

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE GRIESA

08-CV-0526

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ELEANOR CAPOGROSSO

Plaintiff,

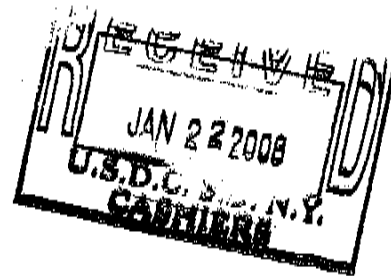
COMPLAINT

Against

JURY TRIAL DEMANDED

NEW YORK STATE COMMISSION
ON JUDICIAL CONDUCT,
RAOUL FELDER (INTENDED TO BE
CHAIR OF THE NEW YORK STATE COMMISSION
ON JUDICIAL CONDUCT),
HON. FERN FISHER BRANDVEEN
HON. MARTIN A. SHULMAN
HON. JOAN B. CAREY
HON. CAROL R. EDMOND
HON. EILEEN A. RAKOWER
HON. JEFFREY K. OING
HON. GEOFFREY D. WRIGHT
HON. JOAN M. KENNEY
SARAH JO HAMILTON

Defendants.
-----x



JURISDICTION

1. The jurisdiction of this Court is based upon 28 U.S.C. Sec. 1331 and Sec.1332.

VENUE

2. Venue is properly placed in the United States District Court of New York pursuant to 28 U.S.C. Sec. 1391.
3. Plaintiff is a citizen, resident and domiciliary of State of New Jersey and resides at 30 River Court Apt. 301, Jersey City, New Jersey 07310.
4. Defendant New York State Commission on Judicial Conduct is the state agency responsible for investigating complaints of misconduct against judges of the state unified court system and, where appropriate, determining to admonish, censure or remove from office those judges found to have engaged in unethical behavior. Defendant New York State Commission on Judicial Conduct is located at 38-40 State Street Albany, New York 12207 and 61 Broadway New York, NY 10006.
5. Upon information and belief, defendant Raoul L. Felder, is at the time this action is commenced, the Chair of the defendant New York State Commission on Judicial Conduct and is located at 38-40 State Street Albany, New York 12207 and 61 Broadway New York, NY 10006. Defendant Raoul Felder is sued in his official capacity only.
6. Defendant Hon. Fern Fisher Brandveen is a Civil Court Judge in New York County and is located at 111 Centre Street, New York, NY 10013.
7. Defendant Hon. Martin A. Shulman is a Supreme Court Judge in New York County and is located at 111 Centre Street New York, NY 10013.
8. Defendant Hon. Joan B. Carey is a Deputy Chief Administrative Court Judge in New York County and is located at 100 Centre Street, New York, NY 10013.

9. Defendant Hon. Carol R. Edmead is a Supreme Court Judge in New York County and is located at 60 Centre Street, New York, NY 10007.
10. Defendant Hon. Eileen A. Rakower is a Civil Court Judge in New York County and is located at 111 Centre Street, New York, NY 10013.
11. Defendant Hon. Jeffrey K. Oing is a Civil Court Judge in New York County and is located at 111 Centre Street, New York, NY 10013.
12. Defendant Hon. Geoffrey D. Wright is a Civil Court Judge in New York County and is located at 111 Centre Street, New York, NY 10013.
13. Defendant Hon. Joan M. Kenney is a Civil Court Judge in New York County and is located at 111 Centre Street, New York, NY 10013.
14. Defendant Sarah Jo Hamilton was former First Deputy Chief Counsel of the Departmental Disciplinary Committee for the First Judicial Department and is located at Scalise & Hamilton LLP, 670 White Plains Road Suite 325, Scarsdale, New York 10583.

STATUTORY BASIS FOR THIS ACTION

15. This action is being brought pursuant to 42 U.S.C. Sec. 1983 to challenge certain actions taken by defendants under color of state law affecting plaintiff which plaintiff believes to be unconstitutional.

AS AND FOR A FIRST CLAIM FOR RELIEF

16. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
17. Article VI, Section 22 of the Constitution of the State of New York provides in relevant part:

There shall be a commission on judicial conduct. The commission on judicial conduct shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judges or justice of the unified court system, in the manner provided by law; and, in accordance with subdivision d of this section, may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his or her duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his or her judicial duties.
18. This power of the commission on judicial conduct is a constitutional obligation.
19. Section 44 of the Judiciary Law provides in relevant part that:

The commission shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge, and, in accordance with the provisions of subdivision d of section twenty-two of article six of the constitution, may determine that a judge be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge be retired for mental or physical disability preventing the proper performance of his judicial duties.
20. Section 44 of the Judiciary Law provides further in relevant part:

Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.
21. The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The

Commission's objective is to enforce the obligation of judges to observe high standards of conduct.

- 22. Rule-making power of the defendant commission on judicial conduct is not a privilege to be exercised but a duty that it must exercise as part of their constitutional obligations.
- 23. The public policy of the State is to ensure honesty and integrity in all proceedings.
- 24. Unbridled discretion has been given to the New York State Commission on Judicial Conduct to determine which allegations of a complaint are without merit and to dismiss them.
- 25. Complaints filed against a judge with the defendant New York State Commission on Judicial Conduct are not made public.
- 26. The Legislature has abrogated its constitutional responsibility by giving a constitutional obligation to an organization that is not subject to review or oversight.
- 27. As a result of the foregoing, the above law is unconstitutional.

AS AND FOR A SECOND CLAIM FOR RELIEF

- 28. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
- 29. Article VI, Section 22 of the Constitution of the State of New York provides in relevant part:

There shall be a commission on judicial conduct. The commission on judicial conduct shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judges or justice of the unified court system, in the manner provided by law; and, in accordance with subdivision d of this section, may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his or her duties,

habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his or her judicial duties.

30. Section 44 of the Judiciary Law provides in relevant part that:

The commission shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge, and, in accordance with the provisions of subdivision d of section twenty-two of article six of the constitution, may determine that a judge be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge be retired for mental or physical disability preventing the proper performance of his judicial duties.

31. Section 44 of the Judiciary Law provides further in relevant part:

Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit.

32. Governor Pataki's Executive Order 113.7 which, in pertinent part, reads as follows:

I hereby temporarily suspend and modify, for the period from the date of this Executive Order until further notice, any other statute, local law, ordinance, order, rule, or regulation or part thereof, establishing limitations of time for the filing of service of any legal action, notice or other process or proceeding that the courts lack authority to extend through the exercise of discretion, where any limitation of time concludes during the period commencing from the date that the disaster emergency was declared pursuant to Executive Order Number 113, issued on September 11, 2001, until further notice.

N.Y. Exec. Order No. 113.7, 9 NYCRR § 5.113.7 (2004).

33. On October 4, 2001, this order was modified by Executive Order 113.28, stating:

To the extent that any person or an attorney for any person has been directly affected by the disaster emergency, section 2004 of the Civil Practice Law and Rules, so far as it limits a court's authority to extend on behalf of such person the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed, in those instances that are otherwise expressly prescribed by law.

N.Y. Exec. Order 113.28, 9 NYCRR § 5.113.28 (2004).

34. This continued the suspension until November 8, 2001. On November 7, 2001, this order, Executive Order 113.28, was modified by Executive Order 113.42, continuing the suspension until December 7, 2001. See N.Y. Exec. Order 113.42, 9 NYCRR § 5.113.42 (2004). On December 7, 2001, Executive Order 113.28 was further modified by Executive Order 113.43, see N.Y. Exec. Order 113.43, 9 NYCRR § 5.113.43 (2004), which continued the suspension until January 7, 2002.

35. Chief Judge Hon. Judith S. Kaye and Chief Administrative Judge Jonathan Lippman stated:

“In these extraordinary circumstances, we know that there will be dislocation and disruption in day-to-day court operations, especially in lower Manhattan . . . where telephone service, transportation, security issues and building conditions are some of the variables that affect our decisions. While every effort will be made to return to normal as soon as possible, our decisions must also recognize the multitude of human issues involved [M]any people with offices in lower Manhattan -- now inaccessible or possibly even destroyed. . .”

Statement from Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman, N.Y.L.J., Sept. 18, 2001, at 2.

36. Chief Judge Hon. Judith S. Kaye and Chief Administrative Judge Jonathan Lippman stated:

“We know . . . that some of you -- particularly those of you with offices in lower Manhattan -- may be unable to gain access to your offices, and that some offices and files may have even been destroyed [T]oday's resumption of court operations in Manhattan will proceed with sensitivity to the needs and circumstances of the thousands of affected attorneys, litigants, and witnesses. Governor Pataki has already issued an Executive Order temporarily suspending time limitations on actions and appeals. As for the many discretionary time limitations that occur in your daily practice, please be assured that judges and staff in all courts will honor appropriate requests for adjournments and provide whatever assistance and information you may need Finally, we are working to ensure that telephone service, security and all other court conditions return to normal as soon as possible”

Hon. Judith S. Kaye, Chief Judge of the State of N.Y. and Jonathan Lippman, Chief Administrative Judge, Letter to the Bar, N.Y.L.J., Sept. 18, 2001 at 2.

37. Chief Judge Hon. Judith S. Kaye stated:

“Our courts will, of course, remain mindful of the difficulties of reaching people, places and papers Calendar calls and other matters will proceed as scheduled, with sensitivity to the unique circumstances presented.”

Statement of Chief Judge Judith S. Kaye, N.Y.L.J., Sept. 18, 2001, at 2.”

38. “Chief Judge Judith S. Kaye yesterday moved quickly to reassure the bar that judges would be 'sensible and flexible' in applying court deadlines in the wake of the attack on the World Trade Center. In an open letter to the bar, Chief Judge Kaye also advised lawyers to appear for scheduled court dates 'if possible' . . . Several judges who had civil motion calendars at 60 Centre Street yesterday made it clear that there would be no defaults taken against attorneys whose practices have been hobbled because of the attack . . . Acting Justice Robert D. Lippman, who oversaw the special referee part at 60 Centre Street yesterday, said that 'if lawyers want an adjournment, I'll give them an adjournment.”

Daniel Wise, Kaye Resolves to Get Courts Back on Track, N.Y.L.J., Sep. 18, 2001, at 1.

39. Chief Judge Hon. Judith S. Kaye stated:

“From the time of its establishment the First Department has endeavored to provide maximum access to legal process to the members of the public and the Bar. In furtherance of that commitment, and consistent with Executive Order 113.7 issued by Governor George E. Pataki, on September 13, 2001 [infra], parties who are unable to serve papers, meet filing deadlines or appear for previously scheduled Oral Arguments are requested to so advise the Court by letter.”

Court Notes, N.Y.L.J., Sept. 20, 2001 at 33.

40. Likewise, during this time period the courts themselves were experiencing difficulties. As reported in the Law Journal, “[n]ormal telephone service remains disrupted. We do not know when such service will be restored. In the meantime, the court is utilizing internet telephone service to receive and respond to inquiries from the Bar.” Court Notes, N.Y.L.J., Oct. 26, 2001, at 32, and “During the period that regular telephone service is

unavailable, the court will attempt to respond to telephonic inquiries using internet telephones and to inquiries transmitted by e-mail. In view of the severe dislocations caused by the tragedy of September 11, 2001, the court urgently requests the full cooperation of the Bar." Id.

41. From September 11, 2001 through October 19, 2001, no defaults have been or will be taken with regard to motions on the calendar of the Motion Support Office Courtroom. In the event that counsel did not or do not respond to the call of a calendar, motions in which no opposition or reply papers had been submitted were or will be adjourned by the court for two weeks. The court did not and will not enforce the 45 day deadline on adjournments for motions pending in the Motion Support Courtroom.

Effective October 22, 2001, the Motion Support Office will resume its regular practice with regard to the submission of motions on which papers in opposition have not been presented to the court. Motions on which opposition papers have not been submitted and as to which no request for an adjournment is made will be marked submitted without opposition and transmitted to the assigned Justice for action. This return to regular practice is motivated, in general, by the need to resume normal procedures and, in particular, by the fact that the adjournment of motions since Sept. 11, 2001 has generated a significant backlog of motions and has given rise to large calendars in the Motion Support Office Courtroom (Room 130). However, the Justices of the court will screen all such motions and, in instances in which staff are able to determine that the attorneys for the respondents on the motion had their offices in or near the World Trade Center, the court will take such action as is appropriate to avoid hardship for such practitioners.

In addition, effective October 22, 2001, the standard procedures of the Motion Support Office with regard to requests for adjournments will be reinstated.

Where needed, the court will continue to grant reasonable extensions of time to attorneys affected by the disaster. The 45-Day Rule will remain suspended until further notice.

Court Notes, N.Y.L.J., Oct. 26, 2001 at 32.

42. Plaintiff's office was located in close proximity to the World Trade Center site. Plaintiff had no phones, fax or computers working as of October 10, 2001.
43. On October 10, 2001, plaintiff appeared before defendant Hon. Eileen A. Rakower in opposition to her adversary's Motion to Open defendant's Default and Permit the Filing

- of an Answer in the action Eleanor Capogrosso, Esq. against Hospital for Special Surgery (Index No. 020708 CVN 2001).
44. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff requested at this hearing that the Court grant her an adjournment.
 45. Plaintiff's requested adjournment would have given her additional time to reinstate her office's support systems in order to prepare her arguments and opposition papers against her adversary's Motion.
 46. Plaintiff was not granted the request for an adjournment. The decision states "oral response-application for her adjournment denied" and is dated October 10, 2001, less than one month after September 11th. See Exhibit A.
 47. Defendant Hon. Eileen A. Rakower granted the Motion to Open Defendant's Default and Permit the Filing of an Answer in favor of plaintiff's adversary, without allowing plaintiff the opportunity to present arguments or opposition papers against the Motion.
 48. Defendant Hon. Eileen A. Rakower acted in willful contravention of the orders of Governor Pataki.
 49. Defendant Hon. Eileen A. Rakower displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
 50. Defendant Hon. Eileen A. Rakower obstructed and frustrated the administration of justice.
 51. By letter dated April 12, 2007, plaintiff filed a complaint based upon the above facts with the defendant New York State Commission on Judicial Conduct claiming that the defendant Hon. Eileen A. Rakower was in criminal and civil contempt of Governor

Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye, and violations of the Codes of Judicial Conduct. See Exhibit A.

52. By letter dated August 27, 2007 the defendant New York State Commission on Judicial Conduct and defendant Raoul Felder dismissed plaintiff's complaint. See Exhibit B.

53. As a result of the above, defendant New York State Commission on Judicial Conduct, and defendant Raoul Felder by dismissing plaintiff's complaint acted outside of color of state law in violation of 42 U.S.C. Section 1983.

AS AND FOR A THIRD CLAIM FOR RELIEF

54. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

55. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.

56. Plaintiff's office was located in close proximity to the World Trade Center site. Plaintiff had no phones, fax or computers working as of October 10, 2001.

57. On October 10, 2001, plaintiff appeared before defendant Hon. Eileen A. Rakower for a previously scheduled hearing on a Motion to Open Defendant's Default and Permit the Filing of an Answer in the action Eleanor Capogrosso, Esq. against Hospital for Special Surgery (Index No. 020708 CVN 2001).

58. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff requested at this hearing that the Court grant her an adjournment.

59. Plaintiff's requested adjournment would have given her additional time to reinstate her office's support systems in order to prepare her arguments and opposition papers against her adversary's Motion.
60. Plaintiff was not granted the request for an adjournment. The decision states "oral response-application for her adjournment denied" and is dated October 10, 2001, less than one month after September 11th. See Exhibit A.
61. Defendant Hon. Eileen A. Rakower granted the Motion to Open Defendant's Default and Permit the Filing of an Answer in favor of plaintiff's adversary, without allowing plaintiff the opportunity to present arguments or opposition papers against the Motion.
62. Defendant Hon. Eileen A. Rakower acted in willful contravention of the order of Governor Pataki.
63. Defendant Hon. Eileen A. Rakower displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
64. Defendant Hon. Eileen A. Rakower obstructed and frustrated the administration of justice.
65. By letter dated April 12, 2007, plaintiff filed a complaint based upon the above facts with the defendant New York State Commission on Judicial Conduct claiming that the defendant Hon. Eileen A. Rakower was in criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye, and violations of the Codes of Judicial Conduct. See Exhibit A.
66. By letter dated August 27, 2007 the defendant New York State Commission on Judicial Conduct and defendant Raoul Felder dismissed plaintiff's complaint. See Exhibit B.

67. As a result of the above, defendant New York State Commission on Judicial Conduct and defendant Raoul Felder's decision to dismiss the complaint was arbitrary and capricious and in violation of the Fourteenth Amendment to the United States Constitution.

AS AND FOR A FOURTH CLAIM FOR RELIEF

68. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
69. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
70. Plaintiff's office was located in close proximity to the World Trade Center site. Plaintiff had no phones, fax or computers working as of October 10, 2001.
71. On October 10, 2001, plaintiff appeared before defendant Hon. Eileen A. Rakower for a previously scheduled hearing on a Motion to Open Defendant's Default and Permit the Filing of an Answer in the action Eleanor Capogrosso, Esq.-against-Hospital for Special Surgery (Index No. 020708 CVN 2001).
72. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff requested at this hearing that the Court grant her an adjournment.
73. Plaintiff's requested adjournment would have given her additional time to reinstate her office's support systems in order to prepare her arguments and opposition papers against her adversary's Motion.

- 74. Plaintiff was not granted the request for an adjournment. The decision states "oral response-application for her adjournment denied" and is dated October 10, 2001, less than one month after September 11th. See Exhibit A.
- 75. Defendant Hon. Eileen A. Rakower granted the Motion to Open Defendant's Default and Permit the Filing of an Answer in favor of plaintiff's adversary, without allowing plaintiff the opportunity to present arguments or opposition papers against the Motion.
- 76. Defendant Hon. Eileen A. Rakower acted in willful contravention of the orders of Governor Pataki.
- 77. Defendant Hon. Eileen A. Rakower displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
- 78. Defendant Hon. Eileen A. Rakower obstructed and frustrated the administration of justice.
- 79. Defendant Hon. Eileen A. Rakower has committed criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye.

AS AND FOR A FIFTH CLAIM FOR RELIEF

- 80. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
- 81. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.

82. Plaintiff's office was located in close proximity to the World Trade Center site. Plaintiff had no phones, fax or computers working as of October 10, 2001.
83. On October 10, 2001, plaintiff appeared before defendant Hon. Eileen A. Rakower for a previously scheduled hearing on a Motion to Open Defendant's Default and Permit the Filing of an Answer in the action Eleanor Capogrosso, Esq. against Hospital for Special Surgery (Index No. 020708 CVN 2001).
84. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff requested at this hearing that the Court grant her an adjournment.
85. Plaintiff's requested adjournment would have given her additional time to reinstate her office's support systems in order to prepare her arguments and opposition papers against her adversary's Motion.
86. Plaintiff was not granted the request for an adjournment. The decision states "oral response-application for her adjournment denied" and is dated October 10, 2001, less than one month after September 11th. See Exhibit A.
87. Defendant Hon. Eileen A. Rakower granted the Motion to Open Defendant's Default and Permit the Filing of an Answer in favor of plaintiff's adversary, without allowing plaintiff the opportunity to present arguments or opposition papers against the Motion.
88. Defendant Hon. Eileen A. Rakower acted in willful contravention of the order of Governor Pataki.
89. Defendant Hon. Eileen A. Rakower displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.

90. Defendant Hon. Eileen A. Rakower obstructed and frustrated the administration of justice.
91. Defendant Hon. Eileen A. Rakower has committed criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye.
92. As a result of the above, plaintiff has incurred substantial legal fees and costs.

AS AND FOR A SIXTH CLAIM FOR RELIEF

93. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
94. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
95. Plaintiff's office was located in close proximity to the World Trade Center site. Plaintiff had no phones, fax or computers working.
96. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq. against Howard Benjamin, Esq. (Index No. 26983/01).
97. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country since her office was not functioning and requested that the Court grant her an adjournment.

98. Rather than grant plaintiff an adjournment, defendant Hon. Carol R. Edmead allowed plaintiff's adversary to appear before the Court and make his arguments, despite the plaintiff's previous request for an adjournment and absence from the Court at this time.
99. Despite the plaintiff's previous request for an adjournment and absence from the Court, defendant Hon. Carol R. Edmead granted plaintiff's adversary's Motion for an Order to Dismiss the Complaint with Prejudice. The decision/order stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.
100. Defendant Hon. Carol R. Edmead acted in willful contravention of the orders of Governor Pataki.
101. Defendant Hon. Carol R. Edmead displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
102. Defendant Hon. Carol R. Edmead obstructed and frustrated the administration of justice.
103. By letter dated April 12, 2007, plaintiff filed a complaint based upon the above facts with the defendant New York State Commission on Judicial Conduct claiming that the defendant Hon. Carol R. Edmead has committed criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye, and violations of the Codes of Judicial Conduct. See Exhibit C.
104. By letter dated August 27, 2007 the defendant New York State Commission on Judicial Conduct and defendant Raoul Felder dismissed plaintiff's complaint. See Exhibit B.
105. As a result of the above, defendant New York State Commission on Judicial Conduct, and defendant Raoul Felder acted outside of color of state law in violation of 42 U.S.C. Section 1983.

AS AND FOR A SEVENTH CLAIM FOR RELIEF

106. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
107. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
108. Plaintiff's office was located in close proximity to the World Trade Center site, Plaintiff had no phones, fax or computers working.
109. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq against Howard Benjamin, Esq. (Index No. 26983/01).
110. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country since her office was not functioning and requested that the Court grant her an adjournment.
111. Rather than grant plaintiff an adjournment, defendant Hon. Carol R. Edmead allowed plaintiff's adversary to appear before the Court and make his arguments, despite the plaintiff's previous request for an adjournment and absence from the Court at this time.
112. Despite the plaintiff's previous request for an adjournment and absence from the Court, defendant Hon. Carol R. Edmead granted plaintiff's adversary's Motion for an Order to Dismiss the Complaint with Prejudice. The decision/order stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.

113. Defendant Hon. Carol R. Edmead acted in willful contravention of the order of Governor Pataki.
114. Defendant Hon. Carol R. Edmead displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
115. Defendant Hon. Carol R. Edmead obstructed and frustrated the administration of justice.
116. By letter dated April 12, 2007, plaintiff filed a complaint based upon the above facts with the defendant New York State Commission on Judicial Conduct claiming that the defendant Hon. Carol R. Edmead has committed criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye, and violations of the Codes of Judicial Conduct. See Exhibit C.
117. By letter dated August 27, 2007 the defendant New York State Commission on Judicial Conduct and defendant Raoul Felder dismissed plaintiff's complaint. See Exhibit B.
118. As a result of the above, defendant New York State Commission on Judicial Conduct's and defendant Raoul Felder's decision was arbitrary and capricious and in violation of the Fourteenth Amendment to the United States Constitution.

AS AND FOR AN EIGHTH CLAIM FOR RELIEF

119. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
120. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.

121. Plaintiff's office was located in close proximity to the World Trade Center site. Plaintiff had no phones, fax or computers working.
122. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq. against Howard Benjamin, Esq. (Index No. 26983/01).
123. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country and requested that the Court grant her an adjournment.
124. Rather than grant plaintiff an adjournment, defendant Hon. Carol R. Edmead allowed plaintiff's adversary to appear before the Court and make his arguments, despite the plaintiff's previous request for an adjournment and absence from the Court at this time.
125. Despite the plaintiff's previous request for an adjournment and absence from the Court, defendant Hon. Carol R. Edmead granted plaintiff's adversary's Motion for an Order to Dismiss the Complaint with Prejudice. The decision/order stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.
126. Defendant Hon. Carol R. Edmead acted in willful contravention of the orders of Governor Pataki.
127. Defendant Hon. Carol R. Edmead displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
128. Defendant Hon. Carol R. Edmead obstructed and frustrated the administration of justice.

129. Defendant Hon. Carol R. Edmead has committed criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye.

AS AND FOR A NINTH CLAIM FOR RELIEF

130. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
131. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
132. Plaintiff's office was located in close proximity to the World Trade Center site. Plaintiff had no phones, fax or computers working.
133. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq. against Howard Benjamin, Esq. (Index No. 26983/01).
134. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country and requested that the Court grant her an adjournment.
135. Rather than grant plaintiff an adjournment, defendant Hon. Carol R. Edmead allowed plaintiff's adversary to appear before the Court and make his arguments, despite the plaintiff's previous request for an adjournment and absence from the Court at this time.
136. Despite the plaintiff's previous request for an adjournment and absence from the Court, defendant Hon. Carol R. Edmead granted plaintiff's adversary's Motion for an Order to

Dismiss the Complaint with Prejudice. The decision/order stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.

- 137. Defendant Hon. Carol R. Edmead acted in willful contravention of the order of Governor Pataki.
- 138. Defendant Hon. Carol R. Edmead displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
- 139. Defendant Hon. Carol R. Edmead obstructed and frustrated the administration of justice.
- 140. Defendant Hon. Carol R. Edmead has committed criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye.
- 141. As a result of the above, plaintiff has incurred substantial legal fees and costs.

AS AND FOR A TENTH CLAIM FOR RELIEF

- 142. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
- 143. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
- 144. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq. against Howard Benjamin, Esq. (Index No. 26983/01).

145. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country and requested that the Court grant her an adjournment.
146. Defendant Hon. Carol R. Edmead ignored plaintiff's circumstances and Governor Pataki's Order, and refused to adjourn plaintiff's case to a later date.
147. Defendant Hon. Carol R. Edmead rendered a decision/order which stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.
148. Plaintiff thereafter filed a Motion to Vacate Default Judgment in this matter. Defendant Hon. Jeffrey K. Oing presided over the case.
149. On January 18, 2005, defendant Hon. Jeffrey K. Oing entered his decision upholding defendant Hon. Carol R. Edmead's decision/order dismissing plaintiff's complaint with prejudice. See Exhibit D.
- In his decision/order, defendant Hon. Jeffrey K. Oing states: "This Executive Order, entitled 'Temporary Suspension and Modification of Statutory Provisions Establishing Time Limitations on Actions and Time in Which to Take An Appeal', which plaintiff relies on is inapplicable to the facts of this case. Nothing in the Executive Order, including the part quoted by plaintiff, relieves litigants from appearing in court for a scheduled court appearance."
150. Defendant Hon. Jeffrey K. Oing's decision/order also states: "[P]laintiff's failure to appear on December 17, 2001 had no connection whatsoever to the September 11, 2001 event. As such, plaintiff has failed to demonstrate a reasonable excuse for her default."

Defendant Hon. Jeffrey K. Oing came to this decision despite the fact that plaintiff was out of the country because her office was nonfunctioning due to the World Trade Center disaster.

151. Defendant Hon. Jeffrey K. Oing acted in willful contravention of the orders of Governor Pataki.
152. Defendant Hon. Jeffrey K. Oing displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
153. Defendant Hon. Jeffrey K. Oing obstructed and frustrated the administration of justice.
154. By letter dated April 12, 2007 plaintiff filed a complaint based on the above facts with the defendant New York State Commission on Judicial Conduct claiming that the defendant Hon. Jeffrey K. Oing was in criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye, and violations of the Codes of Judicial Conduct. See Exhibit D.
155. By letter dated August 27, 2007 the defendant New York State Commission on Judicial Conduct and defendant Raoul Felder dismissed plaintiff's complaint. See Exhibit B.
156. As a result of the above, defendant New York State Commission on Judicial Conduct, and defendant Raoul Felder by dismissing plaintiff's complaint acted outside of color of state law in violation of 42 U.S.C. Section 1983.

AS AND FOR AN ELEVENTH CLAIM FOR RELIEF

157. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.

158. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
159. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq. against Howard Benjamin, Esq. (Index No. 26983/01).
160. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country and requested that the Court grant her an adjournment.
161. Defendant Hon. Carol R. Edmead ignored plaintiff's circumstances and Governor Pataki's Order, and refused to adjourn plaintiff's case to a later date.
162. Defendant Hon. Carol R. Edmead rendered a decision/order which stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.
163. Plaintiff thereafter filed a Motion to Vacate Default Judgment in this matter. Defendant Hon. Jeffrey K. Oing presided over the case.
164. On January 18, 2005, defendant Hon. Jeffrey K. Oing entered his decision upholding defendant Hon. Carol R. Edmead's decision/order dismissing plaintiff's complaint with prejudice. See Exhibit D.

In his decision/order, defendant Hon. Jeffrey K. Oing states: "This Executive Order, entitled 'Temporary Suspension and Modification of Statutory Provisions Establishing Time Limitations on Actions and Time in Which to Take An Appeal', which plaintiff relies on is inapplicable to the facts of this case. Nothing in the Executive Order,

including the part quoted by plaintiff, relieves litigants from appearing in court for a scheduled court appearance.”

165. Defendant Hon. Jeffrey K. Oing’s decision/order also states: “[P]laintiff’s failure to appear on December 17, 2001 had no connection whatsoever to the September 11, 2001 event. As such, plaintiff has failed to demonstrate a reasonable excuse for her default.” Defendant Hon. Jeffrey K. Oing came to this decision despite the fact that plaintiff was out of the country because her office was nonfunctioning due to the World Trade Center disaster.
166. Defendant Hon. Jeffrey K. Oing acted in willful contravention of the orders of Governor Pataki.
167. Defendant Hon. Jeffrey K. Oing displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
168. Defendant Hon. Jeffrey K. Oing obstructed and frustrated the administration of justice.
169. By letter dated April 12, 2007 plaintiff filed a complaint based on the above facts with the defendant New York State Commission on Judicial Conduct claiming that the defendant Hon. Jeffrey K. Oing was in criminal and civil contempt of Governor Pataki’s executive orders and the directives of the Chief Judge Hon. Judith S. Kaye, and violations of the Codes of Judicial Conduct. See Exhibit D.
170. By letter dated August 27, 2007 the defendant New York State Commission on Judicial Conduct and defendant Raoul Felder dismissed plaintiff’s complaint. See Exhibit B.
171. As a result of the above, defendant New York State Commission on Judicial Conduct and defendant Raoul Felder’s decision to dismiss the complaint was arbitrary and capricious and in violation of the Fourteenth Amendment to the United States Constitution.

AS AND FOR A TWELFTH CLAIM FOR RELIEF

172. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
173. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
174. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq. against Howard Benjamin, Esq. (Index No. 26983/01).
175. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country and requested that the Court grant her an adjournment.
176. Defendant Hon. Carol R. Edmead ignored plaintiff's circumstances and Governor Pataki's Order, and refused to adjourn plaintiff's case to a later date.
177. Defendant Hon. Carol R. Edmead rendered a decision/order which stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.
178. Plaintiff thereafter filed a Motion to Vacate Default Judgment in this matter. Defendant Hon. Jeffrey K. Oing presided over the case.
179. On January 18, 2005, defendant Hon. Jeffrey K. Oing entered his decision upholding defendant Hon. Carol R. Edmead's decision/order dismissing plaintiff's complaint with prejudice. See Exhibit D.

In his decision/order, defendant Hon. Jeffrey K. Oing states: "This Executive Order, entitled 'Temporary Suspension and Modification of Statutory Provisions Establishing Time Limitations on Actions and Time in Which to Take An Appeal', which plaintiff relies on is inapplicable to the facts of this case. Nothing in the Executive Order, including the part quoted by plaintiff, relieves litigants from appearing in court for a scheduled court appearance."

180. Defendant Hon. Jeffrey K. Oing's decision/order also states: "[P]laintiff's failure to appear on December 17, 2001 had no connection whatsoever to the September 11, 2001 event. As such, plaintiff has failed to demonstrate a reasonable excuse for her default." Defendant Hon. Jeffrey K. Oing came to this decision despite the fact that plaintiff was out of the country because her office was nonfunctioning due to the World Trade Center disaster.
181. Defendant Hon. Jeffrey K. Oing acted in willful contravention of the orders of Governor Pataki.
182. Defendant Hon. Jeffrey K. Oing displayed further contemptuous behavior when she willfully disobeyed the directives of the Chief Judge Hon. Judith S. Kaye.
183. Defendant Hon. Jeffrey K. Oing obstructed and frustrated the administration of justice.
184. Defendant Hon. Jeffrey K. Oing has committed criminal and civil contempt of Governor Pataki's executive orders and the directives of the Chief Judge Hon. Judith S. Kaye.

AS AND FOR A THIRTEENTH CLAIM FOR RELIEF

185. Plaintiff restates and realleges each of the foregoing paragraphs with the same force and effect as if more fully set forth herein.
186. Plaintiff repeats and realleges the facts set forth in paragraphs 29 through 41 of the Second Claim for Relief of the complaint as set forth above.
187. On December 17, 2001 plaintiff was scheduled to appear before defendant Hon. Carol R. Edmead in the action of Eleanor Capogrosso, Esq. against Howard Benjamin, Esq. (Index No. 26983/01).
188. However, due to the fact that plaintiff's practice was seriously affected by the aftermath of September 11, 2001, and plaintiff lacked a working phone, fax machine or computer, plaintiff had left the country and requested that the Court grant her an adjournment.
189. Defendant Hon. Carol R. Edmead ignored plaintiff's circumstances and Governor Pataki's Order, and refused to adjourn plaintiff's case to a later date.
190. Defendant Hon. Carol R. Edmead rendered a decision/order which stated: "Defendants' motion for an order dismissing the complaint with prejudice etc. is granted on default to the extent of dismissing the complaint with prejudice." See Exhibit C.
191. Plaintiff thereafter filed a Motion to Vacate Default Judgment in this matter. Defendant Hon. Jeffrey K. Oing presided over the case.
192. On January 18, 2005, defendant Hon. Jeffrey K. Oing entered his decision upholding defendant Hon. Carol R. Edmead's decision/order dismissing plaintiff's complaint with prejudice. See Exhibit D.