

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2610

KENNETH ROSELLINI,
Appellant

v.

GARY WILCOX, In his individual and official capacity;
HON. FRANK LAROCCA, In his individual capacity and
official capacity;

MICHAEL DOBLIN, DDS, In his official capacity;
JUDGE EDWARD TORACK, In his individual capacity;
MARIE LIHOTZ, In her individual capacity;
HANY MAWLA, In his individual and official capacity;
MARIE SIMONELLI, In her individual and official
capacity;

STUART RABNER, In his individual and official capacity;
CARMEN DIAZ-PETTI, In her official capacity;
SUPREME COURT OF NEW JERSEY DISTRICT XI
ETHICS COMMITTEE;
NORMAN KLEIN, In his official capacity;
ROBERT C. PAPA, In his official capacity
(D.N.J. No. 2:20-cv-20101)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and AMBRO*, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the

* Judge Ambro's vote is limited to panel rehearing only.

other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

By the Court,
s/ L. Felipe Restrepo
Circuit Judge

Dated: April 30, 2025
Sb/cc: All Counsel of Record

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2610

KENNETH J. ROSELLINI,
Appellant

v.

GARY WILCOX, In his individual and official capacity;
HON. FRANK LAROCCA, In his individual capacity and
official capacity;

MICHAEL DOBLIN, DDS, In his official capacity;
JUDGE EDWARD TORACK, In his individual capacity;
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HANY MAWLA, In his individual and official capacity;
MARIE SIMONELLI, In her individual and official
capacity;

STUART RABNER, In his individual and official capacity;
CARMEN DIAZ-PETTI, In her official capacity;
SUPREME COURT OF NEW JERSEY DISTRICT XI
ETHICS COMMITTEE;
NORMAN KLEIN, In his official capacity;
ROBERT C. PAPA, In his official capacity

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 2:20-CV-20101)
District Judge: Hon. Madeline Cox Arleo

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)

on November 15, 2024

Before: RESTREPO, MONTGOMERY-REEVES, and
AMBRO, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted on November 15, 2024. On consideration whereof, it is now **ORDERED** and **ADJUDGED** that the District Court's Orders entered on October 14, 2021, and July 28, 2022, are hereby **AFFIRMED**. Costs shall be taxed against Appellant. All of the above in accordance with the Opinion of this Court.

ATTEST:
s/Patricia S. Dodszuweit
Clerk

DATED: February 5, 2025

APPENDIX C

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2610

KENNETH J. ROSELLINI,
Appellant

v.

GARY WILCOX, In his individual and official capacity;
HON. FRANK LAROCCA, In his individual capacity and
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capacity;

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Before: RESTREPO, MONTGOMERY-REEVES, and
AMBRO, *Circuit Judges*
(Filed: February 5, 2025)

OPINION*

RESTREPO, *Circuit Judge*

On December 22, 2020, attorney Kenneth Rosellini filed a 296-page complaint in federal court against multiple defendants alleging a sprawling conspiracy to violate his First and Fourteenth Amendment rights. Included in the long list of defendants were the Supreme Court of New Jersey's District XI Ethics Committee (the "Ethics Committee") and two of its members, Norman Klein and Robert C. Papa (together with the Ethics Committee, the "Ethics Committee Defendants"), as well as several New Jersey state court judges (the "Judicial Defendants") and other individuals.¹ At the time he filed the complaint, Rosellini faced ongoing disciplinary proceedings for openly refusing to comply with multiple sanctions orders entered in New Jersey state courts.

The District Court dismissed the claims against the Judicial Defendants and Ethics Committee Defendants. As to the claims against the Ethics Committee Defendants, the District Court abstained under *Younger v. Harris*, 401 U.S.

37 (1971). The District Court later abstained again on those same claims when denying Rosellini's motion for relief from

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

1 The Judicial Defendants were Hon. Gary N. Wilcox, Hon. Stuart Rabner, Hon. Hany A. Mawla, Hon. Marie P. Simonelli, Hon. Marie E. Lihotz and Hon. Edward V. Torack. The other defendants were Carmen Diaz-Petti, Hon. Frank LaRocca and Michael Doblin. None of the claims against these defendants are at issue in this appeal.

2

the order based on newly discovered evidence. Rosellini timely appealed both orders and raises only one issue: whether the District Court erred in applying the *Younger* abstention doctrine to dismiss the claims against the Ethics Committee Defendants. Because we find the District Court did not err in abstaining under *Younger*, we will affirm both orders.

I.2

In 2016, Rosellini sought to vacate five orders entered in a divorce action before the New Jersey Superior Court. The court denied Rosellini's motion on res judicata grounds and sanctioned him for "filing a frivolous motion." App. 315. On appeal, the New Jersey Appellate Division affirmed and imposed additional sanctions. Openly refusing to comply, Rosellini filed a petition for certification to the New Jersey

Supreme Court challenging the constitutionality of the snowballing sanctions. That court denied the petition, granted a motion by the opposing party for attorney's fees and imposed further sanctions.

On November 15, 2019, the Ethics Committee filed a complaint against Rosellini alleging he violated Rule 3.4(c) and Rule 8.4(d) of the New Jersey Rules of Professional Conduct ("RPC") by openly refusing to comply with multiple court orders.³ The Ethics Committee held a hearing on November 20, 2020. On December 22, 2020—before the Ethics Committee issued its decision—Rosellini filed his federal complaint. He alleged a

2 Since we write primarily for parties already familiar with this case, we include only those facts necessary to reach our conclusion.

3 RPC 3.4(c) states that “[a] lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.” RPC 8.4(d) states that “[i]t is professional misconduct for a lawyer to . . . engag in conduct that is prejudicial to the administration of justice.”

3

wide-ranging conspiracy to perpetrate fraud and violate his First and Fourteenth Amendment rights through unconstitutional sanctions and retaliatory disciplinary proceedings.

As to the Ethics Committee Defendants, Rosellini asked the District Court to declare that (1) New Jersey Court Rule 1:20-15(h)—which provides for constitutional

challenges to the proceedings to be raised in a petition for review to the New Jersey Supreme Court— violates the Due Process Clause of the Fourteenth Amendment because it restricts the ability to raise constitutional claims; (2) RPC 3.4(c) and RPC 8.4(d) violate the First and Fourteenth Amendments to the extent they interfere with his right to free speech and advocacy; and (3) RPC 3.4(c) and RPC 8.4(d) may not be used as retaliation for the exercise of rights guaranteed by the First and Fourteenth Amendments.

On March 31, 2021, the Ethics Committee recommended dismissal of the ethics charges with one member dissenting. Under New Jersey Court Rule 1:20-15(e), the Director of the Office of Attorney Ethics (“OAE”) can appeal the dismissal of an ethics complaint to the Disciplinary Review Board (“DRB”), which reviews the decision *de novo*. The OAE did just that, appealing the dismissal of the charges against Rosellini.

While the ethics appeal was pending before the DRB, on October 14, 2021, the District Court granted the motions to dismiss filed by the Ethics Committee Defendants and Judicial Defendants in this case. As to the Ethics Committee Defendants, the District Cour dismissed the claims under the *Younger* abstention doctrine because the state disciplinary proceedings were ongoing with an appeal pending before the DRB.

On April 20, 2022, the DRB issued a decision reversing the Ethics Committee’s dismissal of the ethics complaint and imposing a three-month suspension with the added

condition that Rosellini satisfy the sanctions orders against him prior to reinstatement. After the DRB issued its decision, Rosellini moved to vacate the October 14, 2021 order dismissing the claims against the Ethics Committee Defendants and Judicial Defendants.⁵ On July 28, 2022, the District Court denied that motion, rejecting Rosellini's contention

that abstention was no longer appropriate because the DRB's decision showed that (1) he lacked an adequate forum to raise his constitutional claims in the ethics proceedings and (2) the ethics proceedings were brought in bad faith. The only issue on appeal is whether the District Court erred in abstaining under *Younger* from deciding Rosellini's claims against the Ethics Committee Defendants in its October 14, 2021 and July 28, 2022 orders.

II.6

A. The *Younger* Abstention Doctrine

We first address whether the District Court erred in finding the legal requirements for *Younger* abstention were met. "To promote comity between the national and state

⁴ The facts available to the District Court when it abstained end here, but Rosellini's state disciplinary proceedings continued. He petitioned the New Jersey Supreme Court to review the DRB's decision, and the New Jersey Supreme Court denied that petition on May 16, 2023. On May 19, 2023, the New Jersey Supreme Court entered an order censuring Rosellini and instructing him to satisfy the sanctions orders previously entered against him. It then

discipline proceedings do not afford him an adequate opportunity to raise his constitutional claims. But the Supreme Court—in an almost identical case—held the opposite. *See Middlesex Cnty.*

Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 435–36 (1982) (“In light of the unique relationship between the New Jersey Supreme Court and the local Ethics Committee, and in view of the nature of the proceedings, it is difficult to conclude that there was no ‘adequate opportunity’ for [the plaintiff] to raise his constitutional claims.”). When assessing “whether a federal plaintiff has an adequate opportunity to raise his constitutional

District Court’s decision to abstain from considering the claims against the Ethics Committee Defendants. *See Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295, 302 (3d Cir. 2004) (holding decision to abstain constitutes final appealable order). “We exercise plenary review over a trial court’s . . . determination of whether *Younger* abstention is proper.” *Smith & Wesson Brands, Inc. v. Att'y Gen. of N.J.*, 27 F.4th 886, 890 (3d Cir. 2022) (omission in original) (quoting *Hamilton v. Bromley*, 862 F.3d 329, 333 (3d Cir. 2017)).

claims,” the proper inquiry is “whether ‘state law clearly bars the interposition of the constitutional claims.’” *Gonzalez v. Waterfront Comm'n of N.Y. Harbor*, 755 F.3d 176, 18 (3d Cir. 2014) (quoting *Moore v. Sims*, 442 U.S. 415, 425–26 (1979)) (emphasis omitted). “In making this determination,

we consider whether state law raises procedural barriers to the presentation of the federal challenges.” *Id.* (citing *Moore*, 442 U.S. at 430).

Rosellini faced no procedural barriers here. In fact, New Jersey’s disciplinary rules provide two avenues for constitutional challenges to the proceedings. An attorney can (1) petition the New Jersey Supreme Court for immediate, interlocutory review upon a showing of irreparable harm *during* the proceedings, N.J. Ct. R. 1:20-16(f)(1), or (2) raise constitutional challenges in a petition for review *after* an adverse decision by the DRB N.J. Ct. R. 1:20-16(f)(2). Rosellini chose only the second avenue. If anything, Rosellini limited his own opportunities to raise his constitutional claims.

Rosellini points to the DRB’s expression of doubt that he properly raised the constitutional challenges in the ethics proceeding as proof that he lacks an adequate forum. But as the District Court noted in its July 2022 Order, “the mere possibility that the New Jersey Supreme Court may find that [Rosellini] failed to properly preserve his constitutional claims does not suggest that New Jersey has erected procedural barriers that ‘clearly bar’ a party from raising constitutional claims.” App. 18. Rosellini also contends that the New Jersey Supreme Court did not “meaningful[ly] review” and “failed to address . . . in any way” his constitutional arguments. Appellant’s Br. at 14. As proof, he points to the brevity of the May 16, 2023, order denying his petition. True, the New Jersey Supreme Court denied Rosellini’s petition without explanation. But that does not change the fact that

Rosellini had an adequate opportunity to present his constitutional challenges in the petition. New Jersey erected no procedural barriers that clearly barred him from raising the claims. Thus, the legal requirements for *Younger* abstention were met.

B. The Bad-Faith Exception to *Younger* Abstention

Even when the legal requirements for *Younger* abstention are met, a district court should not abstain if the plaintiff shows that “(1) the state proceedings are being undertaken in bad faith or for purposes of harassment or (2) some other extraordinary circumstances exist, such as proceedings pursuant to a flagrantly unconstitutional statute, such that deference to the state proceeding will present a significant and immediate potential for irreparable harm to the federal interests asserted.” *Schall v. Joyce*, 885 F.2d 101, 106 (3d Cir. 1989) (citing *Middlesex*, 457 U.S. at 435). The Supreme Court has explained that the bad faith exception to *Younger* applies “[o]nly in cases of proven harassment or prosecutions undertaken by state officials . . . without hope” of success. *Perez v. Ledesma*, 401 U.S. 82, 85 (1971).

Rosellini argued that the District Court should have applied the bad-faith exception to *Younger* for the first time in his motion for relief from the October 2021 order. He contends the District Court erred by abstaining again in the July 2022 order because “irregularities contained in the DRB Decision, the New Jersey Supreme Court Orders, and OAE actions, prove that these ethics proceedings are in bad faith.” Appellant’s Br. at 26–27. Yet Rosellini has presented nothing

to suggest the proceedings were initiated by the Ethics Committee Defendants for purposes of retaliation and without hope of success. Rosellini criticize the DRB's decision to suspend his license and the New Jersey Supreme Court's denial

of his petitions, but these conclusions are not proof of any irregularity, much less bad faith. The DRB and New Jersey Supreme Court cited his refusal to comply with valid court orders as the reason for his suspension—not his filing of this federal complaint. And in any event, Rosellini challenges the District Court's abstention from the claims against the Ethics

Committee Defendants, not claims against the DRB or the New Jersey Supreme Court.⁷

In sum, Rosellini rehashes challenges to the merits of the state court sanctions orders and the conclusions reached by the DRB and New Jersey Supreme Court in the disciplinary proceedings. Even if meritorious, these allegations are unrelated to whether the proceedings were initiated to harass him or without hope of success. Thus, the District Court properly found that Rosellini failed to allege sufficient facts to show that the “bad faith” exception to the *Younger* doctrine should apply.

III.

For the reasons set forth above, we will affirm the District Court's October 14, 2021 and July 28, 2022, orders.

7 In further support of his bad-faith exception argument, Rosellini cites information that is beside the point. Rosellini notes that the dissenting opinion to the initial recommendation by the Ethics Committee references his federal complaint, but that does not prove that the proceedings were initiated in retaliation against him for filing his federal complaint.

He also cites unrelated ethics proceedings against a New Jersey judge and other attorneys and claims they received lighter discipline for worse conduct. This all misses the mark. It is the initiation of the disciplinary proceedings that must be in bad faith for the exception

to *Younger* to apply—contentions of an unfair outcome are irrelevant.

8 Rosellini's August 13, 2024, motion, *see* 3d Cir. ECF No. 44, is denied as moot

APPENDIX D

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

KENNETH ROSELLINI,
Plaintiff,

Civil Action No. 20-20101

v.

ORDER

GARY WILCOX, et al.,
Defendants.

THIS MATTER comes before the Court by way of Plaintiff Kenneth Rosellini's ("Plaintiff") Motion to Partially Vacate Order of October 14, 2021, ECF No. 54;

and it appearing that Defendants Hon. Gary N. Wilcox, Hon. Stuart Rabner, Hon. Hany A Mawla, Hon. Marie P. Simonelli, Hon. Marie E. Lihotz, Hon. Edward V. Torack, the Supreme Court of New Jersey District XI Ethics Committee (the "Ethics Committee"), Norman Klein, and Robert C. Papa oppose the Motion, ECF No. 55;

and it appearing that this action arises from Plaintiff's failure to pay allegedly unconstitutional court sanctions imposed upon him by New Jersey state courts, see generally Compl.;1

and it appearing that on November 15, 2019, an attorney disciplinary complaint was filed against Plaintiff, alleging that Plaintiff violated New Jersey Rules of Professional Conduct ("RPC") 3.4(c) and 8.4(d) by failing to

pay court-ordered sanctions against him (the “Ethics Proceeding”), id. ¶ 399;

1 The Court discussed the background of this action at length in letter orders dated October 14, 2021 and July 28, 2022, ECF Nos. 28, 59. The Court herein recites only those facts necessary to resolve the instant Motion.

and it appearing that on December 22, 2020, Plaintiff filed the instant action seeking, among other things, declaratory and injunctive relief stating that RPC 3.4(c), RPC 8.4(d), and the New Jersey Court Rules governing attorney ethics proceedings unconstitutionally infringe upon the First Amendment right to the freedom of speech, see id. at 77-78 (wherefore clause);

and it appearing that on March 31, 2021, the Ethics Committee recommended dismissal of the ethics charges against Plaintiff, see June 25, 2021 Rosellini Cert. Ex. A, ECF No. 20.2;

and it appearing that on June 23, 2021, the New Jersey Office of Attorney Ethics appealed the decision of the Ethics Committee to the Disciplinary Review Board (“DRB”) pursuant to New Jersey Court Rule 1:20-15(e)(1), see July 12, 2021 Rosellini Cert. Ex. A., ECF No. 26;

and it appearing that on October 14, 2021, this Court entered a letter order abstaining from Plaintiff’s claims pursuant to Younger v. Harris, 401 U.S. 37 (1971), to the extent they related to the ongoing Ethics Proceeding, ECF No. 28 (the October 2021 Order”);2

and it appearing that on April 20, 2022, the DRB issued a decision finding that Plaintiff should be suspended from the

practice of law for three months, see June 24, 2022 Rosellini Cert. Ex. A, ECF No. 54.2 at 30-89 (the “DRB Decision”);

and it appearing that on May 10, 2022, Plaintiff filed a petition with the New Jersey Supreme Court seeking review of the DRB Decision, see id. at 4-29; and it appearing that on June 24, 2022, Plaintiff filed the instant Motion, which asks the Court to vacate the October 2021 Order to the extent it abstained from claims related to the Ethics Proceeding;

and it appearing that Plaintiff argues that abstention is no longer appropriate because the DRB Decision demonstrates that (1) Plaintiff lacks an adequate forum to raise constitutional claims

2 The October 2021 Order made additional rulings not relevant to the instant Motion.

in the Ethics Proceeding; and (2) the Ethics Proceeding was brought against him in bad faith, see Pl. Mem., ECF No. 54.1;3

and it appearing that Younger requires the Court to abstain from cases that would interfere with an ongoing civil enforcement proceeding that (1) is “judicial in nature”; (2) “implicate[s] important state interests”; and (3) “afford[s] an adequate opportunity to raise federal claims,” Malhan v. Sec'y U.S. Dep't of State, 938 F.3d 453, 462 (3d Cir. 2019) (citing Sprint Commc'n, Inc. v. Jacobs, 571 U.S. 69, 81-82 (2013)); see also Sprint, 571 U.S. at 79 (holding that attorney disciplinary proceedings are “enforcement proceedings” subject to Younger) (citing Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 433-34 (1982));

and it appearing that to determine whether a party has an adequate opportunity to raise federal claims in a state proceeding, the Court must ask whether “state law clearly bars the interposition of the constitutional claims” through procedural barriers, Gonzalez v. Waterfront Comm'n of N.Y. Harbor, 755 F.3d 176, 184 (3d Cir. 2014) (citations omitted); and it appearing that in the October 2021 Order, the Court held that the Ethics Proceeding provided an adequate forum because New Jersey Court Rule 1:20-16(f) allowed Plaintiff to petition the New Jersey Supreme Court for review of any constitutional issues properly raised during the administrative stages of the Ethics Proceeding, Oct. 2021 Order at 8;

and it appearing that while Plaintiff has now petitioned the New Jersey Supreme Court to review his constitutional claims related-to the Ethics Proceeding, he contends that he nonetheless lacks an adequate forum because the DRB expressed “doubt[s] that [Plaintiff] has properly raised a constitutional challenge within the ethics proceeding,” Pl. Mem. 21-22; DRB Decision at 49;

3 The Court construes Plaintiff’s Motion as a request under Federal Rule of Civil Procedure 60(b)(2), which permits relief from a final order based on “newly discovered evidence.” Cf. Hi Tech Trans, LLC v. New Jersey, 382 F.3d 295, 302 (3d Cir. 2004) (explaining that a district court’s decision to abstain is a final order).

and it appearing that in rendering its decision, the DRB further clarified that “whether respondent properly raised a constitutional challenge to the proceeding . . . is a matter for the [New Jersey Supreme] Court to decide,” DRB Decision at 50;

and it appearing the mere possibility that the New Jersey Supreme Court may find that Plaintiff failed to properly preserve his constitutional claims does not suggest that New Jersey has erected procedural barriers that “clearly bar” a party from raising constitutional claims;

and it appearing outside the nonbinding “doubts” expressed by the DRB, Plaintiff has not pointed to anything suggesting that New Jersey law prevents him from raising constitutional claims in the Ethics Proceeding;

and it appearing that the Court therefore finds no reason to disturb its conclusion that the Ethics Proceeding provides an adequate opportunity to raise federal claims;

and it appearing that even where the requirements for Younger abstention are otherwise satisfied, it is inappropriate to abstain where “the state proceedings are being undertaken in bad faith or for purposes of harassment,” Getson v. New Jersey, 352 F. App’x 749, 753 (3d Cir. 2009) (citation omitted);

and it appearing that “[a] prosecution or proceeding is conducted in ‘bad faith’ for abstention purposes when it is brought ‘without hope’ of success,” id. (citing Perez v. Ledesma, 401 U.S. 82, 85 (1971)); see also Jaffery v. Atl. Cnty. Prosecutor’s Off., 695 F. App’x 38, 41 (3d Cir. 2017) (“Bad faith” in this context generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction.”);

and it appearing that Plaintiff bears the burden to establish that the “bad faith” exception to Younger applies, see Getson, 352 F. App’x at 753;

and it appearing that Plaintiff argues that “irregularities” in the DRB Decision demonstrate that the Ethics Proceeding was brought in bad faith, including that

the DRB (1) imposed a three month suspension on Plaintiff instead of a lesser punishment; (2) improperly and unconstitutionally considered Plaintiff's conduct in this federal lawsuit in rendering its decision; and (3) committed errors of law with respect to the civil immunity afforded to members of the Ethics Committee, see Pl. Br. at 16-20;

and it appearing that despite Plaintiff's disagreement with the conclusions reached and reasoning employed by the DRB, Plaintiff has presented nothing to suggest the proceedings were initiated for purposes of retaliation and without hope of success in finding that Plaintiff violated RPCs 3.4(c) and 8.4(c), see Getson, 352 F. App'x at 753-54 (holding that a plaintiff's "challenges [to] the merits" of conclusions reached in an administrative proceeding "do not . . . establish that the administrative proceeding was brought in bad faith"); and it appearing that while Plaintiff maintains that the enforcement of RPCs 3.4(c) and 8.4(c) unconstitutionally abridges his freedom of speech, "the possible unconstitutionality of a statute" does not by itself justify federal intervention "against good-faith attempts to enforce it," Younger, 401 U.S. at 54;

and it appearing that Plaintiff has therefore failed to establish that the "bad faith" exception to Younger abstention applies here;

IT IS on this 28th day of July, 2022;

ORDERED that Plaintiff's Motion to Partially Vacate Order of October 14, 2021, ECF No. 54, is **DENIED**.

/s Madeline Cox Arleo _____

MADELINE COX ARLEO

UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

**CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE**

**MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST. ROOM 4066
NEWARK, NJ 07101
973-297-4903**

October 14, 2021

VIA ECF

LETTER ORDER

**Re: Kenneth Rosellini v. Gary Wilcox, et al.
Civil Action No. 20-20101**

Dear Litigants:

Before the Court is (1) Defendants Hon. Gary N. Wilcox's ("Judge Wilcox"), Hon. Stuart Rabner's ("Chief Justice Rabner"), Hon. Hany A. Mawla's ("Judge Mawla"), Hon. Marie P. Simonelli's ("Judge Simonelli"), Hon. Marie E. Lihotz's ("Judge Lihotz"), Hon. Edward V. Torack's ("Judge Torack" and together with Judge Wilcox, Chief Justice

Rabner, Judge Mawla, Judge Simonelli, and Judge Lihotz, the “Judicial Defendants”), the Supreme Court of New Jersey’s, District XI Ethics Committee’s (the “Ethics Committee”), Norman Klein’s (“Klein”), and Robert C. Papa’s (“Papa” and together with the Ethics Committee and Klein, the “Ethics Committee Defendants”) Motion to Dismiss the Complaint, ECF No. 7; and (2) Defendant Carmen Diaz-Petti’s (“Diaz-Petti”) Motion to Dismiss the Complaint, ECF No. 13. Pro se Plaintiff Kenneth Rosellini (“Plaintiff”) opposes each Motion. ECF Nos. 10, 17. For the reasons explained below, the Motions are each **GRANTED**.

I. BACKGROUND¹

This civil rights action arises from allegedly unconstitutional court sanctions imposed on Plaintiff, an attorney admitted to practice law in the State of New Jersey, in connection with a postjudgment motion Plaintiff filed on behalf of his client in a divorce proceeding before the New Jersey Superior Court (the “Divorce Action”). See generally Compl. Plaintiff began representing Linda Doblin (“Linda”) in September 2013 in connection with a bankruptcy proceeding. Id. ¶ 351. In 2015, Linda asked Plaintiff to review the Divorce Action, asserting that she had been the victim of fraud upon the court perpetrated by her ex-husband, nonmoving Defendant Michael Doblin (“Michael”). Id. ¶¶ 352-56. Plaintiff alleges that he was subjected to frivolous litigation sanctions after he filed a motion to vacate certain orders in the Divorce Action. Id. ¶¶ 358-98. When Plaintiff refused to pay the sanctions, the Ethics Committee filed a professional ethics complaint against him. Id. ¶ 399.

1 These facts are principally drawn from the Complaint, ECF No. 1, and the exhibits attached thereto.

A. The Divorce Action

Plaintiff dedicates more than half of his 84-page Complaint to a detailed account of the Divorce Action, which began 17 years before Plaintiff began representing Linda. Id. ¶¶ 77-350. Taken as true, the Complaint alleges that Michael and his divorce attorney, nonmoving Defendant Frank LaRocca (“LaRocca”), perpetrated an extensive campaign of fraud upon the Court designed to diminish Linda’s right to support and custody of the Doblins’ then-minor child, Matthew. Most notably, Plaintiff alleges that in December 2006, Michael filed a fraudulent “settlement agreement” that substantially altered the terms of a previously entered divorce decree and contained a forgery of Linda’s signature. Id. ¶¶ 190-91, 199-201; see also id. Ex. O (the “2006 Settlement”). As a result of the 2006 Settlement and other alleged fraudulent representations, primary physical custody of Matthew was transferred from Linda to Michael, id. ¶ 199, and substantial financial obligations were imposed on Linda, ultimately driving her into bankruptcy, e.g., id. ¶¶ 201, 207, 217.

Judge Torack, a now-retired Superior Court judge, presided over the first decade of the Divorce Action. Plaintiff alleges that in that role, Judge Torack committed a series of legal errors and improper actions. Among other things, Plaintiff alleges that Judge Torack (a) relied on fraudulent representations related to Matthew’s medical care to deny Linda’s 2004 motion to enforce support, id. ¶¶ 117, 122-32, 135; (b) issued a summons for criminal contempt against

B. Rosellini's Motion to Vacate

In 2016, Plaintiff appeared on behalf of Linda in the Divorce Action and filed a motion to vacate five orders entered between December 2006 and October 2008 on grounds that the 2006 Settlement was a forgery (the "Motion to Vacate"). Id. ¶ 358 & Ex. GG. Judge Wilcox denied the motion based on res judicata, though Plaintiff alleges that the issue of Linda's allegedly forged signature had never been previously litigated. Id. ¶¶ 362, 364. Judge Wilcox also granted Michael's motion for fees and costs and sanctioned Plaintiff in the amount of \$5087.50 for "filing and pursuing frivolous litigation," in violation of New Jersey Court Rule 1:4-8 ("Rule 1:4-8"). Id. ¶ 368.

Plaintiff appealed Judge Wilcox's merits ruling and order for sanctions to the Appellate Division. Id. ¶ 375. Judges Lihotz and Mawla heard the appeal and affirmed Judge Wilcox in a per curiam decision dated July 7, 2017. Id. ¶ 376; see also Doblin v. Doblin, No. A-5066-15T3, 2017 WL 2895892 (N.J. Super. Ct. App. Div. July 7, 2017).² Judge Lihotz subsequently imposed an additional \$2200 in fee sanctions against Plaintiff. Compl. ¶¶ 379-80 & Ex. HH. Presiding Judge Simonelli denied Plaintiff's subsequent motion for reconsideration and assessed another \$2200 in fees and costs. Id. ¶¶ 381-82 & Ex. II. Finally, Plaintiff filed a petition for certification to the New Jersey Supreme Court, which was also denied. Id. ¶ 387. Chief Justice Rabner granted Michael's motion for attorney's fees and imposed a further \$5000 in sanctions on Plaintiff. Id. ¶ 387 & Ex. JJ.

Plaintiff has openly refused to comply with any of the aforementioned sanction orders. Id. ¶¶ 369, 383, 391. He

further maintains that each order amounts to a “calculated lie” designed to further conceal fraud on the court and retaliate against Plaintiff for exercising his First Amendment rights. Id. ¶¶ 377-78, 385, 395.

C. The Ethics Proceeding

On November 15, 2019, the Ethics Committee³ filed a complaint against Plaintiff, alleging that Plaintiff violated New Jersey Rules of Professional Conduct 3.4(c) (“RPC 3.4”) and 8.4(d) (“RPC 8.4(d)”) by failing to comply with the sanction orders (the “Ethics Proceeding”). Compl. ¶ 399. On March 31, 2021, the Ethics Committee recommended dismissal of the ethics charges against Plaintiff, with one member dissenting. See Supplemental Certification of Kenneth

2 With respect to Linda’s claim of fraud on the court, the Appellate Division held:

Although we are satisfied res judicata bars defendant’s claims, we address her claims of fraud upon the court to highlight why the trial judge’s imposition of counsel fees as a sanction for frivolous litigation was appropriate. Regarding her claim of fraud upon the court, the law provides:

a party seeking to be relieved from the judgment must show that the fact of the falsity of the testimony could not have been discovered by reasonable diligence in time to offset it at the

trial or that for other good reason the failure to use diligence is in all the circumstances not a bar to relief.

Here, defendant had over a decade to bring the alleged fraud to the court's attention, and in fact litigated numerous issues before the trial court, and in one instance, an appeal before this court, but never asserted this argument. Defendant's financial circumstances and auditory issues did not prevent her from litigating these matters through counsel over this ten-year period. She does not assert the alleged fraud was only recently discovered, and the eleventh hour conjuring of the claim supports the trial judge's view the claim was without merit.

Doblin, 2017 WL 2895892, at *4-5 (citation omitted).

3 Defendants Papa and Klein are members of the Ethics Committee. Id. ¶¶ 26, 29.

Rosellini Ex. A, ECF No. 20.2.4 On June 23, 2021, the New Jersey Office of Attorney Ethics ("OAE") appealed the decision of the Ethics Committee to the Disciplinary Review Board ("DRB") pursuant to New Jersey Court Rule 1:20-15(e)(1). See Reply Certification of Kenneth Rosellini Ex. A, ECF No. 26. Michael filed a separate notice of appeal on July 1, 2021. Id. Ex. B.

The Ethics Proceeding ostensibly remains pending before the DRB.

D. The Complaint and Procedural History

Plaintiff initiated this action by filing the five count Complaint on December 22, 2020. ECF No. 1. Plaintiff sues Judge Wilcox, Judge Mawla, Judge Simonelli, and Chief Justice Rabner in both their individual and official capacities. Compl. ¶¶ 8, 18, 20, 22. Retired Judges Lihotz and Torack are sued only in their individual capacities. Id. ¶¶ 14, 16. Lastly, Plaintiff sues Diaz-Petti and the Ethics Committee Defendants only in their official capacities. Id. ¶¶ 24, 26-29.

Count I requests declaratory relief against Doblin, LaRocca, the Judicial Defendants, and the Ethics Committee Defendants. Id. ¶¶ 422-23. Plaintiff seeks a total of six declarations related to purported “policies” pursued by the Judicial Defendants in the Divorce Action and the rules and procedures governing the Ethics Proceeding.⁵ Count II seeks injunctive relief based on an alleged civil conspiracy between Michael, LaRocca, and the Judicial Defendants. Count II does not specify the applicable law and vaguely asks the Court to “enjoin[] these defendants from violating the rights of litigants appearing before the courts of the State of New Jersey, and abusing the process of law.” Id. ¶¶ 424-30. Counts III and IV seek monetary damages against Michael, LaRocca, and the Judicial Defendants in their individual capacities, pursuant to 42 U.S.C. § 1983 (“Section 1983”) and the New Jersey Civil Rights Act, N.J.S.A. § 10:6-2 (“NJCRA”).⁶ Id. ¶¶ 431-43. These counts also request “any and all injunctive relief against Carmen Diaz-Petti required to expose and prevent the extent of the unlawful unconstitutional conspiracy committed by these defendants.” Id. at 81, 83 (wherefore clauses). Count V seeks

monetary damages against Michael and LaRocca for malicious abuse of process. Id. ¶¶ 444-46.

LaRocca answered the Complaint on March 31, 2021. ECF No. 9. Michael has failed to answer or otherwise respond to the Complaint, and on July 14, 2021, the Clerk of Court entered default judgment against Michael pursuant to Federal Rule of Civil Procedure 55(b)(1). ECF No.

4 Plaintiff's separately filed motion to supplement the motion record, ECF No. 20, is granted as unopposed. The Court considers undisputed evidence outside the Complaint only to the extent it bears on subject matter jurisdiction. See, e.g., *Const. Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014).

5 Plaintiff specifically asks the Court to declare that (a) state court officers must guard against fraud on the court and may not apply "the doctrine of Res Judicata . . . to deny an application to vacate or void a state court judgment based upon fraud upon the court;" (b) a state court order sanctioning an attorney "must set forth both the reason for the sanction and the basis in law upon which the sanction was issued;" (c) New Jersey Court Rule 1:20-15(h) "violates the due process clause of the Fourteenth Amendment;" (d) Rule 1:4-8 "violates the First Amendment and . . . Fourteenth Amendment;" (e) RPCs 8.4(d) and 3.4(c) "violate the First Amendment and . . . Fourteenth Amendment;" and (f) "Rule 1:4-8, RPC 8.4(d), RPC 3.4(c), and any inherent power possessed by state courts, may not be used for purposes of intimidation or chilling fundamental rights under the First Amendment [or] . . . Fourteenth Amendment." Compl. at 77-78 (wherefore clause).

6 Plaintiff does not seek monetary damages against the Judicial or Ethics Committee Defendants in their official capacities, see Pl. Opp. at 25, 28, ECF No. 10.

27. The Judicial Defendants, Ethics Committee Defendants, and Diaz-Petti now move to dismiss the claims against them. ECF Nos. 7, 13.

II. LEGAL STANDARD

In considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all of the facts in the complaint and draws all reasonable inferences in favor of the plaintiff. Phillips v. Cnty. Of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008). Dismissal is inappropriate simply because “it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits.” Id. The facts alleged, however, must be “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The allegations in the complaint “must be enough to raise a right to relief above the speculative level.” Id. Accordingly, a complaint will survive a motion to dismiss if it provides a sufficient factual basis such that it states a facially plausible claim for relief. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

III. ANALYSIS

Plaintiff’s Complaint seeks retrospective damages against the Judicial Defendants, declaratory and injunctive relief against the Judicial Defendants, and declaratory relief against the Ethics Committee Defendants. The Court addresses each group of claims in turn.

A. Damages Claims Against Judicial Defendants

Plaintiff seeks damages from the Judicial Defendants arising from their alleged participation in a wide-ranging conspiracy to conceal fraud upon the court and violate Plaintiff's civil rights. The Judicial Defendants argue that they are entitled to judicial immunity from Plaintiff's suit for damages. The Court agrees.

State court judges are absolutely immune from suit under Section 1983 or the NJCRA "for monetary damages arising from their judicial acts." Gallas v. Supreme Ct. of Pa., 211 F.3d 760, 768 (3d Cir. 2000).⁷ Where, as here, a plaintiff sues a judge for damages, the court must make two inquiries to determine whether the judge is immune. A judge is not immune from liability for (1) "nonjudicial actions, i.e., actions not taken in the judge's judicial capacity;" or (2) "actions, though judicial in nature, taken in the complete absence of all jurisdiction." Id. (citing Mireles v. Waco, 502 U.S. 9, 11-12 (1991)). Immunity attaches to judicial acts even where a judge allegedly acted with improper motives, Cleavinger v. Saxner, 474 U.S. 193, 200 (1985), or in furtherance of a conspiracy with private parties, Dennis v. Sparks, 449 U.S. 24, 27 (1980).

Plaintiff does not dispute that the alleged conduct of the Judicial Defendants was in a "judicial capacity" but contends that two conspiratorial actions were "taken in the complete absence of all jurisdiction." First, he argues that Judge Torack acted without jurisdiction when he issued a summons for criminal contempt against Linda in 2006. Pl. Opp. at 26. Second, Plaintiff maintains that Judge Wilcox lacked jurisdiction to order the removal of court records in December 2013. Id. at 27. The Court is unpersuaded.

7 “[I]t is well settled that courts construe[] the NJCRA in terms nearly identical to its federal government counterpart: Section 1983.” *Balice v. United States*, No. 17-13601, 2018 WL 3727384, at *4 n.5 (D.N.J. Aug. 6, 2018), aff’d, 763 F. App’x 154 (3d Cir. 2019) (citation and quotation marks omitted); see *id.* at *5 (dismissing NJCRA claims due to judicial immunity).

Where a judge “had jurisdiction over the matter before [him],” actions taken in the course of that proceeding are entitled to immunity, “even when such acts were in excess of [the judge’s] jurisdiction.” *Figueredo v. Blackburn*, 208 F.3d 435, 441 (3d Cir. 2000). Put differently, “where a court has some subject matter jurisdiction, there is sufficient jurisdiction for immunity purposes.” *Id.* at 443-44. Plaintiff does not dispute that the two challenged actions occurred in connection with the Divorce Action. Plaintiff also does not—and cannot—argue that Judges Torack and Wilcox lacked jurisdiction over the Divorce Action. Consequently, these defendants had “some subject matter jurisdiction” and are immune from suit even if the Court accepts Plaintiff’s assertions that they acted beyond the scope of their authority.⁸

Consequently, the Judicial Defendants are absolutely immune from a suit for damages arising from the conduct alleged in the Complaint. Counts III and IV are dismissed with prejudice as to the Judicial Defendants.

B. Claims for Prospective Relief Against Judicial Defendants

The Judicial Defendants next contend that Plaintiff lacks standing to pursue his claims for injunctive and declaratory relief against them.⁹ Again, the Court agrees.

To establish Article III standing, “a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.” TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)). Moreover, a plaintiff must separately demonstrate standing for each form of relief he seeks. *Id.* at 2208. “Past exposure to illegal conduct” does not establish standing to seek prospective relief absent “continuing, present adverse effects.” O’Shea v. Littleton, 414 U.S. 488, 495-96 (1974). Rather, Plaintiff must show a “real or immediate,” i.e., nonspeculative, threat of future injury. City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983).

The Complaint seeks declaratory or injunctive relief related to the Judiciary Defendants’ application of res judicata and imposition of sanctions pursuant to Rule 1:4-8. The Court is mindful, however, of the relief Plaintiff does not seek. Plaintiff does not ask the Court to declare invalid or enjoin either the sanctions against him or any order issued in the Divorce Action.¹⁰ Compl. ¶ 413. He therefore may not establish standing through the “continuing, present adverse effects” of those decisions. Instead, Plaintiff challenges a “policy” allegedly adopted by the New Jersey Judiciary, “that Res Judicata is a bar to review of a court decision based upon fraud upon

8 To the extent Plaintiff argues that Judge Torack acted without any jurisdiction because he issued a summons for criminal contempt against Linda in municipal court, instead of initiating criminal contempt proceedings in the Family Part, Pl. Opp. at 27, the Court disagrees. So long as a judge had jurisdiction over the underlying proceeding, even “inexplicable” or “grave” procedural or legal errors related to a litigant’s alleged contempt of court do not defeat immunity. Figueroa, 208 F.3d at 445; see also Lacey v. City of Newark, 828 F. App’x 146, 149 (3d Cir. 2020). The Court therefore need not determine whether Judge Torack committed legal error.

9 Under limited circumstances, a party may obtain prospective relief against a judge otherwise entitled to judicial or sovereign immunity. See Allen v. DeBello, 861 F.3d 433, 439-40 (3d Cir. 2017); see also Ex parte Young, 209 U.S. 123 (1908). As Plaintiff lacks standing, the Court does not decide whether such relief may be available here.

10 Nor could he, as under the Rooker-Feldman doctrine, this Court lacks jurisdiction to entertain “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

the court, and that an attorney can be sanctioned pursuant to rules promulgated by the New Jersey Supreme Court for seeking such a review.”¹¹ Id. ¶ 412. Plaintiff must therefore show that he is likely to suffer injury caused by a future application of this “policy.” See Edelglass v. New Jersey, No. 14-760, 2015 WL 225810, at *12 (D.N.J. Jan. 16, 2015), aff’d

sub nom., Allen, 861 F.3d at 433 (“[S]tanding to seek [an] injunction depends on whether [plaintiff] is likely to suffer future injury from the behavior sought to be enjoined.”).

In Edelglass, the court considered whether parents involved in child custody disputes before the New Jersey Superior Court, Family Part, had standing to challenge an alleged state “policy of denying parents a plenary hearing when one parent loses custody to the other parent.” Id. at *11-13. The Court held that parents who currently had minor children had standing to pursue prospective relief because “state courts maintain[ed] jurisdiction over [the parents’] child custody matters,” and, therefore, the parents were likely to have another similar encounter with the Family Part in the future. Id. at *12. Here, by contrast, Plaintiff alleges no facts suggesting an immediate threat that he will face future sanctions under similar circumstances. His vague assertion that he will “continue to advocate and exercise his First Amendment Rights to guard against fraud upon the court in New Jersey state court proceedings,” Pl. Opp. at 25, presents, at most, speculation that his advocacy on behalf of unnamed clients will one day result in additional sanctions.¹² Such conjecture is insufficient to obtain Article III standing to pursue forward-looking relief.

The Court therefore dismisses Counts I and II against the Judicial Defendants without prejudice for lack of subject matter jurisdiction.

C. Claim for Declaratory Relief Against Ethics Committee Defendants

Count I also seeks several declarations related to the ongoing Ethics Proceeding. Plaintiff specifically asks the

Court to declare that (1) New Jersey Court Rule 1:20-15(h) (“Rule 1:20- 15(h)”) violates the due process clause of the Fourteenth Amendment because it restricts the ability to raise constitutional claims in state ethics proceedings; (2) RPCs 3.4(c) and 8.4(d) violate the First and Fourteenth Amendments to the extent they interfere with the right to free speech and advocacy; and (3) RPCs 3.4(c) and 8.4(d) may not be used as retaliation for the exercise of rights guaranteed by the First and Fourteenth Amendments.

Plaintiff ostensibly has standing to pursue Count I against the Ethics Committee Defendants because he pleads that the allegedly unconstitutional rules and procedures are presently being deployed against him in the Ethics Proceedings. See, e.g., Compl. ¶¶ 399-409. Nonetheless,

11 A suit challenging “the underlying policy that governed” a state court judgment, as opposed to the judgment itself, does not implicate Rooker-Feldman. Allen, 861 F.3d at 438.

12 Moreover, the Court is unpersuaded that Plaintiff has demonstrated even a past instance of the allegedly offending “policy.” A review of the Appellate Division’s ruling on the Motion to Vacate makes clear that, despite Plaintiff’s characterization of events, the court did not blindly apply res judicata to “bar . . . review of a court decision based upon fraud upon the court” or impose sanctions on Plaintiff simply for “seeking such review.” Rather, the court found sanctions appropriate because (a) relevant law required a party seeking relief from judgment to show that an alleged falsity could not have been timely discovered; (b) Linda did not allege that she recently discovered the fraudulent nature of the 2006 Settlement; and (c) Linda waited over a decade to raise the issue of fraud for the first time, despite litigating

numerous other issues in the Divorce Action during that period. Doblin, 2017 WL 2895892, at *5. Consequently, the Motion to Vacate was deemed “per se frivolous by virtue of the repeated attempts to challenge old orders through different legal argumentation, without the necessary facts to support her claims.” Id. at *7.

the Court concludes that abstention is appropriate pursuant to Younger v. Harris, 401 U.S. 37 (1971).

“Younger requires federal courts to abstain from deciding cases that would interfere with certain ongoing state proceedings.” Malhan v. Sec'y United States Dep't of State, 938 F.3d 453, 461 (3d Cir. 2019) (citing Sprint Commc'n, Inc. v. Jacobs, 571 U.S. 69, 77-78 (2013)). The Court applies a two-pronged inquiry to assess whether to abstain. First, Younger applies to only three types of proceedings: “(1) ‘ongoing state criminal prosecutions’; (2) ‘certain civil enforcement proceedings’; and (3) ‘pending civil proceedings involving certain orders uniquely in furtherance of the state courts’ ability to perform their judicial functions.” Id. (quoting Sprint, 571 U.S. at 78-79). A “state-initiated disciplinary proceeding[] against [a] lawyer for [a] violation of state ethics rules” is among those “enforcement proceedings” subject to Younger. Sprint, 571 U.S. at 79 (citing Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 433-34 (1982)).

Second, the Court must additionally ask whether the proceeding (1) is “judicial in nature;” (2) “implicate[s] important state interests;” and (3) “afford[s] an adequate opportunity to raise federal claims.” Malhan, 938 F.3d at 462 (citing Sprint, 571 U.S. at 81-82). In the context of a New Jersey attorney disciplinary proceeding, the Supreme Court

squarely resolved all three of these questions in favor of abstention, holding that (1) attorney disciplinary proceedings are “judicial in nature” because they fall under the auspice of the New Jersey Supreme Court; (2) New Jersey “has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses;” and (3) New Jersey court rules provide a sufficient opportunity to raise federal claims in a disciplinary proceeding. Middlesex Cnty. Ethics Comm., 457 U.S. at 434-37 & n.15.

Plaintiff principally contends that he lacks an adequate opportunity to raise constitutional concerns during the Ethics Proceeding because neither the Ethics Committee nor the DRB is empowered to consider constitutional issues. See N.J. Ct. R. 1:20-15(h). Still, the applicable court rules “afford an adequate opportunity” for Plaintiff to assert his claims. First, an aggrieved party who properly raises and preserves a constitutional challenge before the Ethics Committee and DRB may petition the New Jersey Supreme Court to review the challenge following an adverse decision by the DRB. N.J. Ct. R. 1:20-16(f)(2). Second—and fatal to Plaintiff’s contention that the mere ability to preserve his arguments for later review is inadequate—an aggrieved party may petition the New Jersey Supreme Court for immediate, interlocutory review upon a showing of irreparable harm. N.J. Ct. R. 1:20-16(f)(1). Indeed, the United States Supreme Court highlighted both of these procedures in determining that Younger abstention was warranted. Middlesex Cnty. Ethics Comm., 457 U.S. at 436 n.15.

Consequently, the Court abstains from Count I to the extent it asserts claims against the

Ethics Committee Defendants.

D. Claims Against Diaz-Petti

Finally, the Court will dismiss the Complaint as to Diaz-Petti, who is named in her official capacity as the Assistant Commissioner of the New Jersey Department of Children & Families (“DCF”). Initially, Plaintiffs do not actually allege any claims directly against Diaz-Petti. See Compl. ¶¶ 422-23, 425-26, 433-34, 439-40, 446. Rather, the wherefore clauses of Counts III and IV merely request “any and all injunctive relief against Carmen Diaz-Petti required to expose and prevent the extent of the unlawful unconstitutional conspiracy” allegedly perpetrated by Michael, LaRocca, and the Judicial Defendants. *Id.* at 81, 83. The Complaint does not allege that Diaz-Petti participated in the conspiracy against Plaintiff and appears to name her for the sole purpose of obtaining discovery that would “expose” other defendants. Plaintiff cites no authority suggesting he may maintain a complaint against Diaz-Petti for this purpose.

The Complaint does allege that DCF “whether intentionally or not” contributed to the success of the alleged conspiracy between the Judiciary Defendants, Michael, and LaRocca by failing to investigate that Michael was abusing his son—during the years before Plaintiff began representing Linda. Compl. ¶ 435. Plaintiff’s opposition to Diaz-Petti’s Motion confirms that such conduct forms the basis for his purported claims against Diaz-Petti. ECF No. 17, at 12, 17. Manifestly, an “unintentional” contribution cannot create liability for a civil conspiracy, since an affirmative “agreement between the parties to inflict a wrong” is an essential element of such a claim. Adams v. Teamsters Local 115, 214 F. App’x 167, 172 (3d Cir. 2007).

Regardless, and as discussed above in Section III.B., Plaintiff lacks standing to pursue prospective relief arising from the alleged conspiracy.

Accordingly, the Court dismisses the Complaint as to Diaz-Petti, without prejudice to Plaintiff's right to assert any timely claims he has standing to pursue.

IV. CONCLUSION

For the reasons stated above, the Judiciary and Ethics Committee Defendants' Motion to Dismiss, ECF No. 7, and Diaz-Petti's Motion to Dismiss, ECF No. 13, are each **GRANTED**. Counts I and II are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction and under principles of abstention, as set forth above. Counts III and IV are **DISMISSED WITH PREJUDICE** as to the Judicial Defendants. Plaintiff's purported claims against Diaz-Petti for an injunction "to expose and prevent" a conspiracy are likewise **DISMISSED WITH PREJUDICE**.

SO ORDERED.

/s Madeline Cox Arleo _____

MADELINE COX ARLEO

UNITED STATES DISTRICT JUDGE