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VIA: EMail

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Re: Matter of the Application of Campaign for Accountability

Dear Ms. Potaris:

Petitioner, the Campaign for Accountability (“CfA”), submits this letter in response to the application by the Attorney Grievance Committee for the Third Judicial Department (“Grievance Committee”) of August 26, 2026, for an order sealing the above-captioned proceeding, including oral argument, until such time as the Court has rendered a decision in the matter.

This sweeping request should be denied. There is a compelling public interest in public disclosure of allegations of misconduct by the top federal prosecutor in Albany. Additionally, there are serious First Amendment issues with respect to the application of Judiciary Law § 90(10) and the court rules implementing it (22 NYCRR § 1240.18(a)–(c); 22 NYCRR § 1250.1(e)(1)) to this case. Those issues may be addressed in the pending Petition. But to the extent Section 90(10), and its implementing rules, might apply to factual matters disclosed in the Petition itself, those matters are already public and the First Amendment prohibits indiscriminately sealing them now.

The only facts disclosed in the Petition relating to Mr. Sarcone are facts in CfA’s original grievance complaint and those in the letter CfA received from the Grievance Committee (and a few other public statements). Under the First Amendment (and the text of Section 90(10), as read by the State), CfA has a right to publish its own complaint, and it has done so. Likewise, it has the right to publish any correspondence it may receive from the Grievance Committee (including this motion), and it has done that as well. Because Article I, Section 8, of the New York Constitution is even more protective of free speech than the First Amendment, Petitioner also has a right to publish the complaint it filed and the response it received from the Grievance Committee under the New York State Constitution as well. *See People ex rel. Arcara v. Cloud Books, Inc.*, 68 N.Y.2d 553, 557–58 (1986) (“[T]he minimal national standard established by the Supreme Court for First Amendment rights cannot be considered dispositive in determining the scope of this State’s constitutional guarantee of freedom of expression”); *O’Neill v. Oakgrove*

Constr., 71 N.Y.2d 521, 534 n.3 (1988) (Bellacosa, J., concurring) (“The protection afforded by the guarantees of free press and speech in the New York Constitution is often broader than the minimum required by the First Amendment”). CfA has already exercised its right to publish all the material in its possession regarding the Sarcone complaint, and the Petition just repeats those public facts. There is nothing else in the Petition other than legal arguments, for which there is no basis for sealing.

The facts in question are laid out in the Petition. In March 2025, respondent John A. Sarcone III was appointed the Interim United States Attorney for the United States Attorney’s Office for the Northern District of New York. Shortly thereafter, he engaged in several erratic and potentially illegal acts, including: (i) making false statements about an alleged assault; (ii) causing an unwarranted charge of attempted murder to be filed against the alleged assailant (which was later dropped); (iii) providing a false residential address in a sworn statement, seemingly in violation of federal law requiring that he reside in the district in which he was serving; and (iv) retaliating against the newspaper whose reporting raised questions about his residency.

Given the serious ethical concerns raised by those actions, CfA filed a complaint with the Grievance Committee, alleging that Mr. Sarcone may have violated several of the New York Rules of Professional Conduct. Approximately one year later, the Grievance Committee released a summary of its decision resolving CfA’s complaint in a brief one-page letter addressed to CfA. The Grievance Committee stated that it “determined there was a sufficient basis for a finding of professional misconduct” against Mr. Sarcone and that it “took appropriate action” against him.

Under 22 NYCRR § 1240.7(d)(2), a more detailed letter was sent to Mr. Sarcone, but not made public. Indeed, citing Section 90(10) in its letter to CfA, the Grievance Committee declined to disclose what specific allegations against Mr. Sarcone it had sustained or what action it had taken, or otherwise provide any substantive information about its decision. CfA believes in public disclosure and accountability, especially for high-ranking government officials, and its Petition seeks to unseal that information, which Section 90(10) expressly permits upon a showing of “good cause.” But there is nothing about Mr. Sarcone’s underlying disciplinary proceedings contained in the Petition that is still secret and nothing that the First Amendment permits the State to seal either beforehand or after the fact.

First, the Petition cites the complaint filed by CfA. In *C.R. Corps. v. Pestana*, 2022 WL 2118191 (S.D.N.Y. June 13, 2022), it was alleged that the Civil Rights Corps (“CRC”) had violated Section 90(10) by making public its own grievance complaints, which it had filed against 21 former state prosecutors. Yet, on CRC’s motion for summary judgment, the State of New York conceded that Section 90(10) does not preclude a party from publishing its own complaint. *Id.* at *7–8 (“The State Defendants’ Opposition . . . directly say[s] that a party is free to publish its own grievance complaints under Section 90(10)”). Further, the *Pestana* court cited *Kamasinski v. Jud. Rev. Council*, 44 F.3d 106, 110 (2d Cir. 1994), for the proposition that the state cannot “prohibit the disclosure of the substance of an individual’s complaint” because “[p]enalizing an individual for publicly disclosing complaints about the conduct of a government official strikes at the heart of

the First Amendment, and . . . such a prohibition would be unconstitutional.” *Id.* at *8 (cleaned up). The State acquiesced in this ruling, which is consistent with the uniform holdings of multiple state and federal courts,¹ and did not appeal. Relying on this decision (and the others cited in n.1, *supra*), CfA publicly disclosed the complaint it filed against Mr. Sarcone, which has been widely reported.² There is nothing confidential in the Petition about CfA’s allegations against Mr. Sarcone.

Second, the Petition cites the letter that CfA received from the Grievance Committee reporting its resolution of the complaint. The Grievance Committee stated that it “determined there was a sufficient basis for a finding of professional misconduct” against Mr. Sarcone and that it “took appropriate action” against him. CfA released that letter publicly and it too has been widely reported.³ The court in *Pestana* addressed this issue as well. Like CfA, CRC had published correspondence it received from the Grievance Committee. Such publication was alleged to violate Section 90(10). On summary judgment, the court addressed “whether a state prohibiting individuals from publishing correspondence and documents related to a grievance complaint would violate the First Amendment.” *Pestana*, 2022 WL 2118191, at *8. It held that “[t]his Court is unconvinced that the First Amendment allows the government to broadly prevent complainants . . . from publicly sharing any and all correspondence, communication, or documents related to their own grievance complaints.” *Id.* at *10. Thus, it ruled, “[t]o the extent that Section 90(10) is being used to prohibit complainants from publicly sharing ‘papers, records and documents’ related to that complainant’s own grievance complaint related to attorney discipline,

¹See, e.g., *In re Brooks*, 678 A.2d 140 (N.H. 1996); *Doe v. Doe*, 127 S.W.3d 728 (Tenn. 2004); *R.M. v. Sup. Ct. of N.J.*, 883 A.2d 369 (N.J. 2005); *Baugh v. Jud. Inquiry & Rev. Comm’n*, 907 F.2d 440 (4th Cir. 1990); *Doe v. Florida Jud. Qualifications Comm’n*, 748 F. Supp. 1520 (S.D. Fla. 1990); *Lind v. Grimmer*, 30 F.3d 1115 (9th Cir. 1994); *Stilp v. Contino*, 613 F.3d 405 (3d Cir. 2010).

² See, e.g., Michael Clauw, *Ethics, Federal Accountability, New York, Press Releases: Watchdog Files John Sarcone Bar Complaint over Apparently Illegal Actions*, CAMPAIGN FOR ACCOUNTABILITY (Aug. 6, 2025), <https://campaignforaccountability.org/watchdog-files-john-sarcone-bar-complaint-over-apparently-illegal-actions/>; Auston C. Jefferson, *Sarcone Hit with Ethics Complaint After Retaliating Against Times Union*, CITY AND STATE NEW YORK (Aug. 18, 2025), <https://www.cityandstateny.com/politics/2025/08/sarcone-hit-ethics-complaint-after-retaliating-against-times-union/407532/>; *Allegations of Professional Misconduct Filed Against John Sarcone*, INTERNET NEWS CAST (Aug. 7, 2025), <https://internewscast.com/crime/allegations-of-professional-misconduct-filed-against-john-sarcone/>; *Rights Groups File Complaint Against U.S. Attorney Who Retaliated Against the Press*, REINVENT ALBANY (Aug. 19, 2025), <https://reinventalbany.org/2025/08/rights-groups-file-complaint-against-u-s-attorney-who-retaliated-against-the-press/>.

³ *Ethics, Government, New York, Press Releases: New York Bar Finds Trump Attorney Sarcone Committed Misconduct, Watchdog Responds*, CAMPAIGN FOR ACCOUNTABILITY (May 11, 2026), <https://campaignforaccountability.org/new-york-bar-finds-trump-attorney-sarcone-committed-misconduct-watchdog-responds/>; Brendan J. Lyons, *Attorney Grievance Committee Finds Sarcone Engaged in ‘Professional Misconduct’*, MSN (May 11, 2026), <https://www.msn.com/en-us/news/other/attorney-grievance-committee-finds-sarcone-engaged-in-professional-misconduct/ar-AA22XiJs>; Brendan J. Lyons, *Attorney Grievance Committee Finds Sarcone Engaged in ‘Professional Misconduct’*, TIMES UNION (May 11, 2026), <https://www.timesunion.com/capitol/article/bar-panel-takes-action-sarcone-professional-22253161.php>; Erica Orden, *Top Federal Prosecutor in New York Committed Misconduct, Watchdog Says*, POLITICO (May 11, 2026), <https://www.politico.com/news/2026/05/11/john-sarcone-misconduct-complaint-00914644>.

the law’s confidentiality provision violates the First Amendment of the United States Constitution.” *Id.* Relying on this ruling, which the State again did not appeal, CfA released publicly the letter it received from the Grievance Committee about its own complaint, and the letter has also been widely reported. There is nothing confidential in the Petition about the contents of the letter from the Grievance Committee. For the same reasons, CfA was entitled to, and did, post the Grievance Committee’s current sealing motion—which contains no facts not already public—on its website.⁴

Finally, the instant Petition itself is public and has been widely reported.⁵ There are no facts in the Petition relating to Mr. Sarcone’s conduct other than the—already public—facts set forth in CfA’s complaint and in the Grievance Committee’s response to CfA. Those disclosures are all protected by the First Amendment. The rest of the Petition is legal argument. There is no basis in the law or in Section 90(10) for sealing legal arguments, and the Grievance Committee cites nothing. To the contrary, there is a compelling public interest in the Grievance Committee’s efforts to keep its activities secret even though the facts that CfA relies upon have already been reported. Thus, CfA’s Petition—and the Grievance Committee’s sealing motion—raise issues of compelling public importance that should be known and discussed publicly. As the Second Circuit recently observed, the public “interest in the faithful administration of justice is heightened when the misconduct of attorneys is at stake, especially so when the purported misconduct involves . . . prosecutors who . . . operate under the aegis of the State.” *C.R. Corps. v. LaSalle*, 184 F.4th 104, 130 (2d Cir. 2026) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (“Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted[.]”)).

A public resolution of this dispute is in accord with the long-standing principle that judicial proceedings are presumptively public. Even grievance proceedings before the grievance committee are “judicial proceeding[s]” with the “Grievance Committee act[ing] . . . [as] an arm of the Appellate Division.” *Wiener v. Weintraub*, 22 N.Y.2d 330, 331–332 (1968) (noting that “a proceeding before . . . a [grievance] committee constitutes a ‘judicial proceeding’”) (cleaned up). As a result, the Second Circuit recently affirmed the district court ruling that dispositions by the Grievance Committee, such as its findings against Mr. Sarcone, should be public—with or without a finding of “good cause.” *C.R. Corps. v. LaSalle*, 741 F. Supp. 3d 112, 168 (S.D.N.Y. 2024), *aff’d*, 184 F.4th 104 (2d Cir. 2026). While the Grievance Committee’s application cites that opinion, it ignores the Second Circuit’s order and still insists on keeping those findings secret. But

⁴Press Releases: *CfA Response to Attorney Grievance Committee Request to Keep Sarcone Proceedings Sealed*, CAMPAIGN FOR ACCOUNTABILITY (Aug. 28, 2026), <https://campaignforaccountability.org/cfa-response-to-attorney-grievance-committee-request-to-keep-sarcone-proceedings-sealed/>.

⁵Michael Clauw, *Federal Accountability, Government, Press Releases: Watchdog Files to Unseal John Sarcone Disciplinary Proceedings*, CAMPAIGN FOR ACCOUNTABILITY (July 30, 2026), <https://campaignforaccountability.org/watchdog-files-to-unseal-john-sarcone-disciplinary-proceedings/>; Brian Lee, *Watchdog Group Seeks to Unseal Sarcone Discipline Records Following Second Circuit Transparency Ruling*, LAW.COM (July 30, 2026), <https://www.law.com/newyorklawjournal/2026/07/30/watchdog-group-seeks-to-unseal-sarcone-discipline-records-following-second-circuit-transparency-ruling/?slreturn=20260826143924>.

proceedings *in this Court* are presumptively public unless the First Amendment interest in public judicial proceedings is overcome by “the proponent of closure . . . establish[ing] through specific, on the record findings that closure is essential to preserve higher values and is narrowly tailored” *Courthouse News Serv. v. Corsones*, 131 F.4th 59, 67 (2d Cir. 2025) (cleaned up). The Grievance Committee makes no effort to satisfy this heavy burden and so there is no basis to grant its sealing request.⁶

Moreover, there is no reason to believe that the Grievance Committee will reveal *any* non-public information in its legal arguments in this case. It certainly suggests no examples, and its speculation provides no basis for any sealing, let alone the blanket sealing sought. If the Grievance Committee chooses to include any such information, it may make a sealing application limited to whatever snippets of information it believes warrant confidentiality, supported of course by a showing that the requested closure is narrowly tailored and essential to preserve higher values.

Respectfully submitted,



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⁶ For all these same reasons, the Grievance Committee’s reliance on 22 NYCRR § 1240.18(a)-(c), which largely mirrors the language of Section 90(10), and 22 NYCRR § 1250.1(e)(1), which governs the Appellate Division’s adjudication of Section 90(10) attorney disciplinary proceedings and appeals therefrom, is equally misplaced.

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