

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of June, two thousand and twenty-one,

Elizabeth Harding Weinstein,

Plaintiff - Appellant,

ORDER

Docket Number: 21-1099

v.

Village of Briarcliff Manor, Briarcliff Police Department, Justice Howard T. Code, Personally & in his Official capacity as Justice of the Briarcliff Village Court, Rori M. Zirman, Personally & in her Official Capacity as Court Clerk, Philip E. Zegarelli, Personally & in his Official Capacity as Village Manager, PO Cody Wilkinson, Personally & in his Official Capacity as a Police Officer, Lt. Dominick Bueti, Personally & in his Official Capacity as a Police Officer, Sgt. Thomas Nacke, Personally & in his Official Capacity as a Police Officer, Det. Fred Galbraith, Personally & in his Official Capacity as a Police Officer, Former Chief Donald Gorey, Personally & in his Official Capacity as a Police Officer, PO Gregory Campus, Personally & in his Official Capacity as a Police Officer, Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer, Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager, Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor, Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Kevin Hunt, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Sabine Werner, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Brian Stryker Weinstein, Marie Vitale, Personally and her Official Capacity as a Court

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of June, two thousand and twenty-one,

Elizabeth Harding Weinstein,

ORDER
Docket No. 21-1099

Plaintiff - Appellant,

v.

Village of Briarcliff Manor, Briarcliff Police Department, Justice Howard T. Code, Personally & in his Official capacity as Justice of the Briarcliff Village Court, Rori M. Zirman, Personally & in her Official Capacity as Court Clerk, Philip E. Zegarelli, Personally & in his Official Capacity as Village Manager, PO Cody Wilkinson, Personally & in his Official Capacity as a Police Officer, Lt. Dominick Bueti, Personally & in his Official Capacity as a Police Officer, Sgt. Thomas Nacke, Personally & in his Official Capacity as a Police Officer, Det. Fred Galbraith, Personally & in his Official Capacity as a Police Officer, Former Chief Donald Gorey, Personally & in his Official Capacity as a Police Officer, PO Gregory Campus, Personally & in his Official Capacity as a Police Officer, Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer, Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager, Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor, Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Kevin Hunt, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Sabine Werner, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Brian Stryker Weinstein, Marie Vitale, Personally and her Official Capacity as a Court

PACER fee: Exempt

General Docket
Court of Appeals, 2nd Circuit

Court of Appeals Docket #: 21-1099
Nature of Suit: 3440 CIVIL RIGHTS-Other
 Weinstein v. Village of Briarcliff Manor
Appeal From: SDNY (WHITE PLAINS)
Fee Status: Paid

Docketed: 04/26/2021
Termed: 07/08/2021

Case Type Information:

- 1) Civil
- 2) Private
- 3) -

Originating Court Information:

District: 0208-7 : 21-cv-1996
Trial Judge: Cathy Seibel, U.S. District Judge
Date Filed: 03/08/2021

Date Order/Judgment: 04/22/2021	Date Order/Judgment EOD: 04/22/2021	Date NOA Filed: 04/26/2021	Date Rec'd COA: 04/26/2021
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Prior Cases:

None

Current Cases:

None

Panel Assignment: Not available

Elizabeth Harding Weinstein
Plaintiff - Appellant

Elizabeth Harding Weinstein, -
Direct: 646-261-7685
[NTC Pro Se]
180 River Road
Briarcliff Manor, NY 10510

Village of Briarcliff Manor
Defendant - Appellee

Lewis R. Silverman, Senior Attorney
Direct: 914-574-4510
[COR NTC Retained]
Silverman & Associates
#1102
445 Hamilton Avenue
White Plains, NY 10601

Briarcliff Police Department
Defendant - Appellee

Lewis R. Silverman, Senior Attorney
Direct: 914-574-4510
[COR NTC Retained]
(see above)

Justice Howard T. Code, Personally & in his Official capacity as
Justice of the Briarcliff Village Court
Defendant - Appellee

Lewis R. Silverman, Senior Attorney
Direct: 914-574-4510
[COR NTC Retained]
(see above)

Rori M. Zirman, Personally & in her Official Capacity as Court Clerk
Defendant - Appellee

Lewis R. Silverman, Senior Attorney
Direct: 914-574-4510
[COR NTC Retained]
(see above)

Philip E. Zegarelli, Personally & in his Official Capacity as Village
Manager
Defendant - Appellee

Lewis R. Silverman, Senior Attorney
Direct: 914-574-4510
[COR NTC Retained]
(see above)

PO Cody Wilkinson, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Lt. Dominick Bueti, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Sgt. Thomas Nacke, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Det. Fred Galbraith, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Former Chief Donald Gorey, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
PO Gregory Campus, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Kevin Hunt, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Sabine Werner, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Brian Stryker Weinstein Defendant - Appellee	Brian S. Weinstein, - Direct: 212-450-4972 [COR NTC Attorney, Pro se] Davis Polk & Wardwell LLP

	New York 2844 450 Lexington Avenue New York New York, NY 10017
Marie Vitale, Personally and her Official Capacity as a Court Appointed Attorney Defendant - Appellee	Marie Vitale, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Daniel Pozin, Personally and his Official Capacity as Attorney for Briarcliff Manor Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
David Lauscher, Personally and in his Official Capacity as Assistant District Attorney Defendant - Appellee	David H. Chen, Esq., - Direct: 914-995-3616 [COR NTC Government] Westchester County Attorney's Office Suite 602 600 Michaelian Office Building 148 Martine Avenue White Plains, NY 10601
Joyce Miller, Personally and in her Official Capacity as Assistant District Attorney Defendant - Appellee	David H. Chen, Esq., - Direct: 914-995-3616 [COR NTC Government] (see above)
Fred Green, Personally and in her Official Capacity as Assistant District Attorney Defendant - Appellee	David H. Chen, Esq., - Direct: 914-995-3616 [COR NTC Government] (see above)
John Doe 1-10 Defendant	

Elizabeth Harding Weinstein,

Plaintiff - Appellant,

v.

Village of Briarcliff Manor, Briarcliff Police Department, Justice Howard T. Code, Personally & in his Official capacity as Justice of the Briarcliff Village Court, Rori M. Zirman, Personally & in her Official Capacity as Court Clerk, Philip E. Zegarelli, Personally & in his Official Capacity as Village Manager, PO Cody Wilkinson, Personally & in his Official Capacity as a Police Officer, Lt. Dominick Bueti, Personally & in his Official Capacity as a Police Officer, Sgt. Thomas Nacke, Personally & in his Official Capacity as a Police Officer, Det. Fred Galbraith, Personally & in his Official Capacity as a Police Officer, Former Chief Donald Gorey, Personally & in his Official Capacity as a Police Officer, PO Gregory Campus, Personally & in his Official Capacity as a Police Officer, Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer, Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager, Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor, Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Kevin Hunt, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Sabine Werner, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Brian Stryker Weinstein, Marie Vitale, Personally and her Official Capacity as a Court Appointed Attorney, Daniel Pozin, Personally and his Official Capacity as Attorney for Briarcliff Manor, David Lauscher, Personally and in his Official Capacity as Assistant District Attorney, Joyce Miller, Personally and in her Official Capacity as Assistant District Attorney, Fred Green, Personally and in her Official Capacity as Assistant District Attorney,

Defendants - Appellees,

John Doe 1-10,

Defendants.

04/26/2021	<input type="checkbox"/> <u>1</u> 9 pg, 244.82 KB	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Elizabeth Harding Weinstein, FILED. [3090387] [21-1099] [Entered: 04/30/2021 10:15 AM]
04/26/2021	<input type="checkbox"/> <u>2</u> 2 pg, 123.36 KB	DISTRICT COURT ORDER, dated 04/06/2021, RECEIVED.[3090404] [21-1099] [Entered: 04/30/2021 10:19 AM]
04/26/2021	<input type="checkbox"/> <u>3</u> 2 pg, 27.69 KB	DISTRICT COURT ORDER, dated 04/22/2021, RECEIVED.[3090408] [21-1099] [Entered: 04/30/2021 10:20 AM]
04/26/2021	<input type="checkbox"/> <u>4</u> 7 pg, 269.74 KB	ELECTRONIC INDEX, in lieu of record, FILED.[3090411] [21-1099] [Entered: 04/30/2021 10:20 AM]
04/30/2021	<input type="checkbox"/> <u>5</u> 1 pg, 77.74 KB	INSTRUCTIONAL FORMS, to Pro Se Appellant, SENT.[3090426] [21-1099] [Entered: 04/30/2021 10:28 AM]
04/30/2021	<input type="checkbox"/> <u>6</u> 1 pg, 77.76 KB	INSTRUCTIONAL FORMS, to Pro Se Appellees, SENT.[3090428] [21-1099] [Entered: 04/30/2021 10:30 AM]
04/30/2021	<input type="checkbox"/> <u>7</u> 1 pg, 80.39 KB	NOTICE, to Appellees Briarcliff Police Department and Village of Briarcliff Manor, regarding a corporation proceeding Pro Se, and requesting a response 30 days from the date of this letter, copy to pro se appellant and appellees, SENT.[3090440] [21-1099] [Entered: 04/30/2021 10:34 AM]
04/30/2021	<input type="checkbox"/> <u>8</u>	PAYMENT OF DOCKETING FEE, on behalf of Appellant Elizabeth Harding Weinstein, district court receipt # ANYSDC-24476702, FILED.[3090785] [21-1099] [Entered: 04/30/2021 02:36 PM]
04/30/2021	<input type="checkbox"/> <u>11</u> 9 pg, 233.32 KB	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Elizabeth Harding Weinstein, FILED. [3091527] [21-1127] [Entered: 05/03/2021 10:58 AM]
04/30/2021	<input type="checkbox"/> <u>12</u> 7 pg, 273.5 KB	ELECTRONIC INDEX, in lieu of record, FILED.[3091546] [21-1127] [Entered: 05/03/2021 11:04 AM]
05/03/2021	<input type="checkbox"/> <u>13</u> 1 pg, 77.74 KB	INSTRUCTIONAL FORMS, to Pro Se Appellant, SENT.[3091553] [21-1127] [Entered: 05/03/2021 11:07 AM]
05/03/2021	<input type="checkbox"/> <u>14</u> 1 pg, 77.76 KB	INSTRUCTIONAL FORMS, to Pro Se Appellees, SENT.[3091559] [21-1127] [Entered: 05/03/2021 11:10 AM]
05/03/2021	<input type="checkbox"/> <u>15</u> 1 pg, 80.39 KB	NOTICE, to Appellees Briarcliff Police Department and Village of Briarcliff Manor, regarding a corporation proceeding Pro Se, and requesting a response 30 days from the date of this letter, copy to pro se appellants and appellees, SENT.[3091567] [21-1127] [Entered: 05/03/2021 11:13 AM]
05/03/2021	<input type="checkbox"/> <u>16</u>	NOTE: See lead case, 21-1099, containing complete set of docket entries.[3091572] [21-1127, 21-1099] [Entered: 05/03/2021 11:15 AM]
05/13/2021	<input type="checkbox"/> <u>20</u> 2 pg, 110.66 KB	ORDER, dated 05/13/2021, dismissing appeal by 06/03/2021, unless Appellant Elizabeth Harding Weinstein, submits Form D-P, copy to pro se appellant and appellees, FILED.[3100284] [21-1099] [Entered: 05/13/2021 03:18 PM]
05/14/2021	<input type="checkbox"/> <u>21</u>	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Appellee William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 05/14/2021 by CM/ECF. [3100828] [21-1099, 21-1127] [Entered: 05/14/2021 10:45 AM]
05/14/2021	<input type="checkbox"/> <u>22</u> 2 pg, 109.33 KB	DEFECTIVE DOCUMENT, Notice of Appearance as Additional Counsel, [21], on behalf of Appellees William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, copy to pro se appellant, FILED.[3100950] [21-1099, 21-1127] [Entered: 05/14/2021 11:54 AM]
05/14/2021	<input type="checkbox"/> <u>23</u> 1 pg, 100.43 KB	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Appellee William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 05/14/2021 by CM/ECF. [3101353] [21-1099, 21-1127] [Entered: 05/14/2021 03:40 PM]
05/14/2021	<input type="checkbox"/> <u>28</u> 13 pg, 852.54 KB	LETTER, dated 04/26/2021, on behalf of Appellant Elizabeth Harding Weinstein in 21-1099, 21-1127, informing the Court to address due process violations, RECEIVED. Service date 04/26/2021 by US mail.[3103881] [21-1099, 21-1127] [Entered: 05/19/2021 01:15 PM]
05/17/2021	<input type="checkbox"/> <u>24</u>	ATTORNEY, Lewis R. Silverman for Peter E. Chatzky Kevin Hunt Maria Pascetta Briarcliff Police Department Cody Wilkinson Gregory Campus Thomas Nacke Donald Gorey Philip E. Zegarelli Edward E. Midgley Howard T. Code Daniel Pozin Village of Briarcliff Manor Steven A. Vescio Dominick Bueti Fred Galbraith Sabine Werner William Bassett Rori M. Zirman, in case 21-1127 Lewis R. Silverman for Peter E.

		Chatzky Kevin Hunt Maria Pascetta Briarcliff Police Department Cody Wilkinson Gregory Campus Thomas Nacke Donald Gorey Philip E. Zegarelli Edward E. Midgley Howard T. Code Daniel Pozin Village of Briarcliff Manor Steven A. Vescio Dominick Bueti Fred Galbraith Sabine Werner William Bassett Rori M. Zirman, in case 21-1099, [23], ADDED.[3101620] [21-1099, 21-1127] [Entered: 05/17/2021 08:23 AM]
05/17/2021	<input type="checkbox"/> 25	CURED DEFECTIVE DOCUMENT: NOTICE OF APPEARANCE FOR ADDITIONAL COUNSEL, [22], [23], on behalf of Appellees William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED.[3101635] [21-1099, 21-1127] [Entered: 05/17/2021 08:40 AM]
05/17/2021	<input type="checkbox"/> 26	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Appellee William Bassett, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 05/17/2021 by CM/ECF. [3101965] [21-1099, 21-1127] [Entered: 05/17/2021 11:32 AM]
05/19/2021	<input type="checkbox"/> 27 2 pg, 124.36 KB	DEFECTIVE DOCUMENT, Notice of Appearance for Additional Counsel, [26], on behalf of Appellees William Bassett, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, copy to pro se appellant, FILED.[3103512] [21-1099, 21-1127] [Entered: 05/19/2021 09:39 AM]
05/28/2021	<input type="checkbox"/> 29	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee David Lauscher, Joyce Miller and Fred Green in 21-1127, 21-1099, FILED. Service date 05/28/2021 by US mail. [3110185] [21-1127, 21-1099] [Entered: 05/28/2021 11:39 AM]
06/02/2021	<input type="checkbox"/> 30 2 pg, 108.25 KB	DEFECTIVE DOCUMENT, Notice of Appearance for Substitute Counsel, [29], on behalf of Appellees Fred Green, David Lauscher and Joyce Miller in 21-1099, 21-1127, copy to pro se appellant, FILED.[3112284] [21-1099, 21-1127] [Entered: 06/02/2021 11:03 AM]
06/02/2021	<input type="checkbox"/> 32	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Fred Green, David Lauscher and Joyce Miller in 21-1127, 21-1099, FILED. Service date 05/28/2021 by US mail. [3112458] [21-1127, 21-1099] [Entered: 06/02/2021 01:08 PM]
06/08/2021	<input type="checkbox"/> 35 2 pg, 110.07 KB	ORDER, dated 06/08/2021, dismissing appeal by 06/29/2021, unless Appellant Elizabeth Harding Weinstein, submits Acknowledgment and Notice of Appearance, copy to pro se appellant, FILED.[3116052] [21-1127] [Entered: 06/08/2021 02:34 PM]
06/08/2021	<input type="checkbox"/> 36 2 pg, 110.95 KB	ORDER, dated 06/08/2021, dismissing appeal by 06/29/2021, unless Appellant Elizabeth Harding Weinstein, submits Form D-P, copy to pro se appellant, FILED.[3116072] [21-1127] [Entered: 06/08/2021 02:45 PM]
06/08/2021	<input type="checkbox"/> 37 2 pg, 408.27 KB	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Fred Green, David Lauscher and Joyce Miller in 21-1127, 21-1099, FILED. Service date 06/08/2021 by US mail. [3116104] [21-1127, 21-1099] [Entered: 06/08/2021 03:13 PM]
06/08/2021	<input type="checkbox"/> 38 1 pg, 38.91 KB	CERTIFICATE OF SERVICE, for Notice of Appearance, on behalf of Appellee William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 06/08/2021 by CM/ECF, US mail.[3116111] [21-1099, 21-1127] [Entered: 06/08/2021 03:21 PM]
06/08/2021	<input type="checkbox"/> 39 2 pg, 109.87 KB	ORDER, dated 06/08/2021, dismissing appeal by 06/29/2021, unless Appellant Elizabeth Harding Weinstein, submits Acknowledgment and Notice of Appearance, copy to pro se appellant, FILED.[3116215] [21-1099] [Entered: 06/08/2021 04:20 PM]
06/08/2021	<input type="checkbox"/> 40	ATTORNEY, David H. Chen, [37], in place of attorney John Joseph Carmody, SUBSTITUTED.[3116234] [21-1099] [Entered: 06/08/2021 04:37 PM]
06/08/2021	<input type="checkbox"/> 41	ATTORNEY, David H. Chen, [37], in place of attorney John Joseph Carmody, SUBSTITUTED.[3116235] [21-1127] [Entered: 06/08/2021 04:39 PM]
06/08/2021	<input type="checkbox"/> 42	CURED DEFECTIVE DOCUMENT: NOTICE OF APPEARANCE FOR SUBSTITUTE COUNSEL, [30], [37], on behalf of Appellees Fred Green, David Lauscher and Joyce Miller, FILED.[3116238] [21-1099] [Entered: 06/08/2021 04:43 PM]
06/08/2021	<input type="checkbox"/> 43 2 pg, 107.85 KB	DEFECTIVE DOCUMENT, Notice of Appearance for Substitute Counsel, [32], on behalf of Appellees Fred Green, David Lauscher and Joyce Miller, copy to pro se appellant, FILED.[3116258] [21-1127] [Entered: 06/08/2021 04:54 PM]

06/08/2021	<input type="checkbox"/> 44	CURED DEFECTIVE DOCUMENT: NOTICE OF APPEARANCE FOR SUBSTITUTE COUNSEL, [30], [43], [37], on behalf of Appellees Fred Green, David Lauscher and Joyce Miller, FILED.[3116274] [21-1127] [Entered: 06/08/2021 05:02 PM]
06/24/2021	<input type="checkbox"/> <u>49</u> 10 pg, 540.6 KB	UNDELIVERABLE MAIL, to USCA from USPS, on behalf of the Appellant Marie Vitale, RECEIVED. [3127336] [21-1099, 21-1127] [Entered: 06/28/2021 11:58 AM]
06/28/2021	<input type="checkbox"/> <u>50</u> 1 pg, 79.16 KB	NOTICE, to Appellee Brian Stryker Weinstein in 21-1099, 21-1127, for failure to file an appearance, copy to pro se appellant and appellee, SENT.[3127354] [21-1099, 21-1127] [Entered: 06/28/2021 12:04 PM]
06/28/2021	<input type="checkbox"/> <u>51</u> 1 pg, 79.16 KB	NOTICE, to Appellee Marie Vitale in 21-1099, 21-1127, for failure to file an appearance, copy to pro se appellant and appellee, SENT.[3127364] [21-1099, 21-1127] [Entered: 06/28/2021 12:07 PM]
06/29/2021	<input type="checkbox"/> <u>54</u> 2 pg, 108.59 KB	STRIKE ORDER, striking Appellees William Bassett, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman, Notice of Appearance as Additional Counsel, [26], from the docket, copy to pro se appellant and appellee, FILED.[3128984] [21-1099, 21-1127] [Entered: 06/29/2021 04:06 PM]
07/08/2021	<input type="checkbox"/> <u>57</u> 1 pg, 88.76 KB	NEW CASE MANAGER, Yana Segal, ASSIGNED.[3133447] [21-1099] [Entered: 07/08/2021 08:51 AM]
07/08/2021	<input type="checkbox"/> 58	ORDER, [20] appeal dismissed for Appellant Elizabeth Harding Weinstein failure to file form D-P, EFFECTIVE. [3133481] [21-1099] [Entered: 07/08/2021 09:08 AM]

Clear All

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 Documents Only

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ELIZABETH HARDING WEINSTEIN,

Plaintiff,

ORDER

- against -

No. 21-CV-1996 (CS)

VILLAGE OF BRIARCLIFF MANOR, *et al.*,

Defendants.

-----x

Seibel, J.

WHEREAS Plaintiff has raised the issue of her competency in this matter by, among other things, challenging a commitment order allegedly issued by Village Justice Howard T. Code on March 9, 2021, (*see* Doc. 5);

WHEREAS the Court finds it appropriate given the circumstances to conduct an inquiry into Plaintiff's competency and whether it would be appropriate to appoint a guardian *ad litem* pursuant to Federal Rule of Civil Procedure 17(c), *see Lewis v. Newburgh Hous. Auth.*, 692 F. App'x 673, 674-75 (2d Cir. 2017) (summary order), *as amended* (July 6, 2017), or take other appropriate measures; and

WHEREAS the records relating to the alleged commitment order are not publicly accessible to the Court, and in the interest of judicial economy,

IT IS HEREBY ORDERED that the Village of Briarcliff Clerk of Court shall, no later than April 20, 2021, submit to the Court any and all records relating to Plaintiff's competency, including any evaluations and rulings, along with a letter explaining which records, if any, are public; and it is further

ORDERED that Plaintiff may also, no later than April 20, 2021, supply any records relating to competency that she wishes the Court to consider, along with a letter explaining which records, if any, are public, as well as suggestions for who might be willing to serve as her guardian *ad litem* should she be found to be incompetent.

The parties shall make their submissions directly to my chambers.

The Court will serve this Order on Plaintiff via ECF and on the Village of Briarcliff Clerk of Court through Lewis Silverman, Esq., who has indicated that he is authorized to accept service.

SO ORDERED.

Dated: April 6, 2021
White Plains, New York



CATHY SEIBEL, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ELIZABETH HARDING WEINSTEIN,

Plaintiff,

ORDER

- against -

No. 21-CV-1996 (CS)

VILLAGE OF BRIARCLIFF MANOR, *et al.*,

Defendants.

-----x

Seibel, J.

WHEREAS Plaintiff Elizabeth Harding Weinstein's submissions in this matter have raised the issue of her competency by, among other things, challenging a commitment order allegedly issued by Village Justice Howard T. Code on March 9, 2021, (*see* Doc. 5), and her alleged involuntary commitment at St. Vincent's Hospital Westchester from March 9, 2021 to April 2, 2021, (*see id.*; Doc. 6; Doc. 10 ¶¶ 33-38, 50);

WHEREAS the Court finds it appropriate given the circumstances to conduct an inquiry into Plaintiff's competency and whether it would be appropriate to appoint a guardian *ad litem* pursuant to Federal Rule of Civil Procedure 17(c), *see Lewis v. Newburgh Hous. Auth.*, 692 F. App'x 673, 674-75 (2d Cir. 2017) (summary order), *as amended* (July 6, 2017), or take other appropriate measures; and

WHEREAS the Court finds that Plaintiff's mental health records from her alleged involuntary commitment at St. Vincent's Hospital Westchester are needed to aid in the Court's required determination of Plaintiff's competency, and therefore "the interests of justice significantly outweigh the need for confidentiality," N.Y. Mental Hyg. Law § 33.13(c)(1); and

WHEREAS a health care provider may disclose protected health information in the course of a judicial proceeding in response to a court order, *see* 45 C.F.R. 164.512(e)(1)(i); and

WHEREAS to the extent that the Court seeks these documents for *in camera* review, their confidentiality shall be maintained,

IT IS HEREBY ORDERED that St. Vincent's Hospital Westchester shall, no later than April 29, 2021, submit to the Court for *in camera* review any and all mental health records relating to Plaintiff Elizabeth Harding Weinstein dated March 9, 2021 to the present.

The records shall be delivered directly to my chambers via mail, fax, or personal delivery at the Hon. Charles L. Brieant Jr. Federal Building and U.S. Courthouse, 300 Quarropas Street, White Plains, New York 10601.

SO ORDERED.

Dated: April 22, 2021
White Plains, New York



CATHY SEIBEL, U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of June, two thousand and twenty-one,

Elizabeth Harding Weinstein,

Plaintiff - Appellant,

ORDER

Docket Number: 21-1127CON

v.

Village of Briarcliff Manor, Briarcliff Police Department, Justice Howard T. Code, Personally & in his Official capacity as Justice of the Briarcliff Village Court, Rori M. Zirman, Personally & in her Official Capacity as Court Clerk, Philip E. Zegarelli, Personally & in his Official Capacity as Village Manager, PO Cody Wilkinson, Personally & in his Official Capacity as a Police Officer, Lt. Dominick Bueti, Personally & in his Official Capacity as a Police Officer, Sgt. Thomas Nacke, Personally & in his Official Capacity as a Police Officer, Det. Fred Galbraith, Personally & in his Official Capacity as a Police Officer, Former Chief Donald Gorey, Personally & in his Official Capacity as a Police Officer, PO Gregory Campus, Personally & in his Official Capacity as a Police Officer, Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer, Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager, Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor, Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Kevin Hunt, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Sabine Werner, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Brian Stryker Weinstein, Marie Vitale, Personally and her Official Capacity as a Court

Appointed Attorney, Daniel Pozin, Personally and his Official Capacity as Attorney for Briarcliff Manor, David Lauscher, Personally and in his Official Capacity as Assistant District Attorney, Joyce Miller, Personally and in her Official Capacity as Assistant District Attorney, Fred Green, Personally and in her Official Capacity as Assistant District Attorney,

Defendants - Appellees,

John Doe 1-10,

Defendants.

A notice of appeal was filed on April 26, 2021. The Appellant's Acknowledgment and Notice of Appearance Form due May 17, 2021 has not been filed. The case is deemed in default of FRAP 12(b), and LR 12.3.

IT IS HEREBY ORDERED that the appeal will be dismissed effective June 29, 2021 if the Acknowledgment and Notice of Appearance Form is not filed by that date.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of June, two thousand and twenty-one,

Elizabeth Harding Weinstein,

Plaintiff - Appellant,

ORDER

Docket No. 21-1099

v.

Village of Briarcliff Manor, Briarcliff Police Department, Justice Howard T. Code, Personally & in his Official capacity as Justice of the Briarcliff Village Court, Rori M. Zirman, Personally & in her Official Capacity as Court Clerk, Philip E. Zegarelli, Personally & in his Official Capacity as Village Manager, PO Cody Wilkinson, Personally & in his Official Capacity as a Police Officer, Lt. Dominick Bueti, Personally & in his Official Capacity as a Police Officer, Sgt. Thomas Nacke, Personally & in his Official Capacity as a Police Officer, Det. Fred Galbraith, Personally & in his Official Capacity as a Police Officer, Former Chief Donald Gorey, Personally & in his Official Capacity as a Police Officer, PO Gregory Campus, Personally & in his Official Capacity as a Police Officer, Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer, Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager, Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor, Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Kevin Hunt, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Sabine Werner, Personally and in his Official Capacity as member of BOARD OF TRUSTEES, Brian Stryker Weinstein, Marie Vitale, Personally and her Official Capacity as a Court

Appointed Attorney, Daniel Pozin, Personally and his Official Capacity as Attorney for Briarcliff Manor, David Lauscher, Personally and in his Official Capacity as Assistant District Attorney, Joyce Miller, Personally and in her Official Capacity as Assistant District Attorney, Fred Green, Personally and in her Official Capacity as Assistant District Attorney,

Defendants - Appellees,

John Doe 1-10,

Defendants.

Appellee's William Bassett, et al., submission of a Notice of Appearance as Additional Counsel does not comply with the Court's prescribed filing requirements. Despite due notice, the defect has not been cured.

IT IS HEREBY ORDERED that the said Notice of Appearance as Additional Counsel is stricken from the docket.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court




PACER fee: Exempt**General Docket
Court of Appeals, 2nd Circuit**

Court of Appeals Docket #: 21-1127
Nature of Suit: 3440 CIVIL RIGHTS-Other
 Weinstein v. Village of Briarcliff Manor
Appeal From: SDNY (WHITE PLAINS)
Fee Status: Paid

Docketed: 04/30/2021**Case Type Information:**

- 1) Civil
- 2) Private
- 3) -

Originating Court Information:

District: 0208-7 : 21-cv-1996
Trial Judge: Cathy Seibel, U.S. District Judge
Date Filed: 03/08/2021
Date Order/Judgment: 03/17/2021 **Date Order/Judgment EOD:** 03/18/2021

Date NOA Filed: 04/29/2021**Date Rec'd COA:** 04/30/2021**Prior Cases:**

None

Current Cases:

None

Panel Assignment: Not available

Elizabeth Harding Weinstein
 Plaintiff - Appellant

Elizabeth Harding Weinstein, -
 Direct: 646-261-7685
 [NTC Pro Se]
 180 River Road
 Briarcliff Manor, NY 10510

Village of Briarcliff Manor
 Defendant - Appellee

Lewis R. Silverman, Senior Attorney
 Direct: 914-574-4510
 [COR NTC Retained]
 Silverman & Associates
 #1102
 445 Hamilton Avenue
 White Plains, NY 10601

Village of Briarcliff Manor, -
 Direct: 914-941-4800
 [NTC -]
 1111 Pleasantville Road
 Briarcliff Manor, NY 10510

Briarcliff Police Department
 Defendant - Appellee

Briarcliff Police Department, -
 Direct: 914-941-2130
 [NTC -]
 Police Department
 Briarcliff Manor Village Hall
 1111 Pleasantville Road
 Briarcliff Manor, NY 10510

Lewis R. Silverman, Senior Attorney
 Direct: 914-574-4510
 [COR NTC Retained]
 (see above)

Justice Howard T. Code, Personally & in his Official capacity as
 Justice of the Briarcliff Village Court
 Defendant - Appellee

Howard T. Code, -
 Direct: 914-944-2788
 [NTC Pro Se]
 1111 Pleasantville Road

	Briarcliff Manor, NY 10510
	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Rori M. Zirman, Personally & in her Official Capacity as Court Clerk Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
	Rori M. Zirman, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Philip E. Zegarelli, Personally & in his Official Capacity as Village Manager Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
	Philip E. Zegarelli, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
PO Cody Wilkinson, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
	Cody Wilkinson, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Lt. Dominick Bueti, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Dominick Bueti, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Sgt. Thomas Nacke, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Thomas Nacke, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Det. Fred Galbraith, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Fred Galbraith, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)

Former Chief Donald Gorey, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Donald Gorey, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
PO Gregory Campus, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Gregory Campus, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Sgt. William Bassett, Personally & in his Official Capacity as a Police Officer Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager Defendant - Appellee	William Bassett, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Maria Pascetta, Personally & in her Official Capacity as Secretary to Village Manager Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor Defendant - Appellee	Maria Pascetta, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Mayor Steven A. Vescio, Personally and in his Official Capacity as Mayor of the Village of Briarcliff Manor Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Steven A. Vescio, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Edward E. Midgley, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Edward E. Midgley, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Peter E. Chatzky, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Peter E. Chatzky, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)

Kevin Hunt, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Kevin Hunt, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
Sabine Werner, Personally and in his Official Capacity as member of BOARD OF TRUSTEES Defendant - Appellee	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
	Sabine Werner, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Brian Stryker Weinstein Defendant - Appellee	Brian S. Weinstein, - Direct: 212-450-4972 [COR NTC Attorney, Pro se] Davis Polk & Wardwell LLP New York 2844 450 Lexington Avenue New York New York, NY 10017
Marie Vitale, Personally and her Official Capacity as a Court Appointed Attorney Defendant - Appellee	Marie Vitale, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
Daniel Pozin, Personally and his Official Capacity as Attorney for Briarcliff Manor Defendant - Appellee	Daniel Pozin, - [NTC Pro Se] 1111 Pleasantville Road Briarcliff Manor, NY 10510
	Lewis R. Silverman, Senior Attorney Direct: 914-574-4510 [COR NTC Retained] (see above)
David Lauscher, Personally and in his Official Capacity as Assistant District Attorney Defendant - Appellee	David H. Chen, Esq., - Direct: 914-995-3616 [COR LD NTC Government] Westchester County Attorney's Office Suite 602 600 Michaelian Office Building 148 Martine Avenue White Plains, NY 10601
Joyce Miller, Personally and in her Official Capacity as Assistant District Attorney Defendant - Appellee	David H. Chen, Esq., - Direct: 914-995-3616 [COR LD NTC Government] (see above)
Fred Green, Personally and in her Official Capacity as Assistant District Attorney Defendant - Appellee	David H. Chen, Esq., - Direct: 914-995-3616 [COR LD NTC Government] (see above)
John Doe 1-10 Defendant	

FOR THE OFFICIAL CAPTION AND A COMPLETE SET OF ATTORNEY LISTINGS, PLEASE SEE THE LEAD DOCKET NUMBER:
21-1099.

04/30/2021	<input type="checkbox"/> <u>1</u> 9 pg. 233.32 KB	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Elizabeth Harding Weinstein, FILED. [3091527] [21-1127] [Entered: 05/03/2021 10:58 AM]
04/30/2021	<input type="checkbox"/> <u>2</u> 9 pg. 65.52 KB	DISTRICT COURT ORDER, dated 03/17/2021, RECEIVED.[3091535] [21-1127] [Entered: 05/03/2021 11:01 AM]
04/30/2021	<input type="checkbox"/> <u>3</u>	PAYMENT OF DOCKETING FEE, on behalf of Appellant Elizabeth Harding Weinstein, district court receipt # ANYSDC-24476729, FILED.[3091539] [21-1127] [Entered: 05/03/2021 11:02 AM]
04/30/2021	<input type="checkbox"/> <u>4</u> 7 pg. 273.5 KB	ELECTRONIC INDEX, in lieu of record, FILED.[3091546] [21-1127] [Entered: 05/03/2021 11:04 AM]
05/03/2021	<input type="checkbox"/> <u>5</u> 1 pg. 77.74 KB	INSTRUCTIONAL FORMS, to Pro Se Appellant, SENT.[3091553] [21-1127] [Entered: 05/03/2021 11:07 AM]
05/03/2021	<input type="checkbox"/> <u>6</u> 1 pg. 77.76 KB	INSTRUCTIONAL FORMS, to Pro Se Appellees, SENT.[3091559] [21-1127] [Entered: 05/03/2021 11:10 AM]
05/03/2021	<input type="checkbox"/> <u>7</u> 1 pg. 80.39 KB	NOTICE, to Appellees Briarcliff Police Department and Village of Briarcliff Manor, regarding a corporation proceeding Pro Se, and requesting a response 30 days from the date of this letter, copy to pro se appellants and appellees, SENT.[3091567] [21-1127] [Entered: 05/03/2021 11:13 AM]
05/03/2021	<input type="checkbox"/> <u>8</u>	NOTE: See lead case, 21-1099, containing complete set of docket entries.[3091572] [21-1127, 21-1099] [Entered: 05/03/2021 11:15 AM]
05/14/2021	<input type="checkbox"/> <u>11</u>	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Appellee William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 05/14/2021 by CM/ECF. [3100828] [21-1099, 21-1127] [Entered: 05/14/2021 10:45 AM]
05/14/2021	<input type="checkbox"/> <u>12</u> 2 pg. 109.33 KB	DEFECTIVE DOCUMENT, Notice of Appearance as Additional Counsel, [11], on behalf of Appellees William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, copy to pro se appellant, FILED.[3100950] [21-1099, 21-1127] [Entered: 05/14/2021 11:54 AM]
05/14/2021	<input type="checkbox"/> <u>13</u> 1 pg. 100.43 KB	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Appellee William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 05/14/2021 by CM/ECF. [3101353] [21-1099, 21-1127] [Entered: 05/14/2021 03:40 PM]
05/14/2021	<input type="checkbox"/> <u>18</u> 13 pg. 852.54 KB	LETTER, dated 04/26/2021, on behalf of Appellant Elizabeth Harding Weinstein in 21-1099, 21-1127, informing the Court to address due process violations, RECEIVED. Service date 04/26/2021 by US mail.[3103881] [21-1099, 21-1127] [Entered: 05/19/2021 01:15 PM]
05/17/2021	<input type="checkbox"/> <u>14</u>	ATTORNEY, Lewis R. Silverman for Peter E. Chatzky Kevin Hunt Maria Pascetta Briarcliff Police Department Cody Wilkinson Gregory Campus Thomas Nacke Donald Gorey Philip E. Zegarelli Edward E. Midgley Howard T. Code Daniel Pozin Village of Briarcliff Manor Steven A. Vescio Dominick Bueti Fred Galbraith Sabine Werner William Bassett Rori M. Zirman, in case 21-1127 Lewis R. Silverman for Peter E. Chatzky Kevin Hunt Maria Pascetta Briarcliff Police Department Cody Wilkinson Gregory Campus Thomas Nacke Donald Gorey Philip E. Zegarelli Edward E. Midgley Howard T. Code Daniel Pozin Village of Briarcliff Manor Steven A. Vescio Dominick Bueti Fred Galbraith Sabine Werner William Bassett Rori M. Zirman, in case 21-1099, [13], ADDED.[3101620] [21-1099, 21-1127] [Entered: 05/17/2021 08:23 AM]
05/17/2021	<input type="checkbox"/> <u>15</u>	CURED DEFECTIVE DOCUMENT: NOTICE OF APPEARANCE FOR ADDITIONAL COUNSEL, [12], [13], on behalf of Appellees William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED.[3101635] [21-1099, 21-1127] [Entered: 05/17/2021 08:40 AM]
05/17/2021	<input type="checkbox"/> <u>16</u>	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Appellee William Bassett, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 05/17/2021 by CM/ECF. [3101965] [21-1099, 21-1127] [Entered: 05/17/2021 11:32 AM]
05/19/2021	<input type="checkbox"/> <u>17</u> 2 pg. 124.36 KB	DEFECTIVE DOCUMENT, Notice of Appearance for Additional Counsel, [16], on behalf of Appellees William Bassett, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, copy to

		pro se appellant, FILED.[3103512] [21-1099, 21-1127] [Entered: 05/19/2021 09:39 AM]
05/28/2021	<input type="checkbox"/> 19	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee David Lauscher, Joyce Miller and Fred Green in 21-1127, 21-1099, FILED. Service date 05/28/2021 by US mail. [3110185] [21-1127, 21-1099] [Entered: 05/28/2021 11:39 AM]
06/02/2021	<input type="checkbox"/> 20 2 pg, 108.25 KB	DEFECTIVE DOCUMENT, Notice of Appearance for Substitute Counsel, [19], on behalf of Appellees Fred Green, David Lauscher and Joyce Miller in 21-1099, 21-1127, copy to pro se appellant, FILED.[3112284] [21-1099, 21-1127] [Entered: 06/02/2021 11:03 AM]
06/02/2021	<input type="checkbox"/> 22	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Fred Green, David Lauscher and Joyce Miller in 21-1127, 21-1099, FILED. Service date 05/28/2021 by US mail. [3112458] [21-1127, 21-1099] [Entered: 06/02/2021 01:08 PM]
06/08/2021	<input type="checkbox"/> 25 2 pg, 110.07 KB	ORDER, dated 06/08/2021, dismissing appeal by 06/29/2021, unless Appellant Elizabeth Harding Weinstein, submits Acknowledgment and Notice of Appearance, copy to pro se appellant, FILED.[3116052] [21-1127] [Entered: 06/08/2021 02:34 PM]
06/08/2021	<input type="checkbox"/> 26 2 pg, 110.95 KB	ORDER, dated 06/08/2021, dismissing appeal by 06/29/2021, unless Appellant Elizabeth Harding Weinstein, submits Form D-P, copy to pro se appellant, FILED.[3116072] [21-1127] [Entered: 06/08/2021 02:45 PM]
06/08/2021	<input type="checkbox"/> 27 2 pg, 408.27 KB	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Fred Green, David Lauscher and Joyce Miller in 21-1127, 21-1099, FILED. Service date 06/08/2021 by US mail. [3116104] [21-1127, 21-1099] [Entered: 06/08/2021 03:13 PM]
06/08/2021	<input type="checkbox"/> 28 1 pg, 38.91 KB	CERTIFICATE OF SERVICE, for Notice of Appearance, on behalf of Appellee William Bassett, Briarcliff Police Department, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Village of Briarcliff Manor, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman in 21-1099, 21-1127, FILED. Service date 06/08/2021 by CM/ECF, US mail.[3116111] [21-1099, 21-1127] [Entered: 06/08/2021 03:21 PM]
06/08/2021	<input type="checkbox"/> 29	ATTORNEY, David H. Chen, [27], in place of attorney John Joseph Carmody, SUBSTITUTED.[3116235] [21-1127] [Entered: 06/08/2021 04:39 PM]
06/08/2021	<input type="checkbox"/> 30 2 pg, 107.85 KB	DEFECTIVE DOCUMENT, Notice of Appearance for Substitute Counsel, [22], on behalf of Appellees Fred Green, David Lauscher and Joyce Miller, copy to pro se appellant, FILED.[3116258] [21-1127] [Entered: 06/08/2021 04:54 PM]
06/08/2021	<input type="checkbox"/> 31	CURED DEFECTIVE DOCUMENT: NOTICE OF APPEARANCE FOR SUBSTITUTE COUNSEL, [20], [30], [27], on behalf of Appellees Fred Green, David Lauscher and Joyce Miller, FILED.[3116274] [21-1127] [Entered: 06/08/2021 05:02 PM]
06/09/2021	<input type="checkbox"/> 32 2 pg, 393.52 KB	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee Fred Green, David Lauscher and Joyce Miller, FILED. Service date 06/09/2021 by US mail.[3116608] [21-1127] [Entered: 06/09/2021 11:30 AM]
06/24/2021	<input type="checkbox"/> 36 10 pg, 540.6 KB	UNDELIVERABLE MAIL, to USCA from USPS, on behalf of the Appellant Marie Vitale, RECEIVED. [3127336] [21-1099, 21-1127] [Entered: 06/28/2021 11:58 AM]
06/28/2021	<input type="checkbox"/> 37 1 pg, 79.16 KB	NOTICE, to Appellee Brian Stryker Weinstein in 21-1099, 21-1127, for failure to file an appearance, copy to pro se appellant and appellee, SENT.[3127354] [21-1099, 21-1127] [Entered: 06/28/2021 12:04 PM]
06/28/2021	<input type="checkbox"/> 38 1 pg, 79.16 KB	NOTICE, to Appellee Marie Vitale in 21-1099, 21-1127, for failure to file an appearance, copy to pro se appellant and appellee, SENT.[3127364] [21-1099, 21-1127] [Entered: 06/28/2021 12:07 PM]
06/29/2021	<input type="checkbox"/> 40 2 pg, 108.59 KB	STRIKE ORDER, striking Appellees William Bassett, Dominick Bueti, Gregory Campus, Peter E. Chatzky, Howard T. Code, Fred Galbraith, Donald Gorey, Kevin Hunt, Edward E. Midgley, Thomas Nacke, Maria Pascetta, Daniel Pozin, Steven A. Vescio, Sabine Werner, Cody Wilkinson, Philip E. Zegarelli and Rori M. Zirman, Notice of Appearance as Additional Counsel, [16], from the docket, copy to pro se appellant and appellee, FILED.[3128984] [21-1099, 21-1127] [Entered: 06/29/2021 04:06 PM]
07/08/2021	<input type="checkbox"/> 42 1 pg, 88.76 KB	NEW CASE MANAGER, Yana Segal, ASSIGNED.[3133447] [21-1099] [Entered: 07/08/2021 08:51 AM]
07/08/2021	<input type="checkbox"/> 43	ORDER, [3100284-2] appeal dismissed for Appellant Elizabeth Harding Weinstein failure to file form D-P, EFFECTIVE. [3133481] [21-1099] [Entered: 07/08/2021 09:08 AM]

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH HARDING WEINSTEIN,

Plaintiff,

-against-

VILLAGE OF BRIARCLIFF MANOR, *et al.*,

Defendants.

21-CV-1996 (CS)

ORDER

CATHY SEIBEL, United States District Judge:

Plaintiff brings this *pro se* action, for which the filing fee has been paid, alleging that Defendants are violating her civil rights.¹ Plaintiff seeks money damages and emergency injunctive relief. For the reasons set forth below, the Court (1) dismisses without prejudice Plaintiff's claims against Briarcliff Manor Village Court Justice Howard T. Code and Assistant District Attorneys David Lauscher, Joyce Miller, and Fred Green; (2) declines under the *Younger* abstention doctrine to intervene in Plaintiff's ongoing state-court proceedings; and (3) declines to issue summonses as to the remaining defendants pending receipt of further information regarding Plaintiff's status.

¹ Plaintiff names the following parties as defendants: The Village of Briarcliff Manor; Briarcliff Police Department; Briarcliff Manor Village Justice Howard T. Code; Justice Court Clerk Rori M. Zirman; Village Manager Philip E. Zegarelli; Village Police Officers Cody Wilkinson, Gregory Campus; Lt. (or Chief) Dominick Bueti; Sgt. Thomas Nacke; Det. Fred Galbraith; former Police Chief Donald Gorey; Sgt. William Bassett; Secretary to the Village Manager Maria Pascetta; Mayor Steven A. Vescio; Village Board of Trustees members Edward E. Midgley, Peter E. Chatzky, Kevin Hunt, and Sabine Werner; Plaintiff's court-appointed attorney Marie Vitale; Briarcliff Manor Attorney Daniel Pozin; Assistant District Attorneys David Lauscher, Joyce Miller, and Fred Green.

STANDARD OF REVIEW

The Court has the authority to dismiss a complaint, even when the plaintiff has paid the filing fee, if it determines that the action is frivolous, *Fitzgerald v. First E. Seventh Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (*per curiam*) (citing *Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995) (*per curiam*) (holding that Court of Appeals has inherent authority to dismiss frivolous appeal)), or that the Court lacks subject matter jurisdiction, *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Moreover, the Court “has the power to dismiss a complaint *sua sponte* for failure to state a claim,” *Leonhard v. United States*, 633 F.2d 599, 609 n. 11 (2d Cir. 1980), so long as the plaintiff is given notice and “an opportunity to be heard.” *Thomas v. Scully*, 943 F.2d 259, 260 (2d Cir. 1991) (*per curiam*); *see also Perez v. Ortiz*, 849 F.2d 793, 797 (2d Cir. 1988); Wright & Miller, *Federal Practice and Procedure* § 1357, at 301 & n. 3. The Court is obliged, however, to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

The following allegations are taken from the complaint. On January 4, 2021, Plaintiff went to the Clerk’s Office in the Briarcliff Manor Municipal Building to file legal documents in another matter, but Village officials refused to accept her documents. An altercation ensued and Village Manager Philip Zegarelli requested that police remove Plaintiff from the premises for her failure to comply with the mask mandate. (ECF 1, at 10.) Briarcliff Manor Police Chief Bueti, Sergeant Nacke, and Officer Wilkinson responded, and after Plaintiff refused to comply with their order to leave, they arrested her for disorderly conduct. Plaintiff alleges that the arrest was

“retaliatory” and effectuated “in the absence of criminal activity with no probable cause.” (*Id.* at 13.) Plaintiff further alleges that Wilkinson, Bueti, and Nacke used excessive force in arresting her, including twisting her arms and holding her by the back of her neck while pulling her down stairs.

Plaintiff was then taken to the police station, where she was “chained to the wall in an uncomfortable and restraining way.” (*Id.* at 15.) While Plaintiff was detained at the police station, Briarcliff Manor Village Court Justice Howard T. Code came to the station and “had private ex parte communications” with Wilkinson and Nacke. (*Id.* at 17.) Plaintiff was arraigned by video on January 5, 2021, “while in solitary confinement.” (*Id.* at 19.) At some point, Justice Code ordered that Plaintiff undergo a psychiatric examination, remanded her “to prison for seven weeks without cause,” and placed her under suicide watch. (*Id.* at 20.) At a hearing on January 8, 2021, Plaintiff was released without bail, but when she refused to “comply with competency exams,” she was sent back to her cell and “held in solitary confinement for another four and half to six hours.” (*Id.* at 21.)

Plaintiff asserts that her husband Brian Stryker Weinstein, an attorney who is also named as a defendant, “has been using his inner workings of the Westchester Judiciary” to have the judges, police officers, and district attorneys “discredit” Plaintiff in order to “provide a cover for [her husband’s] nefarious actions, abuse of process, and domestic violence thus far.” (*Id.* at 20.)

In the complaint, Plaintiff seeks damages and injunctive relief, including recusal of Judge Code and “[d]ismissal of arrest charges against Plaintiff.” (*Id.* at 33.)

On March 9, 2021, Plaintiff filed a document captioned “Motion for Injunctive Relief: Emergency Access to Court Requested.” (ECF 3.) In the motion, she requests “emergency access to the Court to be heard on the incredible and egregious constitutional rights violations by

Defendant JUDGE HOWARD T. CODE for injunctive relief as Defendant JUDGE HOWARD T. CODE continues to desecrate my constitutional rights and exert further coercive control over my life.” (*Id.* at 2) (capitalization in original). Plaintiff states that Justice Code “is attempting to hold ‘competency hearings’ without grounds and without proper notice, to exert control over me and my ability to properly defend my rights.” (*Id.* at 3.) In her motion, Plaintiff seeks a “[s]tay on all [o]rders issued by” Justice Code “as they relate to Plaintiff.” (*Id.* at 4.)

On March 11, 2021, Plaintiff filed another “Motion for Immediate Injunctive Relief” in which she alleges that she is the “victim of severe narcissistic abuse by defendants Brian Stryker Weinstein, District Attorney David Lauscher, Judge Howard T. Code, and the Briarcliff Manor Police.”² (ECF 5, at 1.) Plaintiff writes that she seeks “immediate injunctive relief for an emergency stay on an unlawful imprisonment and involuntary commitment order issued by Defendant Judge Howard T. Code on March 9, 2021 in Briarcliff Manor Village Court.” (*Id.* at 1-2.) She alleges that she has not seen a copy of Justice Code’s order and maintains that she was not “allowed an opportunity to be fully heard” or permitted to have counsel present. (*Id.* at 2.) Plaintiff asserts that she is “of no threat to [herself] or others, not suicidal or homicidal in any way,” and that Justice Code “issued the order to discredit, punish and silence an articulate pro se litigant.” (*Id.* at 2-3.)

Also on March 11, 2021, the Court received another letter from Plaintiff in which she repeats her previous allegations and asserts that Justice Code’s involuntary commitment order was issued in retaliation for Plaintiff’s filing of this federal action. (ECF 6.) Plaintiff also asserts

² Plaintiff’s motion is handwritten and uses irregular capitalization. For readability, the Court uses standard capitalization when quoting from the motion.

in her letter that medical staff at the hospital in which she is committed are forcing her to take medication. Plaintiff reiterates her request to be immediately released from commitment.

DISCUSSION

A. *Younger* abstention

To the extent that Plaintiff seeks to have this Court intervene in any pending state-court proceedings, the Court must dismiss those claims. In *Younger v. Harris*, 401 U.S. 37 (1971), the United States Supreme Court held that a federal court may not enjoin a pending state-court criminal proceeding in the absence of special circumstances suggesting bad faith, harassment, or irreparable injury that is both serious and immediate. *See Gibson v. Berryhill*, 411 U.S. 564, 573-74 (1973) (citing *Younger*, 401 U.S. 37). This doctrine has been extended to civil actions. *See Kaufman v. Kaye*, 466 F.3d 83, 86 (2d Cir. 2006); *Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002) (“*Younger* generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings.”). Thus, *Younger* abstention is appropriate in only three categories of state court proceedings: (1) state criminal prosecutions; (2) civil enforcement proceedings that are “akin to criminal prosecutions”; and (3) civil proceedings “that implicate a State’s interest in enforcing the orders and judgments of its courts.” *Sprint Commc’n, Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013).

Here, Plaintiff asks the Court to intervene in her ongoing criminal proceedings and related competency proceedings. Beyond her conclusory assertions of retaliation and conspiracy, Plaintiff has alleged no specific facts showing bad faith, harassment, or irreparable injury with respect to her pending state-court criminal proceeding. The Court will therefore not intervene in Plaintiff’s ongoing state-court proceedings and denies her motions for emergency injunctive relief (ECF 3, 5). Plaintiff’s remedy, if the state court erred, lies with the state appellate process.

B. Claims against Justice Code

The Court must dismiss Plaintiff's claims against Justice Code. Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, “acts arising out of, or related to, individual cases before the judge are considered judicial in nature.” *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). “Even allegations of bad faith or malice cannot overcome judicial immunity.” *Id.* (citations omitted). This is because “[w]ithout insulation from liability, judges would be subject to harassment and intimidation” *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994). In addition, as amended in 1996, § 1983 provides that “in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983.

Judicial immunity does not apply when the judge takes action “outside” his judicial capacity, or when the judge takes action that, although judicial in nature, is taken “in absence of jurisdiction.” *Mireles*, 502 U.S. at 9-10; *see also Bliven*, 579 F.3d at 209-10 (describing actions that are judicial in nature). But “the scope of [a] judge's jurisdiction must be construed broadly where the issue is the immunity of the judge.” *Stump v. Sparkman*, 435 U.S. 349, 356 (1978).

Plaintiff's claims against Justice Code arise out of the judge's rulings while presiding over Plaintiff's state-court proceedings. Such rulings and actions were within the scope of Justice Code's judicial capacity and jurisdiction. The Court therefore dismisses Plaintiff's claims against Justice Code under the doctrine of judicial immunity and as frivolous. *See Neitzke*, 490 U.S. at 325 (stating that a claim is frivolous if it “lacks an arguable basis either in law or in fact”); *Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) (“A complaint will be dismissed as ‘frivolous’ when ‘it is clear that the defendants are immune from suit.’” (quoting *Neitzke*, 490

U.S. at 327)); *see also Mills v. Fischer*, 645 F.3d 176, 177 (2d Cir. 2011) (“Any claim dismissed on the ground of absolute judicial immunity is ‘frivolous’ for purposes of [the *in forma pauperis* statute].”).

C. Claims against Assistant District Attorneys Lauscher, Miller, and Green.

The Court must also dismiss Plaintiff’s claims against Assistant District Attorneys Lauscher, Miller, and Green. Prosecutors are immune from civil suits for damages for acts committed within the scope of their official duties where the challenged activities are not investigative in nature but, rather, are “intimately associated with the judicial phase of the criminal process.” *Simon v. City of New York*, 727 F.3d 167, 171 (2d Cir. 2013) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)); *see also Buckley v. Fitzsimmons*, 509 U.S. 259 (1993) (holding that absolute immunity is analyzed under “functional approach” that “looks to the nature of the function performed, not the identity of the actor who performed it”). In addition, prosecutors are absolutely immune from suit for acts that may be administrative obligations but are “directly connected with the conduct of a trial.” *Van de Kamp v. Goldstein*, 555 U.S. 335, 344 (2009).

Here, Plaintiff’s claims against Defendants Lauscher, Miller, and Green are based on actions within the scope of their official duties and associated with the conduct of a trial. Therefore, these claims are dismissed because they seek monetary relief against a defendant who is immune from suit and as frivolous. *See Collazo v. Pagano*, 656 F. 3d 131, 134 (2d Cir. 2011) (holding that claim against prosecutor is frivolous if it arises from conduct that is “intimately associated with the judicial phase of the criminal process”).

D. Plaintiff’s competency and claims against remaining defendants

It appears from Plaintiff’s filings that she is undergoing or has undergone a mental competency examination pursuant to Article 730 of the New York State Criminal Procedure

Law.³ (See ECF 1, at 20.) But whether Plaintiff has been formally adjudicated incompetent is unclear at this time. Under Federal Rule of Civil Procedure 17(c)(2), a person who is adjudicated incompetent and who does not have a duly appointed representative may only sue by a next friend or *guardian ad litem*. Courts are generally prohibited from “mak[ing] a merits determination of claims filed on behalf of a minor or incompetent person who is not properly represented.” *Berrios v. New York City Hous. Auth.*, 564 F.3d 130, 134 (2d Cir. 2009). In an abundance of caution, the Court dismisses Plaintiff’s claims against Justice Code and ADAs Lauscher, Miller, and Green without prejudice. *See id.* at 135 (courts should dismiss without prejudice claims of incompetent persons who appear without a guardian *ad litem* or counsel). Because the Court dismisses Plaintiff’s claims against Justice Code and ADAs Lauscher, Miller, and Green without prejudice, and abstains from intervening in Plaintiff’s ongoing state-court proceedings, the Court need not address the issue of Plaintiff’s competency at this time.

The Court will consider Plaintiff’s claims against the remaining defendants in a subsequent order, and pending receipt of further information regarding Plaintiff’s status. No summonses will issue at this time.

CONCLUSION

Plaintiff has consented to receive electronic service of Court filings. (ECF 2.)

The Court denies Plaintiff’s motions for emergency injunctive relief (ECF 3, 5) under the *Younger* abstention doctrine.

The Court dismisses Plaintiff’s claims against Justice Code without prejudice under the doctrine of judicial immunity and as frivolous.

³ Article 730 of the New York Criminal Procedure Law provides that any time the court is of the opinion that the defendant may be an incapacitated person, the court must order a psychiatric examination. *See N.Y. Crim. Pro. L. § 730.30.*

The Court also dismisses Plaintiff's claims against Assistant District Attorneys Lauscher, Miller, and Green without prejudice under the doctrine of prosecutorial immunity and as frivolous.

Plaintiff's claims against the remaining defendants will be addressed in a subsequent order. No summonses shall issue at this time.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppededge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: March 17, 2021
White Plains, New York



CATHY SEIBEL
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**