UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN MCKEOWN,

Plaintiff,

-against-

THE STATE OF NEW YORK; THE OFFICE OF COURT ADMINISTRATION OF THE UNIFIED COURT SYSTEM; THOMAS J. CAHILL, in his official and individual capacity; SHERRY M. COHEN, in her official and individual capacity; NANCY J. BARRY, in her official and individual capacity; JOSEPH M. ACCETTA, in his official and individual capacity, ROBERT M. DIBELLA, in his official and individual capacity; MCQUADE & MCQUADE, ESQS.; JOSEPH F. MCQUADE, individually and as a partner of MCQUADE & MCQUADE; and JOHN and JANE DOES, 1-20,

Defendants.

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08 Civ 2391 (SAS)

ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

ON NOTICE

Upon the affirmation of Kevin McKeown, *Pro Se*, executed the **28th** day of **April, 2008**, and upon the complaint hereto annexed, it is

ORDERED, that the above named defendants, or any party, appear and show cause before this Court, at Room 15C, in United States District Court for the Southern District of New York, 500 Pearl Street, in the City, County and State of New York on **May _____, 2008,** at _____ **o'clock** in the _____noon thereof, or as soon thereafter as counsel may be heard, why an order should not be issued:

(a) appointing a federal monitor to oversee the day-to-day operations of defendants' Office of Court Administration and State of New York's Departmental Disciplinary Committee, located at 61 Broadway, New York, New York, for an indefinite period of time;

(b) consolidating, for reasons of commonality, proceedings heretofore deemed-related, or hereinafter related, to *Anderson v State of New York, et al (07 Civ 9599(SAS)*;

(c) referring for investigation all matters related, or hereinafter related, to *Anderson v State of New York, et al (07 Civ 9599)(SAS)* to the Office of the United States Attorney for the Southern District of New York, Attention: Boyd M. Johnson III, Chief, Public Corruption Unit, for investigation;

(d) enjoining defendants, pursuant to Rule 65 of the Federal Rules of Civil Procedure, from destroying, concealing, discarding, secreting or in any way altering any portion of any files or ethics complaints involving plaintiff; and

(e) granting such other legal and equitable relief as the court deems just and proper; and it is further,

ORDERED, that sufficient reason having been shown therefor, pending the hearing of plaintiff's application for a preliminary injunction, pursuant to FRCP Rule 65, the defendants are temporarily restrained and enjoined from destroying, concealing, discarding, secreting or in any way altering any portion of any files or ethics complaints involving plaintiff; and it is further

ORDERED, that no security be posted by plaintiff, and it is further,

ORDERED, that personal service of a copy of this order and annexed affirmation upon the defendants or their counsel on or before _____ o'clock in the _____noon, **April** _____, **2008** shall be deemed good and sufficient service thereof.

DATED: **April _____, 2008**
New York, New York

Hon. Shira A. Scheindlin
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN MCKEOWN,

Plaintiff,

-against-

THE STATE OF NEW YORK; THE OFFICE OF COURT ADMINISTRATION OF THE UNIFIED COURT SYSTEM; THOMAS J. CAHILL, in his official and individual capacity; SHERRY M. COHEN, in her official and individual capacity; NANCY J. BARRY, in her official and individual capacity; JOSEPH M. ACCETTA, in his official and individual capacity, ROBERT M. DIBELLA, in his official and individual capacity; MCQUADE & MCQUADE, ESQS.; JOSEPH F. MCQUADE, individually and as a partner of MCQUADE & MCQUADE; and JOHN and JANE DOES, 1-20,

Defendants.

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08 Civ 2391 (SAS)

AFFIRMATION

STATE OF NEW YORK
COUNTY OF NEW YORK ss.:

Kevin McKeown, pro se, makes the following affirmation under the penalties of perjury:

1. I, Kevin McKeown, as plaintiff in the above-entitled action, respectfully move this Court, until a final deposition on the merits in the above entitled action (complaint attached hereto as **Exhibit "A"**), to order defendants to show cause why an order should not be issued:

(a) appointing a federal monitor to oversee the day-to-day operations of defendant State of New York's Departmental Disciplinary Committee (hereinafter "DDC"), located at 61 Broadway, New York, New York, for an indefinite period of time;

(b) consolidating, for reasons of commonality, proceedings heretofore deemed related, or hereinafter related, to *Anderson v State of New York, et al (07 Civ 9599)(SAS)*;

(c) referring for investigation all matters related, or hereinafter related, to *Anderson v State of New York, et al (07 Civ 9599)(SAS)* to the Office of the United States Attorney for the Southern District of New York, Attention: Boyd M. Johnson III, Chief, Public Corruption Unit, for investigation;

(d) enjoining defendants, pursuant to Rule 65 of the Federal Rules of Civil Procedure, from destroying or in anyway altering any portion of any files or ethics complaints involving plaintiff;

(e) granting such other legal and equitable relief as the court deems just and proper; and

(f) pending the hearing of plaintiff's application for a preliminary injunction, temporarily restraining and enjoining defendants from destroying, concealing, discarding, secreting or in any way altering any portion of any files or ethics complaints involving plaintiff.

2. Furthermore, and of immediate importance, I respectfully move this Court for an order temporarily restraining and enjoining defendants from destroying, concealing, discarding, secreting or in anyway altering any portion of plaintiff's files or ethics complaints concerning defendant Joseph McQuade, or attorneys Charles A. Giulini and Christine Giulini (hereinafter "the Giulinis").

3. Unless this order is issued, I will suffer immediate and irreparable injury, loss and further damage in that my constitutional right to fair proceedings will not be possible if defendants are allowed to continue their practice of altering and "cleansing" file documents to support whatever improper purposes may be served in furtherance of defendants' manipulated "findings" involving complaints against select attorneys.

DDC Practice of Altering Official Records

4. In or about December of 2007, and during a meeting with defendant Cohen, in the presence of John Pugliese, a DDC investigator, at the DDC offices, I was advised by defendant Cohen that the files before us on the conference table were the complete contents of the DDC file involving my ethics complaint against defendant McQuade. I quickly observed that the quantity of papers were but a fraction of what had been submitted to the DDC over the previous 18 months. I will be irreparably harmed, and further damaged, if the defendants are allowed to further "cleanse" my attorney ethics complaints.

5. If not specifically prevented by the herein requested relief to enjoin defendants from their usual practice of "white washing" attorney complaints, I will be further harmed by the

defendants in that additional acts of attorney misconduct have recently come to light. In fact, had the DDC conducted a basic investigation in defendant McQuade's complaint proceedings, the DDC would have quickly found that attorney McQuade was assisted by the two Giulini attorneys—who were under DDC oversight-- in furthering the fraud against the stolen $100,000.00-plus 9/11 Red Cross monies. Further, I have been informed that the most basic, cursory review of defendant McQuade's misconduct would have revealed the fact that McQuade and the Giulinis improperly advanced the fraudulent assignment, following the assignee's suicide, by purposely failing to secure proper and required 'substitution of party' court submissions upon his death.

Four Year History of Manipulating Official Records Regarding Defendant McQuade

6. In 2003, defendants Accetta and DiBella caused a known fraudulent assignment of interest to be used for all purposes against plaintiff. However, New York State employee defendants Accetta and DiBella chose to secret that assignment from docketing, although they knew that the filed instrument was fraudulent-- a scheme advanced by their attorney-friend—to further defraud: (a) the American Red Cross of over $100,000.00 in stolen 9/11 donations. (See April 28, 2006 dated *New York Times* article attached hereto as **Exhibit "B"**); and (b) the State of Texas in an amountcurrently exceeding $1,600,000.00 (See December 11, 2007 dated affidavit of State of TexasAssistant Attorney General Ronald R. Del Vento, attached hereto as **Exhibit "C"**)

7. By a letter dated July 11, 2007, attached hereto as **Exhibit "D"**, the newly appointed Westchester County Surrogate Court Chief Clerk, Charles T. Scott, corrected the nearly four year "administrative oversight" and advised plaintiff that the 2003 assignment was then, in 2007, being backdated and docketed.

Virtually No Limit to Defendants' Misrepresentation

8. The defendants knew, or should have known, at all times relevant, that: (a) plaintiff's ethics complaint against defendant McQuade was filed on May 17, 2006; and (b) no Surrogate or Acting-Surrogate had presided over, or been assigned to, the underlying estate proceedings since January 18, 2006. However, defendants Cahill and Cohen chose to ignore their own duty of handling the ethics complaint against defendant McQuade by apparently deferring the matter outside the DDC for resolution. In a letter dated May 15, 2007 (**Exhibit "E"**), on its face bearing the name of defendant Cahill as its author, but admittedly directed by defendant Cohen, the DDC advised plaintiff that the ethics complaint against attorney McQuade had "been resolved by the Surrogate[.]"

9. The defendants knew that the original Surrogate had recused himself in August of 2005 and that an Acting-Surrogate's involvement had ceased on January 18, 2006. The defendants knew there was no Surrogate when they represented to plaintiff in writing that plaintiff's ethics complaint had "been resolved by the Surrogate[.]" In fact, the defendants knew plaintiff's ethics complaint had never been resolved, yet they chose to close the file. Even after defendants received additional confirmation that the DDC was referring to a surrogate judge who did not exist, the defendants embraced their knowingly false information by silence and inaction. (See attached June 25, 2007 dated letter attached hereto as **Exhibit "F"**).

10. The defendants' collective failure to oversee or correct attorney misconduct confirms their inability, or lack of desire, to perform their trusted duty of attorney ethics oversight. I have simply asked the defendant-state employees for assistance in securing my own client files, to which they have responded, falsely, by advising me that the matter was resolved by a non-existent person. Clearly, the defendants are not capable of overseeing the misconduct of defendant McQuade or the

two Giulini attorneys, or for that matter, other select attorneys. In addition, and because the involved attorney misconduct was by select members of the bar, the defendants have little time, and less desire, to address: (a) a fraud involving over $100,000.00 stolen from 9/11 Red Cross donations; and (b) a fraud involving over $1,000,000.00 owed to the State of Texas. The defendants' collective continuation of neglecting their duty requires the immediate appointment of a federal monitor.

11. Notably, the defendants have knowingly acted to allow the DDC to disregard their state-mandated duty to handle ethics complaints against attorneys whose offices are located within Manhattan and the Bronx. The DDC has long abandoned its duty to conduct full, fair and balanced investigations. The defendants improperly attempted to defer their own obligation to handle the McQuade complaint, and subsequent misconduct by the Giulinis, to unauthorized, or even non existent, entities outside the DDC.

TWENTY YEARS OF DDC CHAOS REQUIRES FEDERAL INTERVENTION

12. Plaintiff recently became aware of the fact that the pattern of improper acts within the DDC has been the rule and not the exception-- egregious violations that continue to harm my right of due process and equal access, and actions that only serve to further the improper and selective enforcement of attorney ethical investigations.

13. As a result of flagrant abuse and neglect of duty in and about the DDC in 1988, according to The Murphy Report (attached hereto as **Exhibit "G"**), the DDC office locks were changed, and two high-ranking DDC administrators were forced to resigned by then Appellate Division, First Department Presiding Justice Francis T. Murphy. Interestingly, defendant Cahill has also recently resigned his position as Chief Counsel.

14. The Murphy Report sets forth practices at the DDC from two decades ago that chillingly mirrors current DDC operating procedure:

> "In unlawfully closing the file, Mr. Gentile, wrote a servile letter to that political figure, inviting him to contact Mr. Gentile, and a letter to the complainant chastising him for having filed the complaints."

15. Indeed, in January of 2008, the newly appointed Chief Counsel, Alan W. Friedberg, refused to explain to me how, why or under what authority my complaint ever could be handled by a non-existent DDC outsider; rather, he chose to confront me on a personal level in order to stifle my pursuit of my right of due process concerning an attorney's misconduct.

16. The 20-year-old Murphy report also, and prophetically, speaks of current-day conditions at the DDC:

> "It was apparent to me that a chief counsel whom we could rarely locate, who seemingly tried no cases, whose backlog seemed permanent, whose staff lawyers fell from the masthead with an awe-inspiring frequency and whose unethical conduct in certain cases had caused alarm, and who was lacking in professional courage, was not a chief counsel of anything."

17. The collection of related cases before this honorable Court tells of the continuing "unethical conduct" of the DDC, and the urgent need for this Court's immediate intervention by appointment of a federal monitor over all day-to-day operations of the DDC.

18. I have, this date, provided a copy of the submitted order to show cause, affirmation in support and annexed exhibits to: (a) The State of New York, Litigation Dept., 120 Broadway, NYC; (b) Office of Court Administration, 25 Beaver St., New York, NY; (c) The law offices of McQuade & McQuade, 104 E 40th St., New York, NY; (d) The U.S. Attorneys Office, Public Corruption Unit, 1 St. Andrews Plaza, NYC; (e) State of Texas, Office of the Attorney General, Austin, Texas; and (f) Creedon and Gill, attorneys for Red Cross subrogated insurance claims.

19. I respectfully request that a hearing being held on the herein sought relief and, further, that I be permitted to present the brief testimony of approximately six credible witnesses.

20. I have no other adequate remedy of law, and have not previously sought the relief herein requested.

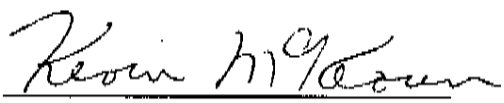
WHEREFORE, I respectfully request that the Court grant the within relief as well as such other and further relief that may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 28, 2008
New York, New York

Respectfully submitted,

KEVIN MCKEOWN

By: 

Kevin McKeown, *Pro Se*
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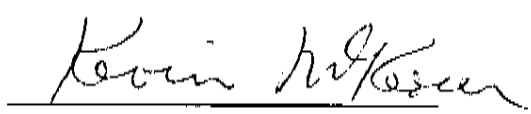
kmck22333@aol.com

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above affirmation and that the information contained therein is true and correct, 28 U.S.C. § 1746; 18 U.S.C § 1621.

Executed at New York, New York on April 28, 2008.



Kevin McKeown

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

KEVIN MCKEOWN,

Plaintiff,

-against-

THE STATE OF NEW YORK; THE OFFICE OF COURT ADMINISTRATION OF THE UNIFIED COURT SYSTEM; THOMAS J. CAHILL, in his official and individual capacity; SHERRY M. COHEN, in her official and individual capacity; NANCY J. BARRY, in her official and individual capacity; JOSEPH M. ACCETTA, in his official and individual capacity, ROBERT M. DIBELLA, in his official and individual capacity; MCQUADE & MCQUADE, ESQS.; JOSEPH F. MCQUADE, individually and as a partner of MCQUADE & MCQUADE; and JOHN and JANE DOES, 1-20,

Defendants.

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08 CV 2391

Civil Action No._____

COMPLAINT

JURY TRIAL DEMANDED

PLAINTIFF Kevin McKeown, *Pro Se*, as and for his Complaint against the above-captioned defendants, alleges upon knowledge as to his own facts and upon information and belief as to all other matters:

PRELIMINARY STATEMENT

1. This is a civil action seeking injunctive relief, monetary relief, compensatory and punitive damages, disbursements, costs and fees for violations of rights, brought pursuant to 42 U.S.C. § 1983; the First and Fourteenth Amendments to the United States Constitution; and State law claims.

2. Specifically, plaintiff alleges that all of the above-captioned defendants wantonly, recklessly, knowingly and purposefully, acting individually and in conspiracy with each other, sought to deprive plaintiff of his Constitutional rights, by means of misrepresentation, fraud, harassment, manipulation of laws, rules, and regulations and for various other reasons. Plaintiff is aware of three related pending cases against the New York State Office of Court Administration

"A"
1/14

of the Unified Court System concerning, *inter alia*, "white-washing" of complaints against certain select attorneys and other state employees for "political reasons."

3. At all times relevant, the defendants, individually and in concert with each other, acted to 'white-wash' and otherwise conceal various improper actions devised to prevent the rightful return of over $100,000.00 stolen from American Red Cross 9/11 donations, and as reported in the ***New York Times*** on April 28, 2006, *"Red Cross Quietly Settles Case of a $120,000 Theft,"* and that additionally resulted in the subsequent fraud against the insurance company that partially paid out on the Red Cross 9/11 donation theft claim.

4. Plaintiff also specifically brings claims against Joseph F. McQuade (in his individual capacity and in his capacity as a partner of McQuade & McQuade, Esqs., (hereinafter "McQuade & McQuade") for alleged fraud, harassment, breach of contract and breach of fiduciary duties.

JURISDICTION AND VENUE

5. Jurisdiction of this Court is invoked under 28 U.S.C. §1331, 28 U.S.C. §§1343(3) and (4), and the First and Fourteenth Amendments to the United States Constitution. Pendent jurisdiction over Plaintiff's state law claims is proper pursuant to 28 U.S.C. §1367.

6. This Court has jurisdiction pursuant to 42 U.S.C. §1983, because defendant the State of New York is a "state actor" within the meaning of §1983; and the Offices of Court Administration of the Unified Court System and the New York State Supreme Court Appellate Division, First Department, Departmental Disciplinary Committee is an arm of the State of New York and are "state actors" within the meaning of § 1983.

7. Venue herein is proper under 28 U.S.C. § 1391(b); the cause of action arose in the Southern District of New York, all of the parties reside in, or worked at all times relevant, in the State of New York, and because the events or omissions giving rise to plaintiff's claims occurred in this judicial district.

THE PARTIES

8. At all times relevant in this Complaint, plaintiff is an individual residing in the State of New York. At all times relevant hereto, plaintiff was a complainant and witness to the various grievance complaints contained herein.

9. At all times relevant to this Complaint, defendant STATE OF NEW YORK (hereinafter "State") is a sovereign state of the United States of America. At all times relevant herein, defendant State was an employer within the meaning of the Constitution of the State of New York and was a governmental entity acting under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of New York.

10. At all times relevant to this Complaint, defendant OFFICE OF COURT ADMINISTRATION OF THE UNIFIED COURT SYSTEM and the New York State Supreme Court, Appellate Division, First Department, Departmental Disciplinary Committee (collectively hereinafter "OCA") are and were at all relevant times governmental entities created by and authorized under the laws of the State of New York. At all times relevant herein, defendant OCA was a governmental entity acting under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of New York.

11. At all times relevant to this Complaint, defendant Thomas J. Cahill (hereinafter "Cahill"), sued here in his official and individual capacity, is an attorney, who, upon information and belief, resides in the State of Connecticut. At all times relevant herein, defendant Cahill was employed as Chief Counsel for the Departmental Disciplinary Committee ("DDC"); was a policy maker for administrative and employment-related matters at the DDC; and was an employer within the meaning of the Constitution of the State of New York.

12. At all times relevant to this Complaint defendant Sherry Cohen (hereinafter "Cohen"), sued in her official and individual capacity, was upon information and belief, a citizen

of the United States, residing in the State of New York. At all times relevant herein, defendant Cohen was employed by OCA as a DDC supervising attorney.

13. At all times relevant to this Complaint, defendant Nancy J. Barry (hereinafter "Barry"), sued here in her official and individual capacity, is an attorney, who, upon information and belief, resides in the State of New York. At all times relevant herein, Defendant Barry was employed by OCA as principal attorney.

14. At all times relevant to this Complaint, defendant Joseph M. Accetta (hereinafter "Accetta"), sued here in his official and individual capacity, is an attorney, who, upon information and belief, resides in the State of New York. At all times relevant herein, defendant Accetta was employed by OCA as a New York State court attorney.

15. At all times relevant to this Complaint, defendant Robert M. DiBella (hereinafter "DiBella"), sued here in his official and individual capacity, is an attorney, who, upon information and belief, resides in the State of New York. At all times relevant herein, defendant Accetta was employed by OCA as a New York State court attorney.

16. At all times relevant to this Complaint, defendant McQuade & McQuade, Esqs. (hereinafter "McQuade & McQuade") is a domestic professional service limited liability company, providing legal services to the public, located at 104 East 40th Street, New York, New York 10016.

17. At all times relevant to this Complaint, defendant Joseph F. McQuade (hereinafter "McQuade"), sued here in his individual capacity and as partner of defendant law firm McQuade & McQuade, is an attorney, who, upon information and belief, resides in the State of New York. At all times relevant herein, defendant McQuade has been a partner in the defendant law firm McQuade & McQuade located at 104 East 40th Street in New York, New York.

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FACTUAL BACKGROUND

18. Upon information and belief, on or about September 2, 2003, plaintiff and Mary Virga (hereinafter "Virga") formally engaged, by virtue of a fully executed retainer agreement, the legal services of defendant McQuade and defendant law firm McQuade & McQuade, to jointly represent them in the estate of their mother. Plaintiff and Virga had both been named as co-fiduciaries in the decedent's, Margaret McKeown (hereinafter "Margaret"), last will and testament, and within days of being formally retained, McQuade filed a joint petition for probate in court on behalf of both co-clients.

19. At the time of her death in New York on August 26, 2003, Margaret had four living children who were beneficiaries under the will: Ronald P. McKeown, Jr. ("Ronald"), a resident of Connecticut; Thomas J. McKeown, Sr. ("Thomas"), a resident of Connecticut; Kevin McKeown ("Kevin" or "plaintiff"), residing in New York; and Mary Megan McKeown Virga ("Virga"), a resident of Florida.

20. Upon information and belief, during September and October of 2003, plaintiff fully advised McQuade that he (the plaintiff) and the decedent had, until her death, been actively engaged in resolving certain legal issues concerning Ronald. McQuade was fully informed that Ronald: (a) was out on bail after being arrested in Connecticut on charges of stealing over $100,000.00 in 9/11 Red Cross donation monies; (b) was mentally incompetent and at the time had been under court-ordered psychiatric in and outpatient care for nearly 18 months; (c) had an outstanding judgment against him by the State of Texas for over $490,000.00 for collected but unpaid sales taxes due the State of Texas, and a Texas State judgment for conversion; (d) had a $250,000.00 federal tax lien against him; (e) had claims against him by the American Red Cross in excess of $120,000.00; (f) that the State of Connecticut had a claim against Ronald pertaining to the pending criminal charges;

and (g) that Ronald had attempted suicide numerous times since his arrest for stealing the Red Cross 9/11 donation monies.

21. Upon information and belief, in or about September and October of 2003, McQuade was made fully aware that plaintiff wanted to expeditiously fulfill their mother's intention to repay the Red Cross monies even though it was not so directed pursuant to her last will and testament. McQuade was informed by plaintiff that the repayment of the Red Cross monies would be equally borne by the four surviving children. There came a time, however, and upon information and belief, when McQuade, Virga, and others who would financially gain, decided to devise certain improper legal implements so that no estate monies would be used to pay back the donation monies stolen from the Red Cross.

22. Upon information and belief, on September 24, 2003, and unbeknownst to plaintiff at the time, Virga executed, and McQuade notarized Virga's signature on an *ex parte* Verified Petition to revoke plaintiff's Preliminary Letters Testamentary- legal documents that McQuade had previously drafted to the detriment of plaintiff on behalf of one co-client in the very same proceeding.

23. Upon information and belief, on or about September 26, 2003, defendant McQuade presented a check to his co-clients, plaintiff and Virga, to be jointly signed, in the amount of $18,370.92, and made payable to defendant McQuade & McQuade. The check cleared the bank, upon information and belief, on or about September 29, 2003.

24. Upon information and belief, on or about October 8, 2003, McQuade appeared in court with, and on behalf of, plaintiff and Virga, announcing on the record in open court, "Mary McKeown and Kevin McKeown both presently preliminary executors – co-executors."

25. Upon information and belief, on or about October 8, 2003, and shortly after the court hearing, and during a conference with defendant Accetta, plaintiff first learned that his

own retained attorney, McQuade, had filed in court his previously prepared, executed, notarized and submitted an *ex parte* order to show cause against plaintiff. At all times relevant, and upon information and belief, McQuade advanced court proceedings in the same matter on behalf of one co-client against another co-client, to wit, co-client Virga against co-client plaintiff, seeking a stay of his own co-client's authority to continue acting as an estate co-fiduciary.

26. Upon information and belief, defendant Accetta: (a) accepted McQuade's *ex parte* filing by Virga against plaintiff, knowing that McQuade was at that time simultaneously representing both parties in that proceeding, the therein petitioner and respondent; and (b) heard plaintiff say to McQuade during that first conference when first presented with the *ex parte* order to show cause, "What are you doing? You're *my* lawyer."

27. Upon information and belief, plaintiff's authority to act in his mother's estate was stayed on or about October 8, 2003 as a result of his own attorney's *ex parte* submission. Shortly thereafter, Virga's authority was stayed upon, *inter alia*, the presentation of official certified court documents evidencing the fact that Virga was a convicted felon; Virga's authority was then subsequently and permanently revoked.

28. Upon information and belief, and at all times relevant, defendant Accetta failed his duty as an attorney and as an OCA employee when he chose not to report or take any action against McQuade's breaches of the most fundamental attorney-client obligations. Although McQuade was ultimately disqualified from the estate many months later, it was only as a result of plaintiff's second submission to the court, protesting that impropriety.

29. Upon information and belief, and at all times relevant, defendant DiBella, acting in a supervisory position with OCA , and who was jointly handling and participating in the estate proceedings with defendant Accetta, failed his duty as an attorney and as an OCA employee when

he chose not to report or take any action against McQuade's breaches of the most fundamental attorney-client obligations.

30. Upon information and belief, in or about November of 2003, parties with interest in the estate were waiting in defendant Accetta's 8th floor office for a scheduled conference to begin. Seconds before defendants Accetta and DiBella of the OCA entered, DiBella was heard saying in a very raised voice, "I told you I didn't like this one."

31. Upon information and belief, and at all times relevant, defendants Accetta and DiBella, grossly and knowingly failed their obligations as attorneys, and as employees of OCA, to take appropriate action or to report the misconduct of defendant McQuade.

32. Upon information and belief, and though formally demanded on numerous occasions, McQuade has never provided plaintiff with copies of all documents while he was representing plaintiff.

Plaintiff Files a Complaint with the DDC

33. On or about May 17, 2006, plaintiff filed an ethics complaint with the DDC against McQuade complaining that: (a) McQuade improperly prepared, executed and filed false and misleading documents against plaintiff while in the attorney-client relationship; (b) McQuade grossly failed the requirement to possess basic knowledge of estate tax filing requirements; (c) McQuade continued to reject the then-two-year old (now 4 year) demand of plaintiff that he provide plaintiff with copies of files while plaintiff was his client; and (d) McQuade failed for over two years to provide a required Affidavit of legal Services to the Court.

Plaintiff Discovers Corruption at the DDC

34. In a letter dated on or about May 15, 2007, approximately one year later, and bearing the stamped signature of defendant Cahill, the DDC advised plaintiff that his complaint against McQuade had "been resolved by the Surrogate" and that the DDC would be taking no

further action. Plaintiff was stunned by the May 15, 2007 dated DDC advisement because, and upon information and belief: (a) the sole county Surrogate had recused himself from the estate nearly two years earlier on August 3, 2005; (b) there were no pending estate proceedings, and there had not been any for over one year; and (c) an acting-surrogate's authority had been terminated over fifteen months earlier on January 18, 2006, before plaintiff had even filed the McQuade complaint with the DDC.

Plaintiff Discovers Outside Acts to Improperly Influence DDC Affairs

35. In a letter dated on or about May 23, 2007, and upon information and belief, defendant Barry of OCA independently, and at the direction of, or in concert with defendants Accetta and DiBella, and possibly other OCA employees, conveyed incomplete and misleading information to plaintiff, and sent a copy of that unsolicited letter to defendant Cahill at the DDC. Upon information and belief, the Barry letter was intended to improperly influence the DDC by conveying, displaying and expressing a heightened level of interest by defendants Barry, Accetta and DiBella, and others, in plaintiff's ethics complaint against defendant McQuade.

The DDC's Sham Findings

36. On or about June 27, 2007, plaintiff provided documentation from the Surrogate's Court Clerk to Cahill establishing that the sole county Surrogate, Judge Scarpino, had previously recused himself on August 3, 2005 and that any authority by any Acting-Surrogate had been terminated January 18, 2006. Specifically, and upon information and belief, from January 18, 2006 until at least the date of Cahill's letter of May 15, 2007, **there were no pending estate matters and there was no Surrogate assigned to the estate,** who could, even if permitted, resolve ***any*** attorney ethics complaint plaintiff had filed with the DDC. To date, and upon information and belief, none of the issues raised in plaintiff's complaint against McQuade have been resolved.

37. In or about January of 2008, and during a personal meeting with defendant Cohen in the DDC offices, Cohen: (a) advised plaintiff that she was in charge of plaintiff's complaint; (b) advised plaintiff that she was responsible for the May 15, 2007 letter, bearing the name of defendant Cahill, and that advised plaintiff that the McQuade ethics complaint had "been resolved by the Surrogate." and, (c) refused to explain how, or under what authority, resolution of the McQuade ethics complaint by an non-existent person outside the DDC could be accomplished.

38. In or about December of 2007, and during a subsequent telephone conversation between Cahill and plaintiff, defendant Cahill: (a) could not provide plaintiff with the name of the mystery and unidentified "Surrogate" who had purportedly resolved all components of plaintiff's attorney ethics complaint against McQuade; (b) could not explain resolution by a non-existent Surrogate; (c) could not identify the person who presented such a false statement of fact to the DDC; and (d) could not provide plaintiff with any law, authority, opinion, directive or hint that conveyed the handling of ***ANY*** ethics complaint from the DDC to ***ANY*** judge or anyone else outside the DDC, except by appropriate referral or appointment by the Court itself.

39. Upon information and belief, and at all times relevant, defendants OCA, Cahill, Cohen, DiBella, Accetta, McQuade and John and Jane Does wantonly, recklessly, knowingly and purposefully, acting individually and in concert with each other, by means of misrepresentation, fraud, harassment, manipulation of laws, rules, regulations, and while acting in bad faith, sought to deprive plaintiff of his Constitutional right to fair and impartial proceedings, competent and effective counsel, and the seeking of relief by OCA administrative and ethics offices, *inter alia*, without improper or undue influence.

40. Upon information and belief, all defendants conspired with each other and agreed with each other to act in concert to deny plaintiff of a fair review of his filed ethics complaint and to deny plaintiff his rights to due process and equal protection of the laws.

COUNT ONE
(All Defendants)
42 U.S.C. §1983
DEPRIVATION OF RIGHTS and
CONSPIRACY TO DEPRIVE RIGHTS UNDER
THE FIRST and FOURTEENTH AMENDMENTS

41. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 40 as though fully set forth herein.

42. As set forth above, the DDC is a division of the New York State Supreme Court, Appellate Division, First Judicial Department, and is therefore part of the New York State court system. As part of the New York State court system, the DDC is obligated to administer justice in a fair and honest manner.

43. The DDC is also an arm of the State of New York and a "state actor" within the meaning of § 1983. Defendants Cahill, Cohen, DiBella, Accetta and Barry are also "state actors" under § 1983.

44. Plaintiff has a Constitutional right to a fair and honest judicial system, free from corruption and bias, with impartial arbiters of the law. Through the conduct set forth above, including but not limited to their conduct in denying plaintiff access to fair and honest court proceedings, all defendants, collectively and each one of them individually, have engaged in actions and abuses which violate and deny plaintiff of his Constitutional rights, including his rights to due process and equal protection of the law, as provided under the Fourteenth Amendment of the United States Constitution.

45. Through the conduct set forth above, including but not limited to their conduct in denying plaintiff access to fair and honest court proceedings, and by colluding in bad faith in various improper *ex parte* communications, all defendants, collectively and each one of them individually, have engaged in actions and abuses which violate and deny plaintiff of his

Constitutional rights, including his right to petition the government under the First Amendment to the United States Constitution.

46. As a direct and proximate result of said acts, plaintiff has suffered and continues to suffer extreme loss of security in the Legal System and Judicial Process, emotional pain and suffering, loss of enjoyment of life, and lost of trust of lawyers, who are charged to uphold ethical standards within the legal system, and in the Court system.

47. As a result of the defendants denying plaintiff's rights, plaintiff is now and will continue to suffer irreparable injury and monetary damages, as well as damages for mental anguish, and humiliation. Plaintiff is entitled to damages in the amount of thirty million dollars ($30,000,000.00) dollars as well as punitive damages, costs, and possible attorneys' fees for these violations.

COUNT TWO
(Defendants Joseph F. McQuade and McQuade & McQuade)
BREACH OF CONTRACT

48. Plaintiff repeats and reiterates the allegations set forth in paragraphs 1 through 47 as though fully set forth herein.

49. Upon information and belief, plaintiff entered into a legal and binding contract with defendant law firm McQuade & McQuade for legal representation concerning his legal interests and involvement in his mother's estate. Plaintiff met with defendant Joseph McQuade, a partner in that law firm, for the purpose of pursuing his interests in his mother's estate. Rather than properly representing plaintiff, or severing the relationship if he perceived a conflict, defendant McQuade knowingly, and with intentional deceit, in collusion with others involving improper *ex parte* communications, surreptitiously filed *ex parte* papers against his own client, the plaintiff. As a partner of the firm McQuade & McQuade, liability for Joseph McQuade's conduct is imputed to the firm.

50. By the actions set forth above, defendants Joseph McQuade and McQuade & McQuade breached their contract to provide legal representation to Plaintiff, and are therefore liable to plaintiff for damages in an amount to be determined at trial.

COUNT THREE
(Defendants Joseph F. McQuade and McQuade & McQuade)
BREACH OF FIDUCIARY DUTY

51. Plaintiff repeats and reiterates the allegations set forth in paragraphs 1 through 50 as though fully set forth herein.

52. As a client of defendant law firm McQuade & McQuade, the law firm and its partners owed plaintiff fiduciary duties of good faith, loyalty, and care.

53. When defendant McQuade drafted, executed and filed ex parte papers against his own client, the plaintiff, both McQuade and the McQuade & McQuade law firm breached their fiduciary duties to plaintiff. As a partner of the firm McQuade & McQuade, liability for Joseph McQuade's conduct is imputed to the firm. As a result, defendants McQuade and McQuade & McQuade, are liable to plaintiff for damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court enter judgment and an Order in favor of plaintiff as follows:

a. First Cause of Action: in excess of thirty million ($30,000,000.00) dollars as well as punitive damages, costs and attorney's fees.

b. Second Cause of Action: in excess of thirty million ($30,000,000.00) dollars as well as punitive damages, costs and attorney's fees.

c. Third Cause of Action: in excess of thirty million ($30,000,000.00) dollars as well as punitive damages, costs and attorney's fees.

d. Awarding plaintiff punitive damages against all individual defendants;

e. Appointing a federal monitor to oversee the day-to-day operations of the DDC for an indefinite period of time; and

f. An Order granting such other legal and equitable relief as the court deems just and proper.

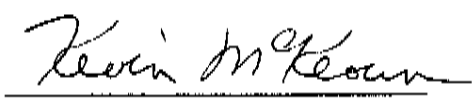
JURY TRIAL IS DEMANDED

Plaintiff demands a trial by jury on al claims so triable.

Dated: New York, New York
March 7, 2008

Respectfully submitted,

KEVIN MCKEOWN

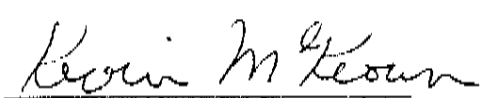
By: 

Kevin McKeown, *Pro Se*
P.O. Box 616
New York, New York 10156
(212) 591-1022 tel
kmck22333@aol.com

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained in the complaint is true and correct, 28 U.S.C. § 1746; 18 U.S.C § 1621.

Executed at New York, New York on March 7, 2008.



Kevin McKeown

The New York Times

Red Cross Quietly Settles Case of a $120,000 Theft

Stephanie Strom. **New York Times.** (Late Edition (East Coast)). New York, N.Y.: Apr 28, 2006. pg. A.16

Subjects:	Theft, Embezzlement, Publicity, Litigation
People:	McKeown, Ronald P Jr
Companies:	American Red Cross (NAICS: 813212, 621991)
Author(s):	Stephanie Strom
Document types:	News
Section:	A
Publication title:	New York Times. (Late Edition (East Coast)). New York, N.Y.: Apr 28, 2006. pg. A.16
Source type:	Newspaper
ISSN:	03624331
ProQuest document ID:	1028263451
Text Word Count	1293
Document URL:	http://proquest.umi.com.jerome.stjohns.edu:81/pqdweb?did=1028263451&sid=1&Fmt=3&clientId=9216&RQT=309&VName=PQD

Abstract (Document Summary)

According to a copy of an e-mail message provided by [Kevin McKeown] and dated Oct. 8, 2004, Ms. [Carla Burgess] said: "Thank you for thinking of us. I also appreciate the fact that you seem to understand our position in choosing not to file a claim against the estate. I do wish you the very best in your efforts to honor your mother's wishes." Mr. McKeown said Ms. Burgess had misunderstood him. "While I do understand their position -- they don't like bad publicity -- I have never and will never understand why they don't want their money back," he said.

On April 10, Mr. McKeown said, a lawyer from the national headquarters called him and said that the Red Cross had recovered from its insurance company 80 percent of the money his brother was accused of stealing. Mr. McKeown said the lawyer told him that the Red Cross considered the matter closed and that recovering the remainder of the money would be cost prohibitive.

Devorah Goldburg, a spokeswoman for the Red Cross, said she could not confirm that Mr. McKeown had initially been given the 80 percent figure, but she said that on Thursday, April 20, in another conversation, the lawyer told Mr. McKeown about the deductible and the breakdown of what the organization recovered.

Full Text (1293 words)

Officials of the American Red Cross say they try to recover "every last dollar" lost to theft or fraud, but a Connecticut case involving the theft of $120,000 has raised questions about that commitment when it carries the risk of bad publicity.

The Red Cross is under intense scrutiny over its response to Hurricane Katrina, including accusations of fraud and theft of relief supplies that volunteers say were ignored for months.

In the Connecticut case, the Red Cross settled for less than half the money from its insurance company rather than pursue the full amount through litigation even though the agency was urged to do so by the suspect's brother.

The brother, Kevin McKeown, said he was told by a local chapter official that pursuing the money would make the agency look bad. "They were worried that any further publicity would create a scandal that would harm their fund-raising," Mr. McKeown said.

National Red Cross officials now argue that a lawsuit would have been expensive and that success was far from certain.

Volunteers and former Red Cross executives say the organization often places a higher priority on avoiding scandal than recovering stolen money, and a former president of the Red Cross, Dr. Bernadine Healy, offered support for that view.

In an interview, Dr. Healy, who was pushed out after the terrorist attacks of Sept. 11, said the Red Cross board criticized her for firing the executive director of the Hudson County chapter in New Jersey, after she learned that he and the bookkeeper had embezzled almost $2 million from the organization.

"They told me I was too tough and too fast in firing the guy and moving in on this fraud," Dr. Healy said. "I was told the way to handle these things was quietly and that nobody needed to know."

Melissa Hurst, the Red Cross's assistant general counsel, disputed Dr. Healy's recollection. "The Red Cross pursued that, and it was supported throughout the organization," Ms. Hurst said.

The Connecticut case is full of legal twists and turns.

The suspect in the case, Ronald P. McKeown Jr., was the executive director of the southeastern Connecticut chapter of the Red Cross from July 2001 until he resigned on March 1, 2002. Eight months later, he was charged with larceny, money laundering and forgery in connection with the embezzlement of more than $120,000 collected by his chapter for the families of victims of the Sept. 11 attacks.

Almost a year after he was charged, however, Mr. McKeown committed suicide at age 52.

His brother Kevin said his mother had been working on a plan to repay the Red Cross with her own money when she died in August 2003, leaving an estate of more than $1 million. "We were hoping the repayment of the money would somehow lessen the criminal outcome of the charges," he said.

The money to make good on that desire then became entangled in a fight over his mother's estate, and Ronald McKeown's death put it even further out of reach because he signed documents transferring his part of the inheritance to his recently remarried former wife.

But Kevin McKeown contacted the Charter Oak chapter of the Red Cross in Connecticut, which had merged with the chapter his brother had run, and urged officials to try to regain the money Ronald McKeown was thought to have taken. The chapter's senior director of program services, Carla Burgess, told him that the Red Cross did not want any more publicity about the matter, he said.

According to a copy of an e-mail message provided by Kevin McKeown and dated Oct. 8, 2004, Ms. Burgess said: "Thank you for thinking of us. I also appreciate the fact that you seem to understand our position in choosing not to file a claim against the estate. I do wish you the very best in your efforts to honor your mother's wishes." Mr. McKeown said Ms. Burgess had misunderstood him. "While I do understand their position -- they don't like bad publicity -- I have never and will never understand why they don't want their money back," he said.

He said he was under no obligation to pay the Red Cross out of his part of his mother's estate. "It was his responsibility, and now his estate has that responsibility," Mr. McKeown said. "The only obligation and duty I feel is toward my mother's wishes."

Ms. Hurst noted that the Red Cross had pursued prosecution of Ronald McKeown until he died.

She said the organization had to consider the cost-effectiveness of various avenues of recourse. Mr. McKeown had not been convicted of theft before his death, and he had other financial difficulties related to collapse of a business he owned with another brother -- a chain of restaurants called Steak 'N' Egg -- both of which might have complicated recovery of the money.

"This individual committed suicide prior to going to trial," Ms. Hurst said. "There was no judgment of guilt, no adjudication. We went through an evaluation of recourse and chose to file a claim with our insurance company."

On Tuesday, Mr. McKeown learned via an e-mail message from the insurance company that it had decided to try to recover from his

brother's estate what it had paid out to the Red Cross.

In recent months, critics of the Red Cross have questioned why it waited months to address accusations of theft and fraud in the New Orleans area after Hurricane Katrina, charges that have led to investigations by the F.B.I. and the Louisiana attorney general's office.

"From what I've witnessed and what I've been told, they don't go after everything they find," said Michael A. Wolters, one of the volunteers who made the accusations in a report he filed with the organization.

Mr. Wolters said he was involved in uncovering fraud involving a police officer in Texas who obtained Red Cross debit cards and handed them out to law enforcement officials.

"He had access to just go get these cards and not even sign for them," Mr. Wolters said. "Who knows how much he took? We turned over reports documenting about $400,000 that was missing."

Ms. Hurst said the matter involved $360,000 and had been turned over to law enforcement officials.

Kevin McKeown, an author and screenwriter, has refused to drop his argument with the Red Cross. In January, he told his story to members of the Senate Finance Committee and various high-ranking officials at Red Cross headquarters in Washington, but heard nothing until this month.

On April 10, Mr. McKeown said, a lawyer from the national headquarters called him and said that the Red Cross had recovered from its insurance company 80 percent of the money his brother was accused of stealing. Mr. McKeown said the lawyer told him that the Red Cross considered the matter closed and that recovering the remainder of the money would be cost prohibitive.

Mr. McKeown contacted the insurer, the Royal Insurance Company, which supplied records showing that, after a $50,000 deductible, it had paid the Red Cross $47,710.59 to cover his brother's theft, or roughly 40 percent of the original amount.

Devorah Goldburg, a spokeswoman for the Red Cross, said she could not confirm that Mr. McKeown had initially been given the 80 percent figure, but she said that on Thursday, April 20, in another conversation, the lawyer told Mr. McKeown about the deductible and the breakdown of what the organization recovered.

Mr. McKeown remains dissatisfied."Thievery against the Red Cross is hardly discouraged when the crimes are underwritten by insurance companies and premiums are paid by unsuspecting donors," he said. "I was shocked to learn this was how they handle things."

[Photograph]
Kevin McKeown, whose brother was accused of embezzlement. (Photo by Carol Halebian for The New York Times)

AFFIDAVIT OF OUTSTANDING JUDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared Ronald R. Del Vento, who being by me duly sworn did state as follows:

"My name is Ronald R. Del Vento, I am over the age of 21, of sound mind, capable of making this affidavit, and have personal knowledge of the facts stated herein. I have read this affidavit, and every statement contained herein is true and correct.

"I am an Assistant Attorney General for the State of Texas, and Chief of the Bankruptcy & Collections Division. I have held this position continuously since August 1985. On August 23, 1996, a judgment was entered by the Honorable Paul Davis in Cause No. 96-08267 in the 250th Judicial District Court of Travis County, Texas, styled The State of Texas vs. Thomas J. McKeown and Ronald P. McKeown, Jr. A true and correct filed stamped copy of that judgment is attached as an exhibit to the Affidavit.

"As of today, December 10, 2007, the judgment balance, including court costs and fees, is $1,618,482.84. Post-judgment interest accrues at the rate of $176.32 per day on and after December 10, 2007. The judgment is valid, subsisting, and remains due and unpaid."

RONALD R. DEL VENTO
Assistant Attorney General
Chief, Bankruptcy & Collections Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2173
(512) 482-8341 (FAX)

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, Eva E. Woods, on this day personally appeared Ronald R. Del Vento, known to me to be the person whose name is subscribed in the foregoing instrument and acknowledged to me that he executed same for purposes and consideration thereby expressed.

Given under my hand and seal of office on this the 11th day of December, 2007.

EVA E. WOODS
Notary Public in and for the State of Texas

EVA E. WOODS
Notary Public, State of Texas
My Commission Expires
APRIL 27, 2009
Notary without Bond

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8/22/96/Sales

CAUSE NO. 96-06267

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
VS.	§	TRAVIS COUNTY, T E X A S
THOMAS J. MCKEOWN AND RONALD P. MCKEOWN, JR.	§	250TH JUDICIAL DISTRICT

DEFAULT JUDGMENT

BE IT REMEMBERED that on this day, came on to be heard the above entitled and numbered cause, wherein the State of Texas is Plaintiff and THOMAS J. MCKEOWN AND RONALD P. MCKEOWN, JR. are Defendants. The Plaintiff announced ready for trial, and the Defendants, though duly and legally served with citation in the time and manner prescribed by law, failed to appear or answer herein and wholly made default. It further appears to the Court that the Citations in said cause, with the officer's return thereon, have been on file with the Clerk of the Court ten (10) days exclusive of the day of filing and judgment. No jury having been demanded, the Court proceeded to hear the pleadings, the evidence and the argument in support of this cause of action brought to recover delinquent sales taxes, penalties, and interest; and this Court finds therefrom that Plaintiff has proven all the material allegations of its petition and is entitled to recover from Defendants the sum of $492,158.96 for sales taxes, penalties and interest. The Court also finds that Plaintiff, the State of Texas, is entitled to recover court costs and reasonable attorney's fees in the amount of $164,000.00 based on Plaintiff's Affidavit of Attorney's Fees admitted into evidence in the trial of this cause. This Court further finds that Plaintiff's lien as set forth in its petition is first and superior to any claim or interest held by any Defendant(s) named in this suit.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, the State of Texas, do have and recover of and from the Defendants, THOMAS J. MCKEOWN AND RONALD P. MCKEOWN, JR., jointly and severally, the sum of $492,158.96, which sum includes the sales taxes, penalties and interest, shown in the Comptroller's certificate(s) attached to Plaintiff's petition and accrued interest on the tax alone from the date of such certificate(s) to the date of judgment; together with interest at the statutory rate specified in §111.010 on the total amount of taxes, penalties and interest from the date of this judgment until paid, and that Plaintiff's lien as alleged in its petition is hereby fixed to be first and superior to any other interest held by any Defendant in this suit, and the same is hereby assigned to Plaintiff and is subject to a subsequent

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DISTRICT CLERK
TRAVIS COUNTY, TEXAS

TRAVIS COUNTY DISTRICT CLERK TEXAS

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foreclosure and order of sale against the property covered thereby or so much thereof as is necessary to satisfy this judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, the State of Texas, do have and recover of and from the Defendants, THOMAS J. MCKEOWN AND RONALD P. MCKEOWN, JR., jointly and severally, attorney's fees in the amount of $164,000.00, together with court costs herein incurred, and court costs which may hereafter be incurred in the collection of this judgment if the same be necessary, for all of which execution and other process necessary to enforce this judgment may issue.

All relief not expressly granted is hereby denied.

SIGNED this the 15th day of August, 1996.

JUDGE PRESIDING

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on December 11 2007.

AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK
By Deputy: Troy Ellen

DISTRICT COURT OF TRAVIS COUNTY TEXAS

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Westchester County Surrogate's Court

111 DR. MARTIN LUTHER KING, JR., BOULEVARD
19th FLOOR
WHITE PLAINS, NEW YORK 10601

914-824-5656
Fax: 914-824-3728

FRANCIS A. NICOLAI
DISTRICT ADMINISTRATIVE JUDGE
NINTH JUDICIAL DISTRICT

ANTHONY A. SCARPINO, JR.
SURROGATE

CHARLES T. SCOTT, ESQ.
CHIEF CLERK

JOHANNA K. O'BRIEN
DEPUTY CHIEF CLERK

July 11, 2007

Mr. Kevin McKeown
P. O. Box 616
New York, New York 10156

Dear Mr. McKeown:

An "Assignment of Share in Estate" by Ronald P. McKeown, Jr. to Deborah Smith McKeown, and an "Affidavit Re Assignment of Share in Estate" by Ronald P. McKeown Jr., were received by the Court on November 7, 2003 along with the appropriate fee of $16.00.

The originals of these documents are on file with the Court. By an administrative oversight, these documents were not entered in the court's "minutes" record. That circumstance has been rectified and these documents now appear in the Court's records as of the day they were received.

Sincerely yours,

Charles T. Scott
Chief Clerk

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1 of 1

DEPARTMENTAL DISCIPLINARY COMMITTEE
SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT
61 BROADWAY
NEW YORK, N.Y. 10006
(212) 401-0500
FAX: (212) 401-0810

May 15, 2007

PERSONAL AND CONFIDENTIAL

Mr. Kevin McKeown
P.O. Box 616
New York, New York 10156

Re: Matter of Joseph McQuade, Esq.
Docket No.: 2006.1386

Dear Mr. McKeown:

The Departmental Disciplinary Committee has completed its investigation of your complaint against the above-referenced attorney. As explained below, the Committee has decided to take no further action.

Specifically, the matter has been resolved by the Surrogate and the Committee has concluded that professional discipline in this case is not warranted. Based on the foregoing, the Committee has determined to conclude its investigation of this matter.

The Committee arrived at this determination after conducting an investigation consisting of several steps. First, we obtained an answer from the attorney and sent it to you for a reply. Then, a staff attorney obtained any additional information necessary to complete the investigation. The case was then submitted to a member of the Committee, an independent board of lawyers and non-lawyers appointed by the Appellate Division, First Judicial Department. The Committee member concluded that no further investigation or action was warranted. As a result, your file has been closed.

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You may seek review of this decision by submitting a written request for reconsideration to this office at the above address within thirty (30) days of the date on this letter.

Very truly yours,

Thomas J. Cahill

D-PR/C
TJC:JNS/mrh

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Westchester County Surrogate's Court

111 DR. MARTIN LUTHER KING, JR., BOULEVARD
19th FLOOR
WHITE PLAINS, NEW YORK 10601

914-824-5656
Fax: 914-824-3728

FRANCIS A. NICOLAI
DISTRICT ADMINISTRATIVE JUDGE
NINTH JUDICIAL DISTRICT

ANTHONY A. SCARPINO, JR.
SURROGATE

CHARLES T. SCOTT, ESQ.
CHIEF CLERK

JOHANNA K. O'BRIEN
DEPUTY CHIEF CLERK

June 25, 2007

Mr. Kevin McKeown
P. O. Box 616
New York, NY 10156

RE: ESTATE OF MARGARET A. McKEOWN, File No. 2239/2003

Dear Mr. McKeown:

There have been no new proceedings filed in the estate of Margaret McKeown since Mr. Kelly's letter to you of October 30, 2006. Therefore, no Surrogate or Acting Surrogate is currently assigned to this estate. As indicated in Mr. Kelly's letter, as new proceedings are submitted to this court for review and filing, they will be referred to the Administrative Judge for the Ninth Judicial District who will assign a Surrogate or Acting Surrogate to the matter.

Sincerely yours,

Charles T. Scott
Chief Clerk

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New York Law Journal
Volume 201, Number 20

Tuesday, January 31, 1989

TEXT OF JUSTICE MURPHY'S REPORT

Following is the text made public yesterday by Presiding Justice Francis T. Murphy of the Appellate Division, First Department, of his report to the Departmental Disciplinary Committee on the resignations submitted earlier this month by Michael Gentile, the committee's chief counsel and Sarah McShea, deputy chief counsel:

On Jan. 3, I requested the resignations of Michael Gentile, the chief counsel, and Sarah McShea, the deputy chief counsel, of the Departmental Disciplinary Committee (hereinafter DDC). In his letter of resignation, Mr. Gentile stated:

"As we discussed today, I will be resigning my position as Chief Counsel to the Departmental Disciplinary Committee effective March 1st, 1989. I am looking forward to spending most of my days until then clearing up some remaining loose ends in the office and by taking some much needed vacation time. I am, of course, ready and willing to help effect a smooth transition during this period.

"On a personal note, I want to thank Your Honor and the entire Court for a very satisfying and fulfilling eight years as the Committee's Chief Counsel.

"I wish you all the best."

In her letter of resignation, Ms. McShea stated:

"I learned today that Mike Gentile has informed you of his intention to resign as Chief Counsel to the Disciplinary Committee effective March 1, 1989.

"Having served happily as Mike's Deputy for three and a half years, this strikes me as a propitious time for me to pursue new professional opportunities for myself. I am therefore resigning my position as Deputy Chief Counsel to the Disciplinary Committee effective March 1, 1989.

"I have greatly enjoyed my eight years on the Committee's staff, not only for the invaluable trial and administrative experience it has afforded, but for the opportunity to work with a Committee and Court devoted to upholding professional standards and intent on making attorney discipline a reality in New York.

"I thank Your Honor and the entire Court for your support and kindness over the years. Best regards."

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At the time of their separate resignations, neither Mr. Gentile nor Ms. McShea attributed my request for their resignations to any cause unrelated to the discharge of their duties at the DDC. Ms. McShea's resignation was consistent with steps taken by her in July 1988 to find other employment. She was then, and for months thereafter, angered by the July 6 promotion and appointment of Donald Brudie, Esq., to the newly created position of executive assistant to William E. Jackson, Esq., the DDC chairman, a post created by me because, among other reasons, there was substantial cause to conclude that Mr. Gentile had in fact abandoned the operation of the DDC to Ms. McShea. By the terms of Mr. Brudie's appointment, he was given, together with Mr. Gentile, joint administrative power over the DDC. Further, Mr. Brudie was expressly made this Court's administrative liaison with the Committee. The vesting of joint administrative power is an undesirable step, unless it is required by necessity, and that necessity then existed in the DDC.

Since my request for the resignations of Mr. Gentile and Ms. McShea on Jan. 3, I have been criticized in the press for having discharged Mr. Gentile and Ms. McShea without good cause. Though I am not required by law to assign any reason for my request for their resignations, I now must regretfully state several of the causes underlying those resignations. These causes would have been disclosed to those two DDC members, Mr. Hynes and Mr. Greenberg, who, in the exercise of sound professional judgment, to say nothing of ordinary fairness, should have inquired of the Court before speaking to the press about a matter of which they knew they were not wholly informed, and indeed were substantially ignorant. When speaking to the press they should have disclosed the length of their friendships with Mr. Gentile. It might have explained why even to this day they have never asked me why I had asked their friend to resign.

First, for about six years Mr. Gentile filed work sheets in which he falsely represented work periods when he was not employed anywhere in the business of the DDC. This problem, the specific character of which I did not know, was on occasion suspected by me and led to my meetings with Mr. Jackson, the DDC chairman, on April 6, 1987 and June 2, 1988, and to telephone calls, too numerous to count, between myself, Mr. Jackson, and Mr. (Harold) Reynolds (Clerk of the Court). It led, as well, to conferences between myself and Mr. Gentile. It led, several years ago, to a conference between the Clerk of the Court and Mr. Gentile's secretary who signed Mr. Gentile's attendance records. Upon being informed by Mr. Reynolds of the legal risk involved in signing Mr. Gentile's attendance sheets, should they be false, Mr. Gentile's secretary declined to sign them.

What were the time periods for which Mr. Gentile was paid when he was not actually working for the State either in the DDC office or out of it?

Writings, given by an attorney on the DDC staff under penalty of perjury, and by a DDC secretary, whose identities are available to the DDC, indicate that Mr. Gentile, for ?? that he appeared daily, or a weekly figure much more probably in the

area of 12 hours, because he regularly failed to appear one or two days a week, or appeared at odd hours, stayed briefly, and then left. I doubt that there is any member of the public who believes that the State should pay, upon false work sheets, an annual salary of $80,000 for work of about 12 hours weekly. As for Ms. McShea, there can be no doubt that she knew of Mr. Gentile's abandonment of his office, an abandonment that alone was sufficient for his discharge on Jan. 3d.

Second, during the last six years, Mr. Gentile was the chief disciplinary prosecutor of this Court which has jurisdiction over 44,000 attorneys in Manhattan and the Bronx. During those six years, a period when the annual intake of docketed cases remained relatively stable, the backlog of docketed cases grew from 720 at the end of 1983 to over 1,300 in December 1988, the month in which it was decided that Mr. Gentile's resignation was required. Nor may we speak confidently of the figures supplied by Mr. Gentile over the years to the Court. In a writing executed under penalty of perjury, this Court has had confirmed Information given to it prior to Mr. Gentile's resignation:

"[Mr. Gentile's] major concern was that he should be criticized by the Court or the Clerk of the Court. Consequently, he took great pains to insure that a true picture of conditions existing in the DDC were concealed from the Court.

"The emphasis was on closing complaint files at any cost to reduce the number of backlogged cases. Monthly quotas were imposed on lawyers for closed cases and pressure was applied to close cases regardless of their merit. At one staff meeting that I attended several years ago, Mr. Gentile stated that we were to use 'prosecutorial discretion' to close cases. Although he was careful not to expressly state it, the implication was that we were to close anything and everything in order to reduce the backlog to below 1200 cases.

"I have a suspicion that over the last few years statistics have been altered to give the appearance that the number of backlogged cases was smaller than it actually was. I do know that in prior years hundreds of new complaints were accumulated in baskets and withheld for months before they were opened. In this way, Mr. Gentile was able to represent to the Court at the end of each year that the number of backlogged cases had been reduced, when in fact that was not true."

These facts alone justify Mr. Gentile's discharge and may implicate Ms. McShea as well.

Third, during the past two years, Chairman Jackson and I, as well as Mr. Reynolds, learned of Mr. Gentile's improper conduct in at least three cases involving political figures and a fourth involving a former Committee member.

In the first case, Mr. Gentile, recommending dismissal of two complaints, stated to Mr. Jackson that the complaints involved only political charges made during a campaign. He thus procured the signature of Mr. Jackson necessary for the closing of the file. In fact, as Mr. Gentile well knew, the complaints sufficiently stated

claims of professional misconduct in two wholly commercial matters. In unlawfully closing the file, Mr. Gentile wrote a servile letter to that political figure, inviting him to contact Mr. Gentile, and a letter to the complainant chastizing him for having filed the complaints.

In the second case, after a petition had been served, Mr. Gentile conferred with the respondent and his attorney. The respondent offered to accept a private admonition but Mr. Gentile said that the chairman, Mr. Jackson, had demanded the respondent's acceptance of a public censure. When the respondent said that he would appeal to Mr. Jackson because he could not believe that that was Mr. Jackson's position, Mr. Gentile answered that, if the public censure were not accepted, he would amend the petition in order to add serious additional counts of which Mr. Gentile had known when the petition was drawn. Upon learning of Mr. Gentile's statements, Mr. Jackson immediately repudiated them, saying that he had never taken the position represented by Mr. Gentile and that an admonition was unquestionably acceptable.

In the third case, Mr. Gentile, without authorization from anyone, and contrary to the purpose of a rule of this Court, entered into an agreement with the United States Attorney for the Southern District of New York to refrain from examining any witness in a highly publicized criminal prosecution until it had been terminated.

In the fourth case, one in which the facts pointed to the possibility of conversion, Mr. Gentile, a close friend of the respondent who was then a member of the DDC, caused the termination of the investigation and the closing of the file, notwithstanding that the file as it then stood contained facts sufficient to justify the public censure of that DDC member.

Lying to or deceitfully misleading the chairman, misrepresenting the chairman's position to a respondent, entering into an unauthorized agreement with a criminal prosecutor that stifled a DDC investigation at its inception, and covering up the misconduct of a DDC member, were ?? for ?? discharge.

Fourth, except for the Roy Cohn case, during the six-year period when Mr. Gentile, sitting in or absent from, the growing shade of a backlog that ultimately almost doubled. Mr. Gentile, as far as we have been able to ascertain, was not involved in any investigation of any case nor did he try a single case before a hearing panel. Nor may it be claimed that Mr. Gentile was the counterpart of a district attorney who, primarily an administrator, cannot ordinarily try cases. Mr. Gentile was not the holder of a position comparable to that of a district attorney. The DDC's chief counsel holds a hands on position requiring at least the trial of major matters. It was learned, before Mr. Brudie's appointment in July 1988, that Mr. Gentile had not had any cases assigned to him. On several occasions, the matter was discussed by me with the DDC chairman, together with the problem of reports to the Court of Mr. Gentile's absences from his office and his

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failure to be engaged in DDC work in any other place. The chairman himself often could not contact Mr. Gentile, for no one at the DDC knew where he was.

These reports of the absences and nonproductivity of Mr. Gentile caused me concern upon the filing with the DDC in October 1988 of the complaints of the Attorney General of the State of New York against C. Vernon Mason in the Brawley case, a filing that was made public by the Attorney General in an extensive release to the press. Upon that filing, Mr. Gentile, repeatedly informed the Clerk of the Court that he, Mr. Gentile, was so frightened by the prospect of the Mason matter that he was inclined to find a way of avoiding it. Indeed, Mr. Gentile had the cases assigned not to himself but to a DDC attorney who was told that that attorney would in fact have nothing to do with it. The Committee should read that file and determine the character of Mr. Gentile's professional judgment.

As to Mr. Gentile's personal judgment, grave doubt about it had arisen in September 1988 when a complainant before the DDC drew in the DDC office what was identified by a staff attorney as a gun, threatened to use it unless his pending complaints were satisfactorily determined, and then left the office. Court officers were immediately summoned to the DDC. Thereafter, the Clerk of the Court inquired of Mr. Gentile whether Gentile would cause the gunman's arrest. Mr. Gentile answered that he would not do so because, he said, the gunman was guilty of only a "violation" and, in any event, the gunman might shoot Mr. Gentile if he causes his arrest. When told that the gunman had committed crimes and that his arrest was necessary in protection of the staff and of the Court itself, Mr. Gentile refused to authorize the arrest of the gunman when police, having seized him that night, called Mr. Gentile. Thereafter, it was necessary to direct Mr. Gentile to place the decision before the DDC chairman, Mr. Jackson, who ordered that the matter be taken to the office of the District Attorney, a staff member of which ordered the gunman's arrest.

It was apparent to me that a chief counsel whom we could rarely locate, who seemingly tried no cases, whose backlog seemed permanent, whose staff lawyers fell from the masthead with an awe-inspiring frequency, whose unethical conduct in certain cases had caused alarm, and who was lacking in professional courage, was not a chief counsel of anything.

Upon the ground of inertia alone, Mr. Gentile was dischargeable.

In fact, on Jan. 4 he informed The New York Times that he had been thinking about resigning before I asked for his resignation. He knew of his danger of discharge in or about March 1988 when he was informed that I had intended to recommend a very small increase in his salary. He was informed that he should not misread the increase. He was told that it was given to encourage him to avoid conflicts about his work and to fix a salary that would attract his successor should Mr. Gentile fail.

As for Ms. McShea, the causes of her discharge are at least several. She knew of Mr. Gentile's abandonment of his public office and did not disclose it to the DDC or the Court, perhaps because it had vested her with Mr. ?? which in 1983 had become scandalous. I have cause to believe that the overwhelming majority of Committee members, eager to work, shared my concern that of the more than 1,200 docketed matters only 25 had been heard in all of 1988, and those 25 were spread among four panels which sat a total of 51 days. Surely Mr. Hynes must have thought it odd that he had sat only eight days in 1988. Did he not wonder why the staff was not reducing the backlog?

More persuasive for Ms. McShea's discharge, however, was the reputation earned by Ms. McShea for her treatment of the legal and lay staff following her appointment as deputy chief counsel. I set forth in full a 1987 affidavit which purports to describe an aspect of Ms. McShea's personality as it existed when she undertook her new post as deputy chief counsel. All comments concerning Ms. McShea that I thereafter heard were consistent with the personality outlined in that affidavit, a copy of which is available to any DDC member:

"[Name], an attorney duly admitted to practice in the State of New York, affirms the following under the penalty of perjury:

"1. I am a Staff Attorney to Michael A. Gentile, Chief Counsel to the Departmental Disciplinary Committee of the Supreme Court of the State of New York, Appellate Division, First Judicial Department, and have been so employed since Dec. 8, 1980.

"2. Within the offices of the Departmental Disciplinary Committee, located on the 39th floor of 41 Madison Avenue, New York, New York, my own office space is located immediately next to and adjoining that occupied by the 1st Deputy Chief Counsel, and shares one (1) contiguous wall with that office. The door frame of that office abutts the wall common to both offices, and the distance from that door to the door of my office is about 10 feet.

"3. Before April 6, 1987 the occupant of the above-described office, and the First Deputy Chief Counsel to the Committee, was Howard Benjamin. After Mr. Benjamin's departure on April 6, 1987 pursuant to his resignation, effective May 1, 1987, the office and title of First Deputy Chief Counsel was assumed by Sarah Diane McShea.

"4. I was in my office with Alan S. Phillips, an Associate Attorney with the Committee Staff, on Tuesday, April 14, 1987, when Sarah Diane McShea knocked on the door and requested to speak to Alan S. Phillips. Mr. Phillips and I walked to the door of her office.

"5. Standing at the door jamb of her office, and in the presence of Mr. Phillips and myself, Sarah Diane McShea displayed to Mr. Phillips a reference inquiry form which had been received in the mail. The form was on 8 1/2 x 11 white paper, with bold black type heading which read, 'Administrative Law Judge,' and below that, in

less bold type, read 'Personal Reference Inquiry for Administrative Law Judge Positions.' Below that, in the otherwise blank address space of the form, appeared 'Mr. Howard Benjamin' along with the address of the Committee.

"6. Sarah asked Mr. Phillips, 'What should we do with this?' to which Mr. Phillips responded that it should be given to Howard Benjamin for his completion. Sarah responded to the effect that since Howard was no longer with the Committee, and she had assumed his position, she should fill it out in her capacity.

"7. Mr. Phillips responded that the form requested Mr. Benjamin's evaluation as a reference, and was therefore personal to Mr. Benjamin and not to his title. That at any rate, Mr. Benjamin was 'still on the payroll' in the title of First Deputy Chief Counsel. Mr. Phillips stated that he had named Howard Benjamin as a reference because he and Howard had known each other for eight years, regardless of Howard's title.

"8. Ms. McShea insisted that the form was received by her as Howard's successor and that she would complete it in that capacity with an explanation that Mr. Benjamin had resigned. Mr. Phillips repeated that the form was addressed to Howard Benjamin.

"9. At that point Chief Counsel Michael A. Gentile approached the three of us and inquired as to what was going on. Both Sarah and Alan reiterated their positions, and Mr. Gentile walked away without answering the question.

"10. At that point, Sarah had walked to the desk in her office. I began walking toward the door of my office, and Mr. Phillips remained, standing stationary in Sarah's office, about 1 1/2 feet in from the doorjamb. As I walked away, and before I was more than two feet away, I heard Ms. McShea say, in a tone of voice that was as much serious business as it was conciliatory, 'I'll tell you what we'll do.' I stopped and turned around, as I was curious to hear her proposal or proposed 'resolution' to the situation.

"11. At that point I heard Sarah Diane McShea say to Alan S. Phillips: 'I won't fuck you, but I want forty (40) closings for this month and three (3) sets of new charges."

"12. I did not see Mr. Phillips' reaction, as his back was to me, nor did I hear his response, if any, as I turned and continued walking into my office.'

?? with the backlog was Ms. McShea's oppressive use of a quota system which, at least to my eye, must have terrorized the legal staff and tended to victimize complainants. In my opinion, the imposition and maintenance of a quota system specifically for the production of dismissals of complaints were unethical acts of which Mr. Gentile knew and of which neither he nor Ms. McShea informed the DDC.

Last, Ms. McShea's negative reaction to the appointment of Mr. Brudie as, among

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other things, liaison with this Court, was of such a prolonged magnitude that I believed her severance desirable. In my opinion, she was not a person to whom power over others should be granted, and she had seemingly identified herself with Mr. Gentile's interests. Accordingly, it did not surprise me that Ms. McShea's letter of resignation stated, in substance, that having learned of Mr. Gentile's resignation and having served "happily as Mike's Deputy," this was "a propitious time" to resign in order "to pursue new professional opportunities."

As I sat through the Jan. 3 resignation conferences with Mr. Gentile, and then Ms. McShea, each knew and concealed a fact that I did not know and of which I learned on Jan. 4 when it was discovered that, during December, Hal Lieberman, the DDC lawyer assigned its major cases of extraordinary significance, had resigned, effective at the end of January. On Jan. 4, Mr. Lieberman had met with the Clerk of the Court and had volunteered in the presence of another attorney that he had resigned because the backlog of cases was "menacing" and, for lack of any planning by Mr. Gentile and Ms. McShea, the backlog was "out of control." Further, he stated that the staff was "demoralized" by the leadership of Mr. Gentile and Ms. McShea.

Thereafter, Mr. Lieberman met with me. In the presence of two other attorneys, he volunteered to me the very same statements concerning his resignation -- the backlog was lacking "a comprehensive plan" and the staff was "demoralized and alienated" by Mr. Gentile's and Ms. McShea's poor leadership. He stated that 20 important cases that should be tried were languishing in the files. It is strikingly significant that, while in December I had been considering the discharge of Mr. Gentile and Ms. McShea for reasons which included the backlog and a demoralized staff, Mr. Lieberman had concurrently decided to resign for those two reasons.

As to certain falsehoods that have been marketed to the press by Mr. Gentile or Ms. McShea, or the both of them, I shall give the brief answers that they deserve.

It is said that, particularly in Mr. Gentile's case, he was brutally removed from his office at 5 P.M. on Jan. 6, the day of a snow storm. In the afternoon of that day, the Clerk of the Court received a telephone inquiry from a reporter who claimed that he had learned that Mr. Gentile had been ousted because of a reason that the Clerk knew to be false. The Clerk told the reporter that he would call Mr. Gentile and ask him to call the reporter. Upon being asked to call the reporter and affirm or deny the cause for discharge described by the reporter, Mr. Gentile repeatedly shouted in a virtually incoherent state, "I'm having a nervous breakdown! I'm on the brink of a nervous breakdown! No comments to the press! No comments to the press!"

The Clerk became alarmed that Mr. Gentile was in that state in the 39th floor office of the DDC, an office that was not fully staffed because of the snow storm. It would be imprudent for Mr. Gentile to deny under oath the telephone "conversation" had by him with the Clerk on the afternoon of Jan. 6.

The Clerk reported that conversation to me after Mr. Brudie, a DDC attorney, stated that, upon telling Mr. Gentile that he had had the office locks changed and that he would be closing the office at 5 P.M., Mr. Gentile said to Mr. Brudie that he would not leave the office at that time but would stay until any hour desired by him. In view of the report of Mr. Gentile's state and the impossibility of predicting his conduct, I advised Mr. Reynolds to direct Mr. Brudie to request the entire staff then in the DDC office to leave at 5 P.M., and to ask the court officer then on duty at the DDC to request another court officer to be present when the office was closed. Provision for the posting of a court officer in the DDC office had been made by the Office of Court Administration since September 1988 in consequence of Mr. Gentile's claims that such an officer was necessary because, among other things, Mr. Gentile was in danger of attack by a disbarred lawyer who had been following him for months. Accordingly, at 5 P.M., there was a brief, peaceful leaving of the DDC office by Mr. Gentile and Ms. McShea. No officer drove them out. None stood by the desk of Mr. Gentile or Ms. McShea ?? eviction were in progress. Their leaving was painful to them but, insofar as such events may be accompanied by civility, they received it.

With respect to the Steinberg DDC matter, several points are noteworthy.

First, Judiciary Law §90 draws a curtain of secrecy only around those disciplinary proceedings involving attorneys who have been lawfully admitted to the Bar. By §90 the Legislature intended to protect only the reputations of such attorneys against the damage of unproved charges; a rational Legislature could never have intended to extend confidentiality to persons like Steinberg who had secured their admissions to the Bar by fraud. Hence, the Steinberg file did not require a motion for its release to the public.

Second, the Daily News did not mysteriously learn of the Steinberg file and then request it. In its issue of Nov. 6, 1987, the News published an article concerning the 1983 post-conviction claims of Steinberg's client, John Novak, and Novak's wife, that Steinberg was addicted to cocaine when he represented Novak in a 1981 federal narcotics trial. There was nothing unusual when, more than one year later, the News on Dec. 22, 1988 made a request of this Court for an examination of the DDC's Steinberg file concerning Novak's complaint, a request made by the News during a two week adjournment in the Steinberg criminal trial.

Third, Mr. Gentile's resignation was not requested solely because of his indefensible handling of the Steinberg case. The resignation of Mr. Gentile was decided upon before the Dec. 22 request of the Daily News for an examination of the Steinberg file.

Fourth, The New York Times on Jan. 5 published an interview of Mr. Gentile together with a photograph of him taken in his DDC office. The Times article quoted Mr. Gentile as having described the DDC's handling of the Steinberg matter as "a terrific job." In answer to that characterization, the Court stated that it "was

of another opinion." Mr. Gentile had blundered incredibly in recommending that the complaint in Steinberg be dismissed.

The DDC might consider appointing a subcommittee to read the Steinberg file and to decide whether the testimony of three persons, Mr. and Mrs. Novak and Mark Ames, who would have testified to Steinberg's cocaine addiction, together with Steinberg's invocation of his privilege against self-incrimination in answer to any questions concerning cocaine, including his addiction to cocaine, would not have caused the DDC to move immediately to suspend Steinberg. According to the Times and the New York Law Journal, Professor Gillers of New York University School of Law apparently thinks that suspension would have followed. If that is the opinion of the subcommittee, the DDC should read the Times' Jan. 5 report of its Jan. 4 interview of Mr. Gentile. There Mr. Gentile said of the Novaks, whom he had never met, "It is quite common for disgruntled clients to make some-sort of effort to attack their lawyers' performance." There is no evidence in the Steinberg file that the Novaks were "disgruntled."

The Times article stated that Mr. Gentile "said the Novaks lost interest in helping disciplinary officials make a case against Mr. Steinberg," these ?? words of our former chief counsel in whose office the Steinberg case had been awaiting determination from November 1983 through October 1986 and who was under this Court's direction to compel unwilling witnesses, such as the Novaks, to appear (Rule 605.9). The Novaks would have been ideal witnesses because they had testified in the 1983 federal post-conviction proceeding that Steinberg apparently was addicted to cocaine. Those transcripts were part of the Steinberg file when Mr. Gentile recommended the dismissal of the complaint.

As for the third witness against Steinberg, Mr. Ames, the Times reported that Mr. Gentile said that Ames "was not reliable." Mr. Gentile had never met Mr. Ames, and there is no evidence in the file that Ames was unreliable.

Is there any member of the DDC who would have kept in his office a lawyer who had made the deceptive statements that Mr. Gentile had made to the Times on Jan. 4?

Last, the nature of the relationship between the DDC and the Court needs to be restated.

The DDC is the Court's disciplinary nominee. Its staff is constituted of civil servants whom the Committee has neither the power to appoint nor to discharge. The Court has those powers and, in the case of noncompetitive confidential employees such as the chief counsel and the deputy chief counsel, need not assign any cause to the DDC or to anyone else. This broad ?? for many reasons, one of which involves the necessity for the exercise of discretion in deciding who is desirable for the execution of sensitive powers.

?? basis for the resignations requested by me, you must ask yourself whether your acceptance of your appointment was subject to the condition that the Court exer-

cise its discretion in discharging DDC employees only in ways acceptable to you. Put another way, your commitment to serve the public interest could not have been made subject to a matter wholly within the Court's discretion. To say otherwise would be to say that your appointment is subject to the Court's opinion concerning the wages you pay your employees, a condition that would surprise you, to say nothing of your employees.

However, should you think that I am right, or that certain issues are seemingly unresolvable, or that you would have exercised your discretion in a different way but for the same purposes, or that this Committee's involvement in the resignations of Mr. Gentile and Ms. McShea has shown why it is not the proper business of this Committee to review a discretion vested by law solely in this Court, then I invite you to resume the work of this Committee which has enjoyed a prestige unshared by any other disciplinary body in the nation. Our efforts should be in the direction of what is constructive and unitive, not in the direction of what is destructive and divisive.

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