

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 22, 2026

PM-238-26

In the Matter of Application for
Divulgence by CAMPAIGN
FOR ACCOUNTABILITY,
Petitioner;

JOHN A. SARCONI III, an Attorney,
Respondent;

OPINION AND ORDER

ATTORNEY GRIEVANCE
COMMITTEE FOR THE
THIRD JUDICIAL
DEPARTMENT,
Respondent.

Calendar Date: September 17, 2026

Before: Garry, P.J., Ceresia, McShan, Powers and Ryba, JJ.

Patterson Belknap Webb & Tyler LLP, New York City (*Gregory L. Diskant* and *Faust Petkovich* of counsel), for petitioner.

Powers & Santola, LLP, Albany (*Michael J. Hutter* of counsel) and *DerOhannesian & DerOhannesian*, Albany (*Paul DerOhannesian II* of counsel), for John A. Sarcone III, respondent.

Monica A. Duffy, Attorney Grievance Committee for the Third Judicial Department, Albany (*Alison M. Coan* of counsel), for Attorney Grievance Committee for the Third Judicial Department, respondent.

Hearst Corporation, New York City (*Jonathan R. Donnellan*, *Ravi V. Sitwala* and *Sarah S. Park* of counsel), for Advance Publications, Inc. and others, amici curiae.

Per Curiam.

Respondent John A. Sarcone III (hereinafter respondent) was admitted to the practice of law in this state by the Second Judicial Department in 1997 and now maintains a business address in Albany County (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [a] [2]). Petitioner Campaign for Accountability (hereinafter CfA), a not-for-profit organization with the primary mission of exposing misconduct and malfeasance in public life, filed an attorney grievance complaint against respondent premised upon his actions during and after a June 2025 incident wherein respondent was the victim of certain criminal behavior. Much of the information pertinent to CfA's complaint – which has since been publicized on CfA's website – arose out of respondent's self-reporting of the criminal incident to various news sources. Respondent Attorney Grievance Committee for the Third Judicial Department (hereinafter AGC) conducted an investigation of CfA's complaint, determined that there was a sufficient basis for a finding of professional misconduct and took appropriate action against respondent (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [d] [2] [v]). CfA was notified of AGC's action in April 2026; however, CfA was also informed that AGC could not provide specific information about the nature of the action it had taken against respondent, with AGC citing its confidentiality obligations pursuant to Judiciary Law § 90 (10) and Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.18.

In July 2026, CfA commenced this proceeding seeking an order divulging all records, papers and documents concerning the disciplinary proceeding against respondent (*see* Judiciary Law § 90 [10]; Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.18 [d]). More particularly, CfA contends that it has established good cause pursuant to Judiciary Law § 90 (10) for the divulgence of the ultimate adjudicatory disposition of AGC and any litigation documents submitted to AGC respecting respondent's disciplinary proceeding and, moreover, that the presumptive First Amendment right of access afforded to it under the US Constitution compels disclosure of these documents. AGC acknowledges that it does not have a good-faith basis to oppose CfA's request for divulgence of AGC's ultimate disposition to the extent that CfA's request is predicated upon its First Amendment right of access; however, AGC opposes CfA's request for any documents within its internal file on the ground that those documents are investigatory in nature or constitute internal work product. Respondent adamantly opposes the disclosure of any and all documents related to his disciplinary proceeding.

Judiciary Law § 90 (10) states that "all papers, records and documents . . . upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline

of an attorney or attorneys, shall be sealed and be deemed private and confidential," unless and until one of two distinct events has occurred. First, under circumstances not present here, where this Court sustains disciplinary charges against an attorney in a formal proceeding before the Court itself (*see* Rules for Atty Disciplinary Matters [22 NYCRR] §§ 1240.7 [d] [2] [vi]; 1240.8; *see also* Rules for Atty Disciplinary Matters [22 NYCRR] §§ 1240.9 [a], [d]; 1240.12, 1240.13), "the records and documents in relation thereto" automatically become public records upon issuance of our order imposing discipline (Judiciary Law § 90 [10]). Alternatively, the statutory scheme dictates that where, as here, the disciplinary matter has been fully resolved before an attorney grievance committee, the papers, records and documents related thereto may be divulged only "upon good cause being shown" by the proponent of disclosure (Judiciary Law § 90 [10]). To that end, Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.18 (d) sets forth the process by which an individual or entity may seek divulgence of confidential records or otherwise closed attorney disciplinary proceedings (*see also* Rules of App Div, 3d Dept [22 NYCRR] § 806.18).

Like many other statutes applicable to other professions (*see generally* Public Health Law § 230; Education Law § 6510; Judiciary Law § 44 [4]), Judiciary Law § 90 (10) "manifests a governmental policy of preserving the confidentiality of information pertaining to disciplinary proceedings" (*Matter of Johnson Newspaper Corp. v Melino*, 77 NY2d 1, 9 [1990]), which "evinces a sensitivity to the possibility of irreparable harm to a professional's reputation resulting from unfounded accusations – a possibility which is enhanced by the more relaxed nature of the proceedings. Indeed, a professional reputation once lost, is not easily restored" (*Matter of Aretakis*, 16 AD3d 899, 900 [3d Dept 2005] [internal quotation marks, brackets, ellipses and citations omitted]). Accordingly, the four Departments of the Appellate Division have historically been highly circumspect about granting divulgence applications, with good cause typically only demonstrated under compelling circumstances, or where some other heightened consideration is at play. For example, in *Matter of New York News (Cohn)* (113 AD2d 92 [1st Dept 1985]), the First Department took particular issue with the attorney's public criticism of the disciplinary authorities that had prosecuted him. Accordingly, the First Department reasoned that, given that the attorney had made public accusations against those disciplinary authorities, the attorney was not then permitted to keep the records of the disciplinary proceeding beyond public examination (*id.* at 95). Otherwise, we have granted a divulgence application where the attorney himself requested permission to disclose the grievance complaints lodged against him to a newspaper (*Matter of Aretakis*, 16 AD3d at 901). Similarly, we have granted divulgence where the attorney had demanded an open disciplinary proceeding (*Matter of Capoccia*, 97 AD2d 591, 592 [3d

Dept 1983])). In this respect, we have taken the view that good cause has been established where the attorney has waived confidentiality themselves, given that the confidentiality of such proceedings is for the attorney's own benefit.

Furthermore, we are well accustomed to an entirely different subset of divulgence applications which do not necessarily result in public dissemination of the disciplinary records in question, even where the divulgence relief is ultimately granted. Where, for example, an attorney under investigation by a grievance committee is under parallel investigation by a law enforcement, regulatory or other licensing agency, we have been called upon to determine whether good cause supports divulgence to the third-party agency of certain aspects of the grievance committee's file. In such instances, even where the divulgence application is supported by a grievance committee itself seeking to be relieved of its confidentiality constraints in order to fully assist in the parallel agency investigation, we remain obliged to determine, on a case-specific basis, whether the applicant for divulgence has met its high burden of establishing good cause, including our assessment of whether the third-party agency has availed itself of other methods to obtain the requested information and whether those methods proved fruitless or impracticable under the circumstances (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.18 [d] [3]). Furthermore, even where the agency has established good cause for divulgence in the form of an overriding law-enforcement purpose or regulatory objective, we remain obliged to direct divulgence in a manner which is narrowly tailored to advance that overriding interest. To that end, we may also direct divulgence in an order which is itself confidential in order to both safeguard the integrity of the ongoing parallel investigations and to preserve the subject attorney's statutory confidentiality while those investigations progress.¹ However, regardless of whether the applicant for divulgence is a governmental agency, a private citizen or a public advocacy organization, it bears repeating that it is this Court's role to determine, under the peculiar facts presented following a full

¹ It bears mention that any proceeding seeking the divulgence of materials made confidential by statute must necessarily itself remain confidential until such time as the application is granted and public disclosure is directed by order of this Court (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.18 [c]). Accordingly, in this divulgence proceeding, we previously ordered, upon application by AGC, that certain responsive and reply pleadings of the parties be filed under seal and not be publicly disclosed until our further order. We likewise directed that the parties' arguments before us on September 17, 2026 be conducted in a courtroom closed to the public and the press, although we also directed the Clerk of this Court to maintain an audio-visual recording of such argument for potential future disclosure.

adjudicatory process, whether the applicant for divulgence has established its high burden of establishing good cause and, if so, the degree and scope of the disclosures that must be made in order to best serve the overriding interest constituting that good cause.

Under the facts presented herein, we cannot conclude that CfA has established good cause for divulgence under any of the traditional modes of analysis discussed above. To be sure, although CfA is a public-interest, not-for-profit organization which serves a laudatory purpose, it lacks the formal statutory or regulatory authority and responsibilities which are the hallmark of the law-enforcement and other governmental entities which have successfully obtained divulgence from this Court in past cases. Further, with respect to CfA's specific arguments, we first conclude that CfA's reliance on *Matter of Aretakis* (16 AD3d at 901) for the proposition that confidentiality has been waived is misplaced. In that case, we found that *the attorney who was the subject of the grievance complaints at issue* sought to publicize the grievance complaints, which waiver established good cause for divulgence. Conversely, in this matter, CfA – the complainant in respondent's disciplinary proceeding and the applicant for divulgence herein – has publicized many records attendant to the grievance proceeding while respondent adamantly opposes disclosure. At bottom, "[t]he provisions for confidentiality set forth in [Judiciary Law § 90 (10)] . . . were enacted primarily, if not only, for the benefit of the attorney under investigation" (*Matter of Capoccia*, 59 NY2d 549, 554 [1983]), and we decline to find a waiver of that confidentiality under the circumstances presented here. Next, we find that CfA's argument concerning the lack of potential reputational harm to respondent is flawed. While CfA claims that respondent would not suffer further reputational harm by divulgence given that disclosure of the disciplinary record would simply detail what charges were sustained and what accusations were deemed unfounded, CfA fails to fully account for AGC's role as both an investigatory and adjudicative body. On this point, AGC is not bound to make findings of misconduct solely as alleged in the complaint. Said differently, AGC is free to make additional findings of misconduct as it sees fit based upon its independent investigation (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [b] [4]) and, accordingly, CfA's claim that additional reputational harm would not inure to respondent is inherently speculative. Lastly, we decline to find good cause based upon a purported heightened public interest premised upon respondent's role as a public official, especially considering that the misconduct in question did not arise out of respondent's formal execution of his public duties.

Our determination that CfA has not established good cause for divulgence under any of the modes of analysis which have traditionally been adjudicated by this Court does not end our inquiry, however, as CfA – with the support of amici – has invoked an

additional cause for divulgence, that being its presumptive right of public access under the First Amendment of the US Constitution. A presumptive right of public access attaches to governmental documents and/or proceedings under the First Amendment of the US Constitution where the documents and/or proceedings in question pass the experience-and-logic test as set forth by the Supreme Court of the United States (*see Press-Enterprise Co. v Superior Court of California for Riverside County*, 478 US 1, 9 [1986]). Thus, there is a two-step analysis to determine whether the presumptive First Amendment right of access attaches to a given document or proceeding (*see Courthouse News Serv. v Corsones*, 131 F4th 59, 66 [2d Cir 2025]). First, "a court must ask 'whether the place and process have historically been open to the press and general public' (the experience prong) and 'whether public access plays a significant positive role in the functioning of the particular process in question' (the logic prong)" (*id.* at 66-67, quoting *Press-Enterprise Co. v Superior Court of California for Riverside County*, 478 US at 8; *see Hartford Courant Company, LLC v Carrol*, 986 F3d 211, 219 [2d Cir 2021]). If the experience-and-logic test is satisfied, then the presumption attaches (*see Courthouse News Serv. v Corsones*, 131 F4th at 68). Second, should that presumptive right of access exist, the burden shifts to "the proponent of closure [to] establish through specific, on the record findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest" (*id.* at 67 [internal quotation marks, ellipsis and citations omitted]; *see Lugosch v Pyramid Co. of Onondaga*, 435 F3d 110, 124 [2d Cir 2006]).

The US Court of Appeals for the Second Circuit has recently had the opportunity to assess the degree to which the presumptive First Amendment right of access applies to various aspects of the attorney disciplinary process in New York (*see Civil Rights Corps v LaSalle*, 184 F4th 104 [2d Cir 2026], *affg* 741 F Supp 3d 112 [SD NY 2024]), and that Court's determination will necessarily inform our analysis of the First Amendment presumptive right of access argument as it may apply to AGC's adjudicatory disposition of respondent's matter and the associated documents within AGC's control. The plaintiffs in *Civil Rights Corps* had filed 21 grievance complaints against certain assistant district attorneys with the Attorney Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts of the Second Judicial Department, and the plaintiffs' requests for, among other documents and proceedings, access to the ultimate dispositions of those complaints were denied by Second Department disciplinary officials. The plaintiffs accordingly brought suit pursuant to 42 USC § 1983, alleging that Judiciary Law § 90 (10), as had been applied to their requests, had impermissibly interfered with their presumptive right of access under the First Amendment (741 F Supp 3d at 127). The plaintiffs moved for partial summary judgment, and the District Court declared that the presumptive First Amendment right of access had attached to the ultimate dispositions of

the plaintiffs' grievance complaints (*id.* at 172). Upon de novo review, the Second Circuit affirmed the District Court's order, concluding that the experience-and-logic test supported a presumptive First Amendment right of access to certain dispositions of the Attorney Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts (184 F4th at 106, 129).² In the Second Circuit's view, the grievance committee, as an adjudicative body operating under the Second Department's mandate, relates back to the historically public attorney misconduct proceedings and is an outgrowth of the historically public adjudication of attorney discipline that conclusively decides most matters that have passed the initial screening by the committee's Chief Attorney and staff (*id.* at 128-129). The Second Circuit further concluded that publicizing these dispositions would not unduly harm an attorney's reputation given the gatekeeping function of the committee's Chief Attorney (*id.* at 129). Considering that the *Civil Rights Corps* defendant did not allege that he had rebutted the plaintiffs' presumptive right of access, the Second Circuit did not reach the second prong of the analysis (*id.* at 124). Nonetheless, the Second Circuit clearly intimated that the issue of whether the presumptive First Amendment right of access had been rebutted would invariably be a judicial determination made following a full adjudicatory process (*id.*).

Turning, then, to an analysis of CfA's First Amendment claim in this matter,³ we first note that the Second Circuit's application of the experience-and-logic test to that

² The Second Circuit did not address disclosure of the Second Department Committee's internal reports or investigatory work product, as the plaintiffs had not sought such disclosure.

³ As an aside, we decline the invitation to direct that notice of this proceeding be provided to the State Attorney General on the premise that the constitutionality of Judiciary Law § 90 (10) is "involved" herein (CPLR 1012 [b] [1]; *see* Executive Law § 71 [1]). Mindful that we are duty bound to afford a construction to Judiciary Law § 90 (10) that will harmonize it with requirements of the US Constitution (*see* McKinney's Con Laws of NY, Book 1, Statutes, § 92, Comment; *see also* *Matter of Seitz v Drogheo*, 21 NY2d 181, 186 [1967]; *Spahn v Julian Messner, Inc.*, 21 NY2d 124, 127 [1967]), we note further that the constitutionality of Judiciary Law § 90 (10) is not fundamentally at issue in this divulgence proceeding. To be sure, this Court has not been called upon to declare any part of Judiciary Law § 90 (10) unconstitutional, either facially or as applied to CfA's claims. Therefore, CfA's claimed presumptive First Amendment right of access is more properly viewed as an avenue to establish good cause for divulgence, as opposed

grievance committee's adjudicative disposition, while not fully binding upon this Court, is persuasive, given its reliance upon precedent of the Supreme Court of the United States (*see Press-Enterprise Co. v Superior Court of California for Riverside County*, 478 US at 8). In this vein, we agree that the presumptive First Amendment right of access attaches to AGC's adjudicatory disposition of respondent's disciplinary proceeding (*see Civil Rights Corps v LaSalle*, 184 F4th at 127-130). Specifically, we are persuaded by the fact that attorney disciplinary proceedings have historically taken place in a public forum (*see Matter of Kelly*, 59 NY 595, 596 [1875]; Charles W. Wolfram, *Toward a History of the Legalization of American Legal Ethics*, 8 U Chi L Sch Roundtable 469, 474-75 [2001]; Leslie C. Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 Geo J Legal Ethics 1, 12-13 [2007]) and, more importantly, that "[t]he primary concern of a disciplinary proceeding is the protection of the public in its reliance on the integrity and responsibility of the legal profession" (*Matter of Rowe*, 80 NY2d 336, 341 [1992]). Given that AGC acts as an outgrowth of this Court's historical and statutory administration of the legal profession, it follows that the rationale affording a presumptive right of access to disciplinary proceedings before this Court would also apply to the adjudicative dispositions of AGC.⁴

Accordingly, we are of the view that CfA has established good cause for divulgence of AGC's disposition of CfA's complaint against respondent based upon CfA's presumptive First Amendment right of access, and we turn to the question of whether either AGC or respondent has rebutted that presumption. At the outset, AGC has conceded that it cannot advance a good-faith claim that its adjudicatory disposition should remain confidential in the face of the holding of *Civil Rights Corps*, noting that there are no specific findings that it made or facts disclosed that would warrant closure or continued confidentiality. Otherwise, we are unpersuaded by respondent's argument that granting disclosure in this instance would mark the end of all private discipline in New York (*see Matter of New York Times Co. v Biaggi*, 828 F2d 110, 116 [2d Cir 1987], *cert*

to a direct constitutional challenge to the good cause standard enunciated in Judiciary Law § 90 (10).

⁴ While the Courts in *Civil Rights Corps* explicitly held that the presumptive right of access applies to disciplinary proceedings before the Appellate Division (*see* 184 F4th at 125-127; 741 F Supp 3d at 156-162), we are not called upon to decide that question in this proceeding and leave for other cases to determine the breadth and scope of that presumptive right of access and under what circumstances – and by what procedural means – that presumption might be rebutted by the proponent of confidentiality.

denied 485 US 977 [1988]). To the contrary, as this proceeding amply demonstrates and as the Second Circuit itself intimated, all adjudicatory dispositions of a grievance committee will remain private until such time as an application for divulgence thereof is made and it is determined following a full adjudicatory process by the relevant Department of the Appellate Division that the opponent of divulgence has not rebutted any presumptive right of public access which the proponent has established. And, where a party to the divulgence proceeding does rebut that presumption by demonstrating through specific, on-the-record findings that continued confidentiality is essential to preserve higher values and is narrowly tailored to serve that interest (*see Courthouse News Serv. v Corsones*, 131 F4th at 67), the committee's adjudicatory disposition will remain confidential, in whole or in part, notwithstanding any presumptive public right of access. Here, however, because neither AGC nor respondent have rebutted the presumptive right of access that CfA has demonstrated with regard to AGC's adjudicative disposition of CfA's complaint, we grant that part CfA's application which seeks divulgence of the admonition which AGC imposed upon respondent by notice dated April 1, 2026 and direct that AGC provide a copy thereof to CfA forthwith.

To the extent that the Second Circuit did not analyze whether a party would be entitled to additional documents within a grievance committee's control, we must now decide what experience and logic dictates. As the Second Circuit observed, a grievance committee's functions are at once investigatory, prosecutorial and adjudicative (*Civil Rights Corps v LaSalle*, 184 F4th at 127). Having passed upon the adjudicatory aspects of AGC's responsibilities, the question turns to whether the documents within AGC's possession prior to the issuance of its ultimate disposition or commencement of a proceeding before this Court are investigatory or prosecutorial. For the reasons that follow, we conclude that the documents within AGC's control are investigatory in nature, that no presumptive right of access applies and that such documentation should therefore remain confidential unless some other good cause for divulgence is demonstrated pursuant to the dictates of Judiciary Law § 90 (10).

As to the experience prong of the analysis, the history of the Appellate Division's statutory authority over disciplinary proceedings in New York dates back to the promulgation of Judiciary Law former § 88 in 1909. The Judiciary Law underwent numerous amendments – most notably occurring in 1945 when the statute was restructured and the relevant provision was renumbered as Judiciary Law § 90 – wherein the authority over disciplinary proceedings was formally delegated to regional attorney grievance committees, as arms of the Appellate Division Departments. That authority gave the courts the power to launch *investigations* into potential misconduct committed

by attorneys, with the court having the power to examine witnesses in camera. In fact, the Court of Appeals in *People ex rel Karlin v Culkin* (248 NY 465, 470 [1928]) – a seminal case describing attorney disciplinary inquests – likened inquisitions into attorney misconduct to inquisitions by a grand jury, which are, of course, fundamentally confidential (see *Gravel v United States*, 408 US 606, 642 n 10 [1972]; *In re Grand Jury Proceedings*, 103 F3d 234, 239 [2d Cir 1996]; Henkin, *The Right to Know and the Duty to Withhold: The Case of the Pentagon Papers*, 120 U Pa L Rev 271, 274-275 [1971]).

To the extent that focusing exclusively on New York's history may be considered "improperly narrow" (*Civil Rights Corps v Lasalle*, 741 F Supp 3d at 158; see *El Vocero de Puerto Rico [Caribbean Intl. News Corp.] v Puerto Rico*, 508 US 147, 150 [1993]), it is imperative to note that the authority to admit, regulate and sanction attorneys and counselors-at-law is a fundamentally judicial function cognizable under the US Constitution (see *Matter of Calvo*, 88 F3d 962, 964-966 [11th Cir 1996]; see also NY Const, art VI, § 4; 1777 NY Const, art XXVII), which dates back to the English courts. In this respect, *Culkin* is instructive inasmuch as it sets forth the history of the courts' regulation of the practice of law. On this point, the *Culkin* Court recounted that, as far back as 1567, the English courts were empaneling special juries to inquire into the wrongdoing of officers of the court (248 NY at 474-475). This court power over the practitioners of law was then codified by the Orders and Notices in the Court of Common Pleas and in the Court of King's Bench in 1654 (see *id.* at 475-476). While the power to discipline attorneys has thus long been within the purview of the courts, the courts have also served a "dual" role of "prefer[ring] the charges . . . and determin[ing] them" (*People ex rel Karlin v Culkin*, 248 NY at 477; see *Ex Parte Wall*, 107 US 265, 266-271 [1883]; *Matter of Percy*, 36 NY 651, 652 [1867]), and a preliminary inquiry by the courts is a necessary prerequisite to any prosecution of the attorney for misconduct (see *Matter of Percy*, 36 NY at 652). While a presumptive right of access born of experience and logic may attach to disciplinary proceedings themselves – i.e., the prosecution and determination of the charges of professional misconduct (see *Civil Rights Corps v LaSalle*, 184 F4th at 125-129) – there is no such tradition where it comes to the investigatory, or inquisitorial, prerequisites to such adjudicatory proceedings. As no less an authority than Chief Judge Cardozo once explained,

"in conceding to the court a power of inquisition we put into its hands a weapon whereby the fair fame of a lawyer, however innocent of wrong, is at the mercy of the tongue of ignorance or malice. Reputation in such a calling is a plant of tender growth, and its bloom, once lost, is not easily restored.

The mere summons to appear at such a hearing and make report as to one's conduct, may become a slur and a reproach. Dangers are indeed here, but not without a remedy. The remedy is to make the inquisition a secret one in its preliminary stages" (*People ex rel Karlin v Culkin*, 248 NY at 478-479; *see e.g. Matter of H*, 87 NY 521 [1882]; *Matter of Attorney*, 83 NY 164 [1880]).

Nor does logic support a right of public access to AGC's preliminary investigatory processes and documentation. Prior to either the issuance of a grievance committee's own adjudicatory disposition or its filing of an application for prosecution before this Court – regardless of whether the matter is commenced by a client or third-party complaint or initiated sua sponte by a grievance committee itself (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [a] [1]) – the nature and subject matter of the particular complaint under consideration will dictate the manner of a grievance committee's discretionary inquiry. Will witnesses be interviewed or records in the hands of a third party be obtained to determine the complaint's "validity" (Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [b] [1])? Should the subject attorney be directed to merely provide a written response to the complaint, or is a more searching examination under oath deemed necessary (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [b] [2])? Must a grievance committee resort to this Court's subpoena power to compel the attendance of witnesses or the production of documents (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [b] [3])? In our view, affording the complainant and the public alike access to these preliminary inquisitorial determinations would defy logic and impede the prompt and orderly fact-finding objectives of a grievance committee. In fact, even the Justices of this Court rarely, if ever, have the opportunity to review the documents which formed the basis of the grievance committee's investigation. Rather, upon the filing of the committee's motion or petition, the committee's role evolves from investigatory to prosecutorial and we are accordingly provided with documents prepared by the respective parties for purposes of the disciplinary litigation being prosecuted before this Court (*but see* Rules of Atty Disciplinary Matters [22 NYCRR] § 1240.9 [d]).

CfA directs our attention, in particular, to whatever responsive paper respondent submitted to AGC in response to CfA's grievance complaint, arguing that that document is effectively a "traditional litigation document" that would typically be made public in an open disciplinary proceeding. This assertion misapprehends both the nature and the purpose of the subject attorney's written response that is submitted during a grievance committee investigation. For one, the analogy to a formal answer or other pleading is

inapt. A grievance committee's purpose in soliciting a response to the grievance complaint is not, as CfA supposes, to crystallize its adversary's position and narrow the issues in preparation for inevitable litigation. Instead, a grievance committee is simply trying to determine what happened. In other words, are the facts as the complainant has alleged, or are there other circumstances that should be made known? While we are mindful that CfA's complaint against respondent was artfully drafted with specific reference to rules of which CfA considered respondent to be in violation, we also note that, more often, a client complaint vaguely outlines the subject attorney's alleged and amorphous misconduct, requiring a grievance committee to demand a response from the subject attorney to simply determine whether further inquiry is needed or whether the complaint may be baseless.

Moreover, depending on the nature of the complaint, the subject attorney's response may take many forms. For example, assuming that a grievance committee has received a complaint alleging neglect of a client matter or that the subject attorney failed to communicate appropriately with the client, a grievance committee may request that the subject attorney turn over its entire client file as part of his or her response to the complaint. Should the client complaint raise concerns about his or her handling of money designated for escrow, a grievance committee may request that the subject attorney turn over bank records for a specified period of time, and it may subpoena those records if the subject attorney is noncompliant. Even more, should the subject attorney disclose information in his or her response that potentially suggests other misconduct previously unknown to a grievance committee, it may follow up and request additional information to discern whether other misconduct has, in fact, been committed by the subject attorney. Therefore, we cannot conclude that a subject attorney's response to a grievance committee's notices of complaint or requests for information are documents submitted in anticipation of litigation, but are instead solicited to determine whether there is any threshold veracity to the allegations of misconduct. This conclusion is further supported by the fact that, often, a grievance committee may dismiss the complaint for lack of proof that the subject attorney engaged in misconduct (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [d] [2] [i]) or it may determine, upon collective consideration of the complaint and the subject attorney's response thereto, that the matter is better suited for another forum (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [d] [2] [ii]). To be sure, investigatory records – whether criminal, civil or regulatory in nature – are presumptively confidential unless an exemption applies (*see e.g.* 5 USC § 552 [b] [7]; 17 CFR § 11.3; Public Officers Law § 87 [2]; *Matter of Fludd v Goord*, 18 AD3d 929, 930 [3d Dept 2005]). Accordingly, we hold that the documents within a grievance committee's control prior to its issuance of an adjudicatory disposition or its

commencement of a proceeding to be prosecuted before this Court are investigatory in nature and, therefore, no presumptive First Amendment right of access has attached to same. Accordingly, we deny CfA's application for divulgence to the extent that CfA has sought respondent's responsive papers to its complaint, given that CfA has not established good cause for their divulgence (*see* Judiciary Law § 90 [10]).

Garry, P.J., Ceresia, McShan, Powers and Ryba, JJ., concur.

ORDERED that petitioner Campaign for Accountability's application for an order directing the divulgence of all records, papers and documents concerning the disciplinary proceeding against respondent John A. Sarcone III is granted in part and denied in part; and it is further

ORDERED that respondent Attorney Grievance Committee for the Third Judicial Department is directed to divulge to petitioner the admonition which it imposed upon respondent John A. Sarcone III by notice dated April 1, 2026; and it is further

ORDERED that this Court's Confidential Decision and Order on Motion decided and entered September 1, 2026 is hereby vacated in its entirety.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial 'R'.

Robert D. Mayberger
Clerk of the Court