Supreme Court of the State of New York
Appellate Division: Third Judicial Department

In the Matter of the Application of CAMPAIGN FOR ACCOUNTABILITY,

Petitioner,

For a Judgment Pursuant to Judiciary Law § 90(10) to Unseal an Attorney Disciplinary Proceeding,

- *against* -

GRIEVANCE COMMITTEE FOR THE THIRD JUDICIAL DEPARTMENT, JOHN A. SARCONE III,

Respondents.

Docket No.: _____

PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION TO ORDER TO SHOW CAUSE

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INTRODUCTION

Respondent John A. Sarcone III has moved via Order to Show Cause for a stay pending appeal of this Court's October 22, 2026 Opinion & Order ("October 22 Order"). As is relevant here, the October 22 Order granted Petitioner Campaign for Accountability's ("CfA") request for the divulgence of the Attorney Grievance Committee for the Third Judicial Department's adjudicative disposition of the complaint against Mr. Sarcone, pursuant to CfA's presumptive First Amendment right of access to that document and ordered that it be produced forthwith. *See* October 22 Order at 8-9. It is Mr. Sarcone's burden to demonstrate why a stay of the October 22 Order pending appeal is warranted and his motion falls well short of doing so.

First, nothing in the Order to Show Cause meaningfully challenges this Court's discretionary findings, let alone the thoughtful First Amendment analysis of this Court and the Second Circuit in *C.R. Corps. v LaSalle*, 184 F.4th 104 (2d Cir. 2026), both of which rest on foundational Supreme Court precedent. As such, the Order to Show Cause fails to show that Mr. Sarcone's appeal has any merit. *Next*, the Order to Show Cause provides no evidence of irreparable harm in the absence of a stay, particularly as the relevant facts underlying CfA's complaint and the admonition are public and Mr. Sarcone points to nothing in the admonition that diverges in any way from what has already been publicized. Finally, a stay would

significantly prejudice CfA given the sweeping restrictions it would impose on CfA's First Amendment rights.

Accordingly, Petitioner respectfully requests that the Court deny the request for a stay pending appeal and direct that a copy of the adjudicatory disposition be produced immediately as the October 22 Order requires.

ARGUMENT

The determination of whether to grant a stay pending appeal is within this Court's discretion. N.Y. C.P.L.R. § 5519(c). But a stay pending appeal should "not be granted . . . in cases where the appeal is meritless or taken primarily for the purpose of delay." *Herbert v. New York*, 126 A.D.2d 404, 407 (1st Dep't 1987); *see M.C. v. Diocese of Rockville Ctr.*, 2020 N.Y. Misc. LEXIS 12619, at *8 (Sup. Ct. Nassau Cnty. July 30, 2020) (explaining that "[t]he primary factor considered under various statutes permitting discretionary stays is whether the party seeking the stay has demonstrated that the appeal has merit" and denying stay "based on the finding that the [movant's] appeal lacks merit"); *Rosenbaum v. Wolff*, 270 A.D. 843 (2d Dep't 1946) ("The motion for a stay pending . . . appeal is denied for lack of a meritorious showing.").

"Thus, the proponent of the stay must demonstrate the merits of the appeal." *Amerra Cap. Mgmt., LLC v. Berkshire Hathaway Specialty Ins. Co.*, 2026 N.Y. Misc. LEXIS 889, at *3 (Sup. Ct. N.Y. Cnty. Feb. 9, 2026) (cleaned up). "Similarly,

a stay cannot be obtained absent a showing that prejudice or irreparable damage will result from a denial of the stay." *Id.* at *3-4 (cleaned up).

Mr. Sarcone's Order to Show Cause falls well short of making these required showings.

I. THE PROPOSED APPEAL IS MERITLESS

"In considering a party's request for a discretionary stay pending appeal, the most important factor is whether the appeal has merit." *Century Indem. CO. v. Brooklyn Union Gas Co.*, 2024 N.Y. Misc. LEXIS 25804, at *2 (Sup. Ct. N.Y. Cnty. Dec. 18, 2024); *see 64 B Venture v. Am. Realty Co.*, 179 A.D.2d 374 (1st Dep't 1992) (denial of stay pending appeal under § 5519(c) proper where movant "failed to show sufficient merit to that appeal"). Here, Mr. Sarcone does not demonstrate that his appeal is likely to succeed on the merits and instead simply sets forth the basis for his appeal while claiming in conclusory fashion that "there is no basis in New York law to construe the First Amendment as allowing any presumptive access to any aspect of [his] disciplinary file." Affirmation of Paul DerOhannesian II dated Oct. 23, 2026 ("DerOhannesian Aff.") ¶ 21.

But contrary to Mr. Sarcone's claims, New York law recognizes that "[t]he 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." *O'Neill v. Oakgrove Constr., Inc.*, 71 N.Y.2d 521, 529 n.3 (1988); *see Immuno AG*

v. Moor-Jankowski, 77 N.Y.2d 235, 249 (1991) (same). It necessarily follows that New York law permits a First Amendment presumptive access to the adjudicative disposition and nothing in the Order to Show Cause is to the contrary or otherwise demonstrates this Court's discretionary finding of good cause for disclosure was erroneous. Nor does the Order to Show Cause meaningfully challenge this Court's thoughtful analysis of CfA's presumptive First Amendment right of access to Mr. Sarcone's adjudicatory disposition, which mirrors the Second Circuit's exhaustive analysis of the same proposition set forth in *C.R. Corps. v LaSalle*, 184 F.4th 104 (2d Cir. 2026). In such circumstances, it plainly fails to set forth any basis on which the Court of Appeals would exercise its discretion and reverse the October 22 Order, particularly given the extent to which both that Order and *C.R. Corps. v LaSalle* rest upon bedrock "precedent of the Supreme Court of the United States." October 22 Order at 8.

Accordingly, respondent "has failed to demonstrate sufficient merit on its pending appeal to warrant the granting of a stay." *Reinah Dev. Corp. v. G.A.P. Hotel Corp.*, 78 A.D.2d 924 (3d Dep't 1980); *see CDR Creances S.A. v. Euro-American Lodging Corp.*, 40 A.D.3d 421, 423 (1st Dep't 2007) ("The court properly exercised its discretion in denying the requested stay pending the . . . appeal . . . as there was no showing of merit to the appeal."); *Colt v. N.J. Tr. Corp.*, 2025 N.Y. Misc. LEXIS 7169, at *10 (Sup. Ct. N.Y. Cnty. Sept. 2, 2025) (where "defendants failed to address

their likelihood of success on the appeal . . . as required under CPLR 5519 (c), and instead merely set forth the basis for their appeal - regurgitating the arguments they made in their original motion . . . the application . . . fail[s] under section 5519(c)").

II. RESPONDENT HAS NOT SHOWN IRREPARABLE HARM IN THE ABSENCE OF A STAY

The Order to Show Cause insists that absent a stay, the pending appeal may be rendered moot. *See* DerOhannesian Aff. ¶ 22. But courts have consistently held that the risk of mootness has no bearing on whether a requested stay should be granted. *See, e.g.*, *Dellums v. Smith*, 577 F. Supp. 1456, 1458 (N.D. Cal. 1984) ("The possibility that defendants' appeal might become moot absent a stay does not affect the considerations which obtain when the Court is asked to stay its order pending appeal.") (citing *Breswick & Co. v. United States*, 100 L. Ed. 1510, 75 S. Ct. 912, 915 (1955)); *Gordon v. Aetna Life Ins. Co.*, 2026 U.S. Dist. LEXIS 107815, at *15-16 (D. Conn. May 15, 2026) ("[T]he majority of courts in this Circuit have found that the mooting of an appeal, without more, does not constitute irreparable injury.") (collecting cases).

The Order to Show Cause also maintains that Mr. Sarcone will suffer certain reputational harms if a stay is not granted. *See generally* DerOhannesian Aff. But Mr. Sarcone fails to identify any information that may be disclosed outside of what is already in the public record and has already impacted his reputation. Simply put, Mr. Sarcone is in possession of the adjudicative disposition and so is this Court;

nevertheless, his Order to Show Cause has not identified any facts that are not already publicly known and cited in CfA's moving papers. His claim of irreparable harm is therefore speculative and unsupported.

Moreover, the general disclosure issues Mr. Sarcone alludes to are necessarily present in *any* contemplated appeal of *any* order compelling disclosure. Determining that disclosure in and of itself constitutes irreparable harm would effectively swallow the irreparable harm analysis whole and require that every order compelling disclosure be stayed simply by filing a notice of appeal which is not the law. *See Grisi v. Shainswit*, 119 A.D.2d 418, 421 (1st Dep't 1986) ("Doubtless, there are instances . . . where the motion and the appeal from an adverse determination are calculated to delay and hinder the expeditious disposition of the case. We recognize that if the . . . disposition of cases were to be deferred routinely pending appellate review . . . the system would collapse of its own weight.").

At bottom, the Order to Show Cause "fail[s] to assert any exigency or hardship [Mr. Sarcone] may confront if a stay is not granted, and has failed to establish any undue prejudice if a stay is denied." *Amerra Cap. Mgmt., LLC*, 2026 N.Y. Misc. LEXIS 889, at *13 (cleaned up). It therefore "fails to demonstrate that a stay is warranted." *Id.*

III. THE REQUESTED STAY WOULD SIGNIFICANTLY PREJUDICE PETITIONER'S CONSTITUTIONAL RIGHTS

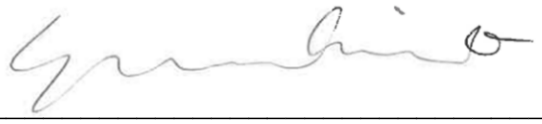
Finally, the Order to Show Cause baselessly claims that CFA would not suffer any harm if the release of the admonition is delayed. *See* DerOhannesian Aff. ¶ 23. But the requested stay would significantly delay the disclosure of the adjudicative disposition in violation of CfA's constitutional rights under the First Amendment and this Court's Order. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 294 (2d Cir. 2021) ("[A] presumption of irreparable injury flows from a violation of constitutional rights.") (cleaned up). The hypothetical and speculative reputational risks to Mr. Sarcone are plainly "insufficient to outweigh the constitutional right of access" afforded to CfA. *N.Y. Times Co. v. Demakos*, 137 A.D.2d 247, 252 (2d Dep't 1988).

CONCLUSION

For the foregoing reasons, CfA respectfully requests that the Court deny Mr. Sarcone's request for a stay pending appeal and direct that a copy of the adjudicatory disposition be produced immediately as the October 22 Order requires.

DATED: New York, New York
October 23, 2026

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

The foregoing brief was prepared on a computer. A proportionally spaced typeface was, used as follows:

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