo, J.)(Weinstein Affidavit at Exhibit B) at 2, aff'd, 894 F.2d 512 (2d Cir.), cert. denied, 497 U.S. 1025 (1990) (denying plaintiff's application for an order enjoining the Disciplinary Committee from continuing the investigation it commenced on Younger abstention grounds); Maddox v. Mollen, No. CV-89-4181, 1990 WL 39869, (E.D.N.Y. March 28, 1990)(Glasser, J.)(Weinstein Affidavit at Exhibit C).

The principles of Younger abstention apply to the case at bar. Here, there state court proceedings concerning the prosecution of three disciplinary petitions against plaintiff, dated February 6, 1990, January 28, 1993 and March 25, 1993. Compl., ¶¶ 59, 151 and 162, which have been pending since the filing of plaintiff's complaint on June 20, 1994. It is elementary that attorney disciplinary proceedings are a matter of significant state concern. Furthermore, plaintiff can raise her constitutional claims in state court by opposing defendant Grievance Committee's motion to confirm the Special Referee's report, or by appeal of a subsequent disciplinary order.

The fact that plaintiff raises a purported constitutional challenge to the state disciplinary procedures does not require a different result. See Maddox v. Mollen, (Weinstein Affidavit at Exhibit C) at 3-4. In any event, any due process challenge to the

state disciplinary proceedings was raised and rejected in Mildner v. Gulotta, 405 F.Supp. 182 (E.D.N.Y. 1975)(three-judge court), aff'd, 425 U.S. 901 (1976). See also Maddox v. Mollen, (Weinstein Affidavit at Exhibit C) at 4 (reaffirming the conclusion in Mildner that New York's disciplinary procedures comport with procedural due process).

In sum, "Younger v. Harris, contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts." Gibson v. Berryhill, 411 U.S. 564, 577 (1973). Accordingly, to the extent the complaint seeks declaratory and injunctive relief, this federal court should abstain and dismiss the action in entirety.

POINT V

DEFENDANTS ARE IMMUNE FROM PLAINTIFF'S CLAIM FOR DAMAGES

A. Defendant Justices and Referee

It is well-established that a judge is absolutely immune from suit for acts done in the exercise of his or her judicial function, even where these acts are in excess of jurisdiction or alleged to have been done maliciously or in bad faith. Indeed, "few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as the Supreme Court recognized when it adopted the doctrine in Bradley v. Fisher, 13 Wall. 335 (1872)." Pierson v. Ray, 386 U.S. 547, 553-554 (1967). See also Mireles v. Waco, ___ U.S. ___, 112 S. Ct. 286, 288 (1991) ("[J]udicial immunity is not overcome by allegations of bad faith

or malice..."); Stump v. Sparkman, 435 U.S. 349, 355-56 (1978). The only prerequisites to judicial immunity are that the judge not act in the "clear absence of all jurisdiction" and that she be performing a judicial act or one which is judicial in nature. Stump v. Sparkman, supra, 435 U.S. at 356-357; Pierson v. Ray, supra, 386 U.S. at 554-54. Judicial immunity applies to special referees who preside over disciplinary hearings. Klapper v. Guria, 153 Misc.2d 730 (1992)("The doctrine of judicial immunity (citations omitted) extends to non-Judges in the cloak of quasi-judicial immunity where they perform "discretionary acts of a judicial nature." (Oliva v. Heller, 839 F.2d 37, 39 [2d Cir. 1988])").

Here, the sole basis for plaintiff's claims against defendant Second Department and defendant Galfunt is the way in which they rendered decisions in plaintiff's state court litigation. There is no indication in the complaint that these defendants were proceeding in the clear absence of all jurisdiction. Accordingly, plaintiff's claim for damages against them is barred.

B. Grievance Committee Defendants

To the extent plaintiff has sued defendants in there individual capacities, four separate doctrines of immunity also require dismissal of plaintiff's claim for money damages against them.

First, as set forth above, the actions taken by the Grievance Committee's Chairman, Chief Counsel and his staff in

furtherance of the investigation and prosecution of the disciplinary action against the plaintiff, are actions taken in their official capacities. Plaintiff's claim for monetary relief is thus barred by the Eleventh Amendment, Rapoport v. Departmental Disciplinary Committee, n.o.r., 88 Civ. 5781, 1989 WL 146264 (S.D.N.Y. Nov. 21, 1989)(Weinstein Affidavit at Exhibit A), and, in any event, is foreclosed by Will v. Michigan Department of State Police, 491 U.S. at 71.

Second, to the extent plaintiff purports to sue the Chairman, Chief Counsel and his staff in their individual capacities, his claim for money damages is barred by the doctrine of absolute judicial and quasi-judicial immunity. It is well settled that absolute judicial immunity, see Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547, 553-554 (1967), extends to judicial functionaries, such as the Grievance Committee's counsel, see Rapoport v. Departmental Disciplinary Committee, n.o.r., 88 Civ. 5781, 1989 WL 146264 (S.D.N.Y. Nov. 21, 1989)(Weinstein Affidavit at Exhibit A). See also Oliva v. Heller, 839 F.2d 37 (2d Cir. 1988); Klapper v. Guria, 151 Misc.2d 726, 730 (N.Y. Co. 1992) (counsel for the disciplinary committee is absolutely immune from suit under the doctrine of quasi-judicial immunity).

Third, the doctrine of absolute prosecutorial immunity also applies to bar plaintiff's claims for monetary relief against the Chairman, Chief Counsel and his staff. Imbler v. Pachtman, 424 U.S. 409, 422-423 (1976). In Klapper v. Guria, 151 Misc. 2d at

731, the court expressly applied absolute prosecutorial immunity to dismiss an action for money damages against a Disciplinary Committee counsel. Compare Clouden v. Lieberman, n.o.r., 92 Civ. 139, 1992 WL 54370 (E.D.N.Y. March 5, 1992), slip op. at 2. (Weinstein Affidavit at Exhibit D).

Finally, plaintiff's claim for monetary relief is barred by the doctrine of qualified immunity. Qualified immunity bars an action for monetary relief where a defendant's alleged conduct comport with clearly established law. Harlow v.Fitzgerald, 457 U.S. 800, 818 (1982). Here, plaintiff challenges the defendants' actions in pursuing an investigation of her fitness to practice law. However, it is the duty of the Chairman, Chief Counsel and his staff to investigate and prosecute such matters against attorneys and, when deemed warranted, to bring such matters to the attention of the justices of the Appellate Division. See 22 NYCRR Part 690. Moreover, plaintiff has not alleged, nor can she show, that defendants' alleged actions are inconsistent with existing law or that defendants' conduct has, in any way, violated plaintiff's "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. at 818.

C. The Attorney General

Claims against former Attorney General G. Oliver Koppell must be dismissed on the grounds of absolute prosecutorial immunity. Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976)(acts of a prosecutor in performing his or her official duties are

absolutely immune from suit under 42 U.S.C. § 1983); Cohen v. Bane, 853 F. Supp. 620 (E.D.N.Y. 1994).

POINT VI

PLAINTIFF IS COLLATERALLY ESTOPPED FROM ASSERTING HER CLAIMS

As noted above, plaintiff has litigated the claims she presents here in the state courts. Accordingly, the doctrine of collateral estoppel bars their re-litigation here.

In Migra v. Warren City School District Board of Education, 465 U.S. 75, 84 (1984), the Court held that, pursuant to the Full Faith and Credit Clause of the Constitution and the implementing statute, 28 U.S.C. § 1738, principles of claim preclusion are fully applicable where a plaintiff attempts to litigate in federal court, under § 1983, a claim that would be barred in state court because of a prior state court proceeding. Migra, 465 U.S. at 84. Migra requires a court to give to a state court judgment "the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." Id. at 84.

Here, plaintiff challenged the June 14, 1991 "interim" suspension several times in prior state proceedings. See Compl., ¶¶ 97-8, 117, 143-45. Moreover, she raised the issue of the constitutionality of her "interim" suspension Order in her appeal as of right to the Court of Appeals, which is not named as a defendant to this action, in which plaintiff argued "that interim suspension orders without hearings are unconstitutional." Compl., ¶ 144.

Plaintiff also brought an Article 78 proceeding in state

court against Honorable Guy Mangano, as Presiding Justice of the Appellate Division, Second Department, Honorable Max Galfunt, as Special Referee, and Edward Sumber and Gary Casella, as Chairman and Chief Counsel respectively of the Grievance Committee for the Ninth Judicial District, "based upon the lack of compliance with jurisdictional pre-petition procedures under 22 N.Y.C.R.R. § 691.4(e) and (f)," Compl., ¶ 166, and cross-moved:

> "to plead a pattern and course of harassing and abusive conduct by Respondents, acting without or in excess of jurisdiction, as reflected by the March 25, 1993 Supplemental Petition and the January 28, 1993 Petition and all acts in prosecution thereof, as well as the May 8, 1990 and January 25, 1991 motions made by Respondent Casella resulting in the interim Order of suspension dated June 14, 1991." Compl., ¶ 173.

Plaintiff further argued "that all of Defendant Second Department's Orders under A.D. #90-00315, when compared to the record, 'evidence a pattern of disregard for black-letter law and standards of adjudication ....'" Compl., ¶ 176. The defendant Second Department dismissed plaintiff's Article 78 petition, Compl., ¶ 182, and the Court of Appeals dismissed plaintiff's subsequent appeal "for lack of finality and upon the ground that no substantial constitutional question is directly involved." Id., ¶ 209.

In the underlying disciplinary proceeding, plaintiff moved for "dismissal/summary judgment of the three disciplinary petitions against her ...; discovery of "ex parte" reports ...; and for appointment of a special referee to investigate and report as to plaintiff's complaints of prosecutorial and judicial misconduct in connection with all of the disciplinary proceedings against her." Compl., ¶ 189.

In recent cases, the New York Court of Appeals has adopted the transactional analysis of the Second Restatement of Judgments in dealing with estoppel issues. E.g., Reill v. Reid, 45 N.Y.2d 24, 407 N.Y.S.2d 645 (1978), citing, § 61, Restatement of Judgment (Second) (Tent. Draft No. 1, 1973). The Court of Appeals explained that "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based on different theories or if seeking a different remedy ...." O'Brien v. City of Syracuse, 54 N.Y.2d 353, 445 N.Y.S.2d 687, 688 (1981)(as long as the "same gravamen of the wrong" is at issue, the prior judgment is conclusive upon the parties, even if the subsequent action involves some variation in the facts alleged, or proceeds on new legal theories, or seeks a different remedy).

Applying this rule to the present case, plaintiff may not now litigate in a federal court proceeding any claim arising out of her challenge to prosecution of disciplinary petitions nor challenges to the constitutionality of her "interim" suspension, or state grievance laws. Since all of the claims in the present complaint relate to those same transactions or events, the claims would be barred in state court and thus must also be barred in federal court under the principles announced by the Supreme Court in Migra, supra. Consequently, plaintiff's claims against defendants for constitutional violations concerning her suspension or disciplinary prosecutions must be dismissed.

In addition, Olitt v. Murphy, 453 F. Supp. at 358, the

court recognized the application of the doctrine of res judicata to a challenge to the outcome of a state bar disciplinary proceeding. Where "[p]laintiff not only had the opportunity to present his federal constitutional claims in the state proceedings, in fact he did present them and they were determined ... [the attorney's] claims are barred under the doctrine of res judicata". Id. 453 F. Supp. at 358. Even where, as here, the New York Court of Appeals "dismissed summarily on the ground that no substantial constitutional question was directly involved, the decision was final and was on the merits" Id., at 359, so that res judicata would apply. See also, Sam & Mary Housing Corp. v. New York State, 632 F. Supp. 1448 (S.D.N.Y. 1986)(holding that plaintiff who commenced a § 1983 action in federal court alleging that it was deprived of due process of law by the New York Supreme Court Justice's failure to take judicial notice before rendering her decision, was barred by res judicata where plaintiff's constitutional claim was essentially raised below).

POINT VII

THE COMPLAINT SHOULD ALSO BE DISMISSED FOR FAILURE TO MEET THE THRESHOLD PLEADINGS REQUIREMENTS FOR CIVIL RIGHTS ACTIONS.

While a court must be "mindful that in ... civil rights actions the allegations of the complaint are to be liberally construed, Haines v. Kerner, 404 U.S. 519, 520 (1972), there are limits to the ability of a court to divine a cause of action in vague and conclusory allegations of violation of Constitutional rights." Holland v. Rubin, 460 F. Supp. 1051, 1052 (E.D.N.Y.

1978). Absent any substantive allegations against a named defendant, a claim against that defendant must be dismissed. MacRae v. Motto, 543 F. Supp. 1007, 1011 (S.D.N.Y. 1982).

In order to state a claim under 42 U.S.C. § 1983, a plaintiff must allege conduct, under color of state law, that deprives her of rights secured by the Constitution or laws of the United States. Katz v. Klehammer, 902 F.2d 204, 206 (2d Cir. 1990). To that end, civil rights complaints "must contain specific allegations of fact which indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple and conclusory statements are insufficient to state a claim under § 1983." Alfaro Motors, Inc. v. Ward, 814 F.2d 883, 887 (2d Cir. 1987). See also Koch v. Yunich, 533 F.2d 80, 85 (2d Cir. 1976); Powell v. Jarvis, 460 F.2d 551 (2d Cir. 1972).

Here, plaintiff fails to set forth any facts which support her conclusory assertions that the defendants took any actions which violated her constitutional rights, other than rulings that went against her. The gravamen of the complaint appears to be plaintiff's contention that the various state disciplinary laws, as interpreted and applied by the state courts, somehow violated her constitutional rights.

Essentially, plaintiff's dissatisfaction with the state court rulings does not provide a basis for a constitutional challenge, especially where the way in which the decisions allegedly violated her rights is so vague and difficult to decipher. With respect to plaintiff's conclusory claim of an unspecified

"conspiracy" between the courts and other defendants, this too should be dismissed. The foregoing threshold standard of specificity must be met where, as here, the complaint seeks to allege a conspiracy to deprive a person of their rights; if not, the complaint will be dismissed. Polur v. Raffe, 912 F.2d 52, 56 (2d Cir. 1990); Ostrer v. Aronwald, 567 F.2d 551 (2d Cir. 1988). Plaintiff makes no factual allegations regarding either a conspiracy or a conspiratorial act, requisite elements for a § 1985 claim. Powell v. Workmen's Comp. Bd., 327 F.2d 131 (2d Cir. 1964). Plaintiff also fails to allege that she was deprived of her rights as a result of class-based, invidious discrimination, and this failure precludes a § 1985 or § 1986 claim. United Brotherhood of Carpenters & Joiners v. Scott, 463 U.S. 825 (1983)).

In sum, the complaint is fatally defective because it fails to satisfy threshold pleading requirements, and should therefore be dismissed.

CONCLUSION

FOR ALL THE FOREGOING REASONS, THE COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY.

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Respectfully submitted,

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