

APPENDIX

TABLE OF CONTENTS

Opinions And Orders To Review

Opinion per curiam, *Sawicki v. Wilson*, No. 25-3581, U.S. Court of Appeals for the Third Circuit, Feb. 13, 2026App.3

Order granting Rule 38 motion, *Sawicki v. Wilson*, No. 25-3581, U.S. Court of Appeals for the Third Circuit, March 5, 2026App.7

Other Relevant Opinions In This Matter

Memorandum, *Sawicki v. Wilson*, No. 2:25-cv-f04884, U.S. District Court for the Eastern District of Pennsylvania, Dec. 15, 2025App.9

Memorandum, *Sawicki v. Kipphan*, No. 1:21-cv-02031, U.S. District for the Middle District of Pennsylvania, Jan. 18, 2024App.25

Opinion, *Sawicki v. Kipphan*, No. 24-2033, U.S. Court of Appeals for the Third Circuit, May 1, 2025App.55

Orders Denying Rehearing

Order denying rehearing, *Sawicki v. Wilson*, No. 25-3581, U.S. Court of Appeals for the Third Circuit, March 13, 2026App.60

Order denying rehearing on Rule 38 motion, *Sawicki v. Wilson*, No. 25-3581, U.S. Court of Appeals for the Third Circuit, April 8, 2026 ...App.62

App.2

Constitutional Provisions, Statutes, Rules

U.S. Const. amend. I	App.63
U.S. Const. amend. XIV § 1	App.63
42 U.S.C. § 1983	App.63
42 U.S.C. § 1988	App.64
Fed. R. App. P. 38.....	App.64
3d Cir. L.A.R. 26.1.2(a)	App.64

Other Essential Material

Notice of Possible Judicial Disqualification, filed December 31, 2025 as <i>doc. 7</i> in <i>Sawicki v.</i> <i>Wilson</i> , No. 25-3581, U.S. Court of Appeals for the Third Circuit.	App.65
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App.3

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 25-3581

NOT PRECEDENTIAL

MARIANNE SAWICKI,

Appellant

v.

RICHARD A. WILSON; CHRISTOPHER B. WENCKER;
GEORGE N. ZANIC; DAVID G. SMITH; ANGELA ROBIN-
SON; LORI HEATON; GLORIA R. AMMONS; SHOHIN H.
VANCE

On Appeal from the United States District Court for
the Eastern District of Pennsylvania
(D.C. No. 2:25-cv-04884)

District Judge: Honorable Gerald J. Pappert

Submitted on the Parties' Cross-Motions for Sum-
mary Action Pursuant to Third Circuit L.A.R. 27.4
and I.O.P. 10.6 on January 16, 2026

Before: KRAUSE, BIBAS, and MONTGOMERY-
REEVES, Circuit Judges

(Opinion filed: February 13, 2026)

OPINION*

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

PER CURIAM

Marianne Sawicki appeals pro se from the order of the United States District Court for the Eastern District of Pennsylvania (“the EDPA”) that dismissed, with prejudice, her second civil-rights action related to attorney disciplinary proceedings that were brought against her in Pennsylvania. We will summarily affirm that judgment.

In 2023, the Supreme Court of Pennsylvania suspended Sawicki from the Pennsylvania Bar for a year and a day for numerous ethical violations. *See Sawicki v. Kipphan*, Nos. 24-2033 & 24-2120, 2025 WL 1261780, at *1 (3d Cir. May 1, 2025) [hereinafter *Sawicki I*] (citing the Supreme Court of Pennsylvania’s decision). In May 2025, we affirmed the decision of the United States District Court for the Middle District of Pennsylvania (“the MDPA”) dismissing, with prejudice, Sawicki’s related civil-rights action. *See id.* at *2. In that pro se action, Sawicki alleged, inter alia, that the disciplinary proceedings brought against her were the product of the unlawful efforts of various officials, who allegedly retaliated against her in violation of her First Amendment rights, conspired against her, and violated her due-process rights. *See id.* at *1-2. We concluded that Sawicki’s retaliation claim failed under the standard set forth in *McLaughlin v. Watson*, 271 F.3d 566, 573 (3d Cir. 2001), that “her conclusory conspiracy allegations [were] implausible,” and that her due-process claims were “just her retaliation theory repackaged.” *Sawicki I*, 2025 WL 1261780, at *2.

After we affirmed, Sawicki filed another pro se civil-rights action related to her disciplinary proceedings, this time in the EDPA. Her complaint there

named some of the defendants from her earlier case, as well as two new defendants (a member of the Disciplinary Board of the Supreme Court of Pennsylvania (“the Board”), and counsel for the Board).¹ The complaint repeated factual allegations from the original action and added factual allegations about the disciplinary proceedings that postdated the MDPA’s resolution of Sawicki’s first case. Once again, she claimed that the defendants had retaliated against her, conspired against her, and violated her due-process rights. On December 16, 2025, the EDPA entered an order granting the defendants’ motions to dismiss Sawicki’s complaint with prejudice. In doing so, the EDPA concluded that Sawicki’s claims against some of the defendants were barred under the doctrine of claim preclusion, that all defendants were immune from suit (for various reasons), that the complaint failed to state a viable claim on the merits (for essentially the reasons set forth in *Sawicki I*), and that amendment would be futile.

Sawicki timely appealed from the EDPA’s judgment,² and the parties have since filed cross-motions for summary action. We conclude that Sawicki’s EDPA complaint, on its merits, fails for substantially the reasons set forth in *Sawicki I* and echoed by the EDPA, and we agree with the EDPA that amendment

¹ The Board had unanimously recommended the suspension that was imposed by the Supreme Court of Pennsylvania.

² We have jurisdiction over this appeal under 28 U.S.C. § 1291, and our review of the EDPA’s decision is plenary. *See Bah v. United States*, 91 F.4th 116, 119 (3d Cir. 2024).

App.6

of the complaint would be futile.³ Accordingly, we grant Appellees' motions for summary affirmance and deny Sawicki's crossmotion for summary reversal, and we will summarily affirm the EDPA's judgment. *See* 3d Cir. I.O.P. 10.6 (providing that summary affirmance is warranted if the panel unanimously concludes that the appeal fails to present a substantial question).⁴

³ We need not, and do not, reach the preclusion and immunity issues discussed in the EDPA's decision.

⁴ To the extent that Sawicki argues that the members of this Panel should recuse themselves because they sat on the panel that decided *Sawicki I*, that argument lacks merit. *See Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000) ("We have repeatedly stated that a party's displeasure with legal rulings does not form an adequate basis for recusal . . ."). Nor has Sawicki otherwise demonstrated that recusal is warranted here. *See generally* 28 U.S.C. § 455 (setting forth standards of recusal).

App.7

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

C.A. No. 25-3581

MARIANNE SAWICKI,
Appellant

v.

RICHARD A. WILSON, et al.

(E.D. Pa. No. 2:25-cv-04884)

Present: KRAUSE, BIBAS and MONTGOMERY-
REEVES, *Circuit Judges*

1. Motion filed by Appellee Richard A. Wilson for Attorneys' Fees and Double Costs Under FED. R. APP. P. 38.
2. Response filed by Appellant Marianne Sawicki to Appellee Richard A. Wilson Motion for Attorneys' Fees and Double Costs Under FED. R. APP. P. 38.

Respectfully,

Clerk

ORDER_____

The foregoing motion is granted in part. Appellee is awarded attorneys' fees and single costs. Appellee shall, within fourteen days of this Order, file supporting documentation that "show[s] the nature and extent of services rendered and the amount sought, including an itemized statement in affidavit form from the attorney stating the actual time expended and the

App.8

rate at which fees are computed, together with a statement of expenses for which reimbursement is sought.” 3d Cir. L.A.R. 108.1(c). Appellant shall, within fourteen days of Appellee’s submission, file a response.

By the Court,

s/Stephanos Bibas

Circuit Judge

Dated: March 5, 2026

Amr/Cc: All counsel of record

App.9

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 25-4884

MARIANNE SAWICKI,

Plaintiff,

v.

RICHARD A. WILSON, et al.,

Defendants.

Pappert, J.

December 15, 2025

MEMORANDUM

Pro se plaintiff Marianne Sawicki sues Richard Wilson, Christopher Wencker, Judge George Zanic, David Smith, Angela Robinson, Lori Heaton, Gloria Ammons and Shohin Vance, alleging they retaliated against her for exercising her First Amendment rights and conspired to deprive her rights under the First, Fifth and Fourteenth Amendments. She also accuses Ammons and Vance of depriving her of liberty and property without due process.

But in doing so, Sawicki tries to relitigate matters already decided. In 2021, she sued all defendants but Ammons and Vance, claiming—like she does now—they engaged in a wide-ranging conspiracy to destroy her legal practice. Judge Wilson in the Middle District of Pennsylvania dismissed Sawicki’s claims first without prejudice, *see Sawicki v. Kipphan (Sawicki I)*, No. 21-CV-2031, 2023 WL 3061850, (M.D. Pa. Apr. 24,

2023), and then with prejudice, *see id.*, 2024 WL 197637 (M.D. Pa. Jan. 18, 2024). Sawicki appealed, and the Third Circuit affirmed. *See id.*, 2025 WL 1261780 (3d Cir. May 1, 2025).

All defendants move to dismiss Sawicki’s Complaint. Claim preclusion and legal immunities bar her claims outright. And in any event her implausible and conclusory assertions fail to state claims upon which relief can be granted. The Court grants the motions and dismisses this case with prejudice.

I

Judge Wilson explained this case’s history in her April of 2023 and January of 2024 opinions. *See generally Sawicki I*, 2023 WL 3061850; *id.*, 2024 WL 197637. Everything stems from Sawicki representing Barbara Kissinger. Police arrested Kissinger on charges of animal cruelty in September of 2019. *See* (Compl. ¶ 27, Dkt. No. 1). While Kissinger was incarcerated, the Borough of Huntingdon purportedly demolished her house without notice and filed a civil lien against her to recover the costs. *See (Id.* ¶¶ 27–29, 46). Sawicki, a solo civil rights lawyer in Huntingdon, defended Kissinger against the lien. (*Id.* ¶¶ 5, 25, 28, 36.) In November of 2019, Sawicki requested records related to the Borough’s demolition of the house. (*Id.* ¶¶ 21, 24.) Sawicki believes her request alerted Borough Solicitor Richard Wilson about extensive costs the Borough would face if Sawicki succeeded, *see (Id.* ¶¶ 29–34), so he supposedly enlisted the other defendants to stop Sawicki, *see (Id.* ¶¶ 29–31, 212).

In November of 2019, Kissinger also retained

Sawicki for her criminal case. (*Id.* ¶ 49.) Sawicki told Kissinger to skip her arraignment, and Sawicki appeared before Judge Zanic on Kissinger’s behalf. *See* (*Id.* ¶¶ 57–58). Attorney Christopher Wencker, who thought he represented Kissinger, learned of Sawicki’s actions, called Kissinger, along with Aging Care Manager Supervisor Lori Heaton, and instructed her to attend the arraignment or risk arrest. *See* (*Id.* ¶¶ 38–39, 56, 58.) Kissinger did so, but District Attorney David Smith and Court of Common Pleas Judge George Zanic prevented Sawicki from speaking to Kissinger or explaining herself in open court. *See* (*Id.* ¶¶ 59–65.)

After that hearing, Judge Zanic and Wencker reported Sawicki to the Disciplinary Board of the Supreme Court of Pennsylvania. (*Id.* ¶¶ 66, 68, 71.) Disciplinary Counsel Gloria Ammons investigated their claims and interviewed Wilson, Wencker, Judge Zanic, Smith, Heaton and Court Administrator Angela Robinson—all of whom repeated alleged falsehoods about Sawicki. *See* (*Id.* ¶¶ 93–99). Sawicki sent Ammons a brief of her position along with 61 exhibits, (*Id.* ¶¶ 98–99), and Ammons filed a Petition for Discipline against Sawicki a month later, (*Id.* ¶ 114.)

Sawicki then sued Wilson, Wencker, Judge Zanic, Smith, Robinson, and Heaton¹ on December 5, 2021. *Sawicki I*, 2023 WL 3061850, at *4. Judge Wilson stayed the case pending the disciplinary proceedings.

¹ Sawicki also sued attorney Michael Kipphan, Huntingdon-Bedford-Fulton Area Agency on Aging, the County of Huntingdon and the Borough of Huntingdon. (Wilson’s Mot. Ex. “1,” *Sawicki I* SAC at 1, Dkt. No. 22-2.)

See id. Ammons prosecuted that case against Sawicki before a three-member Hearing Committee, allegedly relied on fabricated testimony, disparaged Sawicki, and misrepresented the record. *See* (Compl. ¶¶ 120–41). The Hearing Committee ultimately sided with Ammons and adopted her brief “verbatim.” (*Id.* ¶ 142.) The Disciplinary Board adjudicated the claims against Sawicki on April 20, 2023, *see* (*Id.* ¶ 150), and Judge Wilson dismissed Sawicki’s lawsuit four days later without prejudice, *see Sawicki I*, 2023 WL 3061850.

On September 15, Disciplinary Board member Shohin Vance submitted a purportedly fallacious report about Sawicki’s disciplinary proceedings, *see* (*Id.* ¶¶ 155–56), which Sawicki petitioned the Supreme Court of Pennsylvania to overturn, *see* (*Id.* ¶ 165). The Court rejected her petition and suspended Sawicki’s “long-retired law license” for a year and a day starting in January of 2024.² (*Id.* ¶¶ 165–67). Around that time, Judge Wilson dismissed Sawicki’s second amended complaint with prejudice, *see Sawicki I*, 2024 WL 197637, and the Third Circuit affirmed that decision in May of 2025, *see id.*, 2025 WL 1261780.

II

To avoid dismissal under Federal Rule of Civil Procedure 12(b)(6), a complaint must “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially

² The *Altoona Mirror* and *The Huntingdon Daily News* published details of Sawicki’s discipline in December of 2023. (*Id.* ¶ 174.) Sawicki suspects Ammons or Vance had something to do with those stories. *See* (*Id.* ¶ 173).

plausible if the plaintiff pleads facts from which the Court can infer “that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). Although this “plausibility standard is not akin to a ‘probability requirement,’” it demands “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556).

Assessing plausibility under *Twombly* and *Iqbal* is a three-step process. See *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016). Step one is to “take note of the elements the plaintiff must plead to state a claim.” *Id.* (alterations omitted) (quoting *Iqbal*, 556 U.S. at 675). Next, the Court should identify allegations that, “because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* (quoting *Iqbal*, 556 U.S. at 679). Finally, for all “well-pleaded factual allegations, [the] court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.* (alteration in original) (quoting *Iqbal*, 556 U.S. at 679). If the well-pleaded facts do not nudge the “claims across the line from conceivable to plausible,” the Court must dismiss the complaint. *Twombly*, 550 U.S. at 570.³

³ Defendants attach to their motions Sawicki’s second amended complaint in *Sawicki I*, Judge Wilson’s decisions, the Third Circuit decision, and the Disciplinary Board’s Report and Recommendation. See (Cnty. Defs.’ Mot. Exs. “1”–“10,” Dkt. Nos. 19-2–10); (Wilson’s Mot. Exs. 1–6, Dkt. No. 2); (Jud. Defs.’ Mot. Exs. A–C, Attachs. 1–4, Dkt. Nos. 25-2–8). Because those documents are “matters of public record,” the Court will consider them. See *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014)

III

Claim preclusion bars any claims against the *Sawicki I* defendants.⁴ That doctrine precludes claims that were brought or could have been brought in a previous action. *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008). Doing so “protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy ... and promot[es] judicial economy by preventing needless litigation.” *Id.* (alteration in original) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 (1979)).

Claim preclusion requires “(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.” *Davis v. Wells Fargo*, 824 F.3d 333, 341–42 (3d Cir. 2016) (citation omitted). The Third Circuit Court of Appeals takes a “broad view” when considering what constitutes the same cause of action and looks to the “essential similarity” between the underlying events giving rise to the legal claims. *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 277 (3d Cir. 2014) (citation omitted). A district court may grant a Rule 12(b)(6) motion based on an affirmative defense, such as claim preclusion, “if the predicate establishing the defense is apparent from

(citation omitted); *United States ex rel. Alejandro v. Phila. Vision Ctr.*, No. 202027, 2021 WL 22870, at *2 n.3 (E.D. Pa. Jan. 4, 2021) (considering documents filed in a prior case).

⁴ Because *Sawicki* did not sue Ammons and Vance in *Sawicki I*, claim preclusion does not apply to them.

the face of the complaint.” *Bethel v. Jendoco Constr. Corp.*, 570 F.2d 1168, 1174 n.10 (3d Cir. 1978).

The Third Circuit affirmed Judge Wilson’s decision dismissing *Sawicki I* with prejudice, *see* 2025 WL 1261780, at *2,⁵ which operates as a final judgment on the merits, *see Gombocz v. Yelencsics*, 468 F.2d 837, 840 (3d Cir. 1972); Fed. R. Civ. P. 41(b). Sawicki again sues Wilson, Wencker, Judge Zanic, Smith, Robinson and Heaton. *Compare* (Compl. at 1 (listing those defendants)) *with* (*Sawicki I* SAC at 1 (same)). And in both cases, Sawicki alleged the same causes of action, *compare* (Compl. at 28, 31) (First Amendment retaliation and conspiracy) *with* (*Sawicki I* SAC at 86, 89 (same)), seeking the same relief, *compare* (Compl. at 32) *with* (*Sawicki I* SAC at 89–90), and relying on a similar set of facts, *compare* (Compl. ¶¶ 195, 197–98, 212, 216–17) *with* (*Sawicki I* SAC ¶¶ 275–77, 289–90). The only difference is that the current Complaint adds Ammons and Vance, their purported interactions with the *Sawicki I* defendants, and Sawicki’s one-year suspension. *See* (Compl. ¶¶ 93, 95, 104–171). But those allegations all bear an essential similarity to her prior claims: The *Sawicki I* defendants retaliated against her for speaking up and conspired to punish her for doing so.

To the extent the claims differ, Sawicki could have brought them in *Sawicki I*. *Blunt*, 767 F.3d at 277. Sawicki filed a second amended complaint in her prior action on May 31, 2023. *See Sawicki I*, 2024 WL

⁵ Sawicki never filed a petition for a writ of *certiorari*.

197637, at *5. By that time, the disciplinary proceedings had ended, *see* (Compl. ¶¶ 113–49), and the Disciplinary Board had adjudicated the claims against Sawicki, *see* (*Id.* ¶ 150). Sawicki’s new allegations largely concern actions by Ammons and Vance after May 31—not the *Sawicki I* defendants. (*Id.* ¶¶ 150–80). Although Sawicki believes the *Sawicki I* defendants must have plotted with Ammons and Vance, *see* (*Id.* ¶¶ 104–49, 153–55, 162–64), those conclusory and implausible allegations do not “raise a right to relief above the speculative level,” *see Twombly*, 550 U.S. at 545.⁶

IV

Even if Sawicki’s claims are not precluded, the defendants are all immune from suit. *See* 5B *Wright & Miller’s Federal Procedure & Practice* § 1357 (4th ed. 2025) (stating that legal immunities can serve as a basis for a Rule 12(b)(6) motion); *see also Wilson v. Rackmill*, 878 F.2d 772, 776 (3d Cir. 1989) (citations omitted) (absolute immunity); *Capogrosso v. Sup. Ct. of N.J.*, 588 F.3d 180, 185 (3d Cir. 2009) (quasi-judicial immunity); *Washam v. Stesis*, 321 F. App’x 104, 106 (3d Cir. 2009) (prosecutorial and judicial immunity).

A

Judicial immunity bars Sawicki’s individual-capacity claims against Judge Zanic for presiding over

⁶ Several defendants also argue that issue preclusion and the statute of limitations apply. *See* (Cnty. Defs.’ Mem. of L. at 13–14, 16–19, Dkt. No. 20); (Wilson’s Mem. of L. in Supp. at 13–14, Dkt. No. 22). The Court need not address those arguments because other grounds warrant dismissal.

Kissinger’s case and reporting her to the Disciplinary Board. Judges have absolute immunity for judicial acts not taken in the “clear absence of all jurisdiction.” *See Stump v. Sparkman*, 435 U.S. 349, 355–56 (1978); *Figueroa v. Blackburn*, 208 F.3d 435, 444 (3d Cir. 2000) (noting that immunity attaches so long as the court “has some subject matter jurisdiction” (citation omitted)). An act is judicial if it is “a function normally performed by a judge” and the parties “dealt with the judge in his judicial capacity.” *Figueroa*, 208 F.3d at 443 (citation omitted).

Judge Zanic had jurisdiction over Kissinger’s criminal proceedings, *see* 42 Pa. Stat. & Cons. Stat. Ann. § 931(a), and performed judicial acts by presiding over those proceedings and filing a complaint with the Disciplinary Board. Judge Zanic had an “obligation” to “report[] [Sawicki’s] suspected violation to the appropriate authority.” *See* Model Rules of Pro. Conduct r. 2.15 cmts. 1 & 2 (A.B.A. 2020); *id.* r. 2.15(B) & (D) (providing that a judge with knowledge that a lawyer has committed an ethical violation “shall inform the appropriate authority” and “take appropriate action”); *see also Herring v. Gorbey*, No. 17-278, 2017 WL 5885668, at *4–*5 (E.D. Pa. Nov. 27, 2017) (finding that a judge performed judicial acts by reporting the plaintiff’s suspected misconduct). And because judges must feel free to act without fear of incurring personal liability for their actions in court, judicial immunity protects Judge Zanic even if his actions are alleged to be legally incorrect, in bad faith, malicious, or corrupt, *see Mireles v. Waco*, 502 U.S. 9, 11–12 (1991), or are taken as a result of a conspiracy with

others, *see Dennis v. Sparks*, 449 U.S. 24, 27 (1980).⁷

B

Quasi-judicial immunity bars suits against persons “who perform functions closely associated with the judicial process,” *Cleavinger v. Saxner*, 474 U.S. 193, 200 (1985), and thus prevents Sawicki from bringing individual-capacity claims against Robinson as court administrator, Ammons and Vance as Disciplinary Board member and counsel, and Wencker, Judge Zanic and Robinson as witnesses in the disciplinary proceedings.

Persons who act on behalf of a judicial official are entitled to quasi-judicial immunity for their acts. *See Gallas v. Sup. Ct. of Pa.*, 211 F.3d 760, 772–73 (3d Cir. 2000). Sawicki alleges Robinson along with Judge Zanic received and refused her request to make an oral motion to meet with Kissinger. *See* (Compl. ¶¶ 35, 37); *Gallas*, 211 F.3d at 772–73 (holding a court administrator immune for providing a judicial order to a newspaper); *Mercedes v. Barrett*, 453 F.2d 391, 392 (3d Cir. 1971) (per curiam) (finding a clerk of courts and administrative assistant receive quasi-judicial immunity).

Disciplinary proceedings are “judicial in nature,” *see Middlesex Cnty. Ethics Comm. v. Garden State*

⁷ Judge Zanic also enjoys judicial immunity with respect to Sawicki’s request for equitable relief because she never plausibly alleges that he violated a declaratory decree or declaratory relief was unavailable. *See Azubuko v. Royal*, 443 F.3d 302, 304 (3d Cir. 2006) (citing 42 U.S.C. § 1983); *Rush v. Wiseman*, No. 09-4385, 2010 WL 1705299, at *10–*11 (E.D. Pa. Apr. 27, 2010).

Bar Ass’n, 457 U.S. 423, 433 (1982), and so quasi-judicial immunity protects Ammons and Vance as member and counsel of the Disciplinary Board, *see Capogrosso*, 588 F.3d at 184-85 (3d Cir. 2009) (holding that judicial disciplinary counsel are entitled to quasi-judicial immunity); *Murphy v. Off. of Disciplinary Couns.*, No. 17-1239, 2019 WL 4752059, at *18 (E.D. Pa. Sep. 30, 2019) (applying quasi-judicial immunity to members and counsel of the Disciplinary Board); *Vu v. City of Philadelphia*, No. 10-953, 2012 WL 1222628, at *8 (E.D. Pa. Apr. 11, 2012) (same); *Haa-gensen v. Sup. Ct. of Pa.*, 651 F. Supp. 2d 422, 433 (W.D. Pa. 2009) (same); *Frankel v. Disciplinary Bd. of Sup. Ct. of Pa.*, No. 05-CV-1450, 2005 WL 2994354, at *2 (E.D. Pa. Nov. 8, 2005) (same).⁸

And witnesses receive quasi-judicial immunity because their participation in the “trial process . . . is equally indispensable.” *Russell v. Richardson*, 905 F.3d 239, 247– 48 (3d Cir. 2018) (quoting *Briscoe v. LaHue*, 460 U.S. 325, 345–46 (1983)). Sawicki alleges that Robinson, Judge Zanic and Wencker testified falsely before the Hearing Committee, *see* (Compl. ¶¶ 121–23, 148), but “a trial witness has absolute immunity with respect to *any* [§ 1983] claim based on the witness’ testimony,” *see Rehlberg v. Paulk*, 566

⁸ Pennsylvania Rule of Disciplinary Enforcement 209(b) immunizes members of the Disciplinary Board and Disciplinary Counsel for conduct in the course of their official duties. Pa. R.D.E. 209(b); *see also O’Brien v. Beatty*, 329 A.3d 685, 689–90 (Pa. Super. Ct. 2024) (dismissing claims against Disciplinary Counsel with prejudice).

U.S. 356, 367 (2012).⁹

C

Prosecutorial immunity bars Sawicki's individual-capacity claims against Smith for his conduct in Kissinger's criminal prosecution and Ammons for her conduct in Sawicki's disciplinary proceedings. "[A] state prosecuting attorney who acted within the scope of his duties in initiating and pursuing a criminal prosecution" is entitled to absolute immunity. *Imbler v. Pachtman*, 424 U.S. 409, 410 (1976). That protection includes state prosecutors before the Disciplinary Board. See *Haagensen*, 651 F. Supp. 2d at 434; see also *Kwasnik v. LeBlon*, 228 F. App'x 238, 244 (3d Cir. 2007) (finding that prosecutorial immunity precluded suit against disciplinary committee members); *Wager v. York Cnty. Domestic Rels.*, No. 09-CV-1073, 2010 WL 231129, at *9 (M.D. Pa. Jan. 14, 2010) (same).

Smith and Ammons are also immune from allegations concerning their investigation of Kissinger or Sawicki. See (Compl. ¶¶ 91–112); *Butz v. Economou*, 438 U.S. 478, 516 ("[T]hose officials who are responsible for the decision to initiate or continue a proceeding ... are entitled to absolute immunity from damages liability for their parts in that decision."); *Rose v. Bartle*, 871 F.2d 331, 343–47 (3d Cir. 1989) (applying prosecutorial immunity to prosecutors who "solicited

⁹ Pennsylvania Rule of Disciplinary Enforcement 209(b) also provides immunity for "[a]ll communications" to the Disciplinary Board, hearing committee, or disciplinary counsel and for "all testimony" against a respondent-attorney. Pa. R.D.E. 209(b); but see, e.g., *Post v. Mendel*, 507 A.2d 351, 355 (Pa. 1986) (finding no immunity for sending a letter to the Disciplinary Board).

App.21

and prepared perjured testimony by witnesses,” acted in their “investigative capacity,” and performed “investigatory interviews”); *Gagliardi v. Lee*, 154 F. App’x 317, 319 (3d Cir. 2005) (similar).

D

Sovereign immunity requires dismissal of Sawicki’s official-capacity claims. Under the Eleventh Amendment and broader notions of sovereign immunity, states are immune from private suits without their consent. U.S. Const. amend. XI; *Hans v. Louisiana*, 134 U.S. 1 (1890); 13 *Wright & Miller’s Federal Practice & Procedure* § 3524.1 (3d ed. 2025). Official-capacity suits against state officials are not suits against the official but rather “a suit against the State itself.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Such immunity “is a jurisdictional bar which deprives federal courts of subject matter jurisdiction.” *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 693 n.2 (3d Cir. 1996).¹⁰ Moreover, “neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.” *Will*, 491 U.S. at 71.

V

Finally, even in the absence of all of the above,

¹⁰ Nor does any exception to sovereign immunity apply because Congress did not abrogate sovereign immunity with § 1983, see *Downey v. Pa. Dep’t of Corrs.*, 968 F.3d 299, 310 (3d Cir. 2020), Pennsylvania has not waived sovereign immunity, see Pa. Cons. & Stat. Ann. § 8521(b); *Laskaris v. Thornburgh*, 661 F.2d 23, 25 (3d Cir. 1981), and Sawicki does not allege an ongoing violation of federal law, see *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002).

Sawicki fails to state claims upon which relief can be granted. She first alleges that all defendants retaliated against her for requesting public documents and exposing state-sponsored misconduct. *See* (Compl. ¶¶ 195–96). To plead a First Amendment retaliation claim, Sawicki must plausibly allege “(1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action.” *Thomas v. Independence Township*, 463 F.3d 285, 296 (3d Cir. 2006).

Sawicki fails to satisfy the second and third elements. Her claims turn on the defendants purportedly triggering a state bar investigation that ultimately led to her suspension. (Compl. ¶¶ 195–98). But “[w]hen a public official is sued for allegedly causing a third party to take some adverse action against a plaintiff’s speech, . . . [the] defendant’s conduct must be of a particularly virulent character.” *McLaughlin v. Watson*, 271 F.3d 566, 573 (3d Cir. 2001).¹¹ Sawicki’s allegations about the defendants criticizing her or urging her suspension aren’t enough. She must plausibly allege they “threaten[ed] or coerce[d]” the Disciplinary Board or Supreme Court of Pennsylvania to act. *Id.* (citation modified). Without threats or coercion, “such speech does not adversely affect

¹¹ Sawicki insists *McLaughlin* does not apply to defamatory statements. *See* (Pl.’s Resp. in Opp’n at 17–19, Dkt. No. 23). She is incorrect. *McLaughlin*, 271 F.3d at 573 (citing *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 687 (4th Cir. 2000)).

[Sawicki’s] First Amendment rights even if defamatory.” *Id.* (citation modified). None of Sawicki’s non-conclusory allegations suggest that any defendant threatened or coerced anyone.

Even if Sawicki’s discipline was retaliatory, she never plausibly alleges her request for public documents was the “but-for” cause of that retaliatory conduct. *Mirabella v. Villard*, 853 F.3d 641, 651 (3d Cir. 2017). Judge Zanic called the Disciplinary Board the day Sawicki tried to represent Kissinger at her arraignment, not the day Sawicki requested public documents related to the lien. *See* (Compl. ¶¶ 21, 35, 45, 66). And Sawicki conclusorily asserts “on information and belief” that the defendants conferred with each other during her disciplinary proceedings, *see* (Compl. ¶¶ 132, 153), that Ammons “acced[ed] to the wishes of Judge Zanic” when drafting Sawicki’s petition for discipline, *see* (*Id.* ¶ 113), and that Vance and Ammons agreed to deceive the Supreme Court of Pennsylvania, *see* (*Id.* ¶ 154).

Sawicki next alleges that Ammons and Vance deprived her of property and liberty without due process of law. Sawicki cannot use a federal district court to appeal a state Supreme Court’s disciplinary adjudication. *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486–87 (1983). She contends that Ammons and Vance misrepresented the evidentiary record, deceived the Supreme Court of Pennsylvania, relied on false accounts, and thus subverted the disciplinary process. *See* (Compl. ¶¶ 201–03). “But that assertion is just her retaliation theory repackaged. So it too crashes

into *McLaughlin*'s bar." *Sawicki I*, 2025 WL 1261780, at *2.¹²

And because Sawicki has not plausibly alleged a violation of her constitutional rights, she does not state a claim for conspiracy to violate those rights. *See Black v. Montgomery County*, 835 F.3d 358, 372 n.14 (3d Cir. 2016).

VI

A party may amend a pleading with "the court's leave," Fed. R. Civ. P. 15(a)(2), but courts may deny leave when the proposed "amendment would be futile," *Wolfington v. Reconstructive Orthopaedic Assocs. II PC*, 935 F.3d 187, 210 (3d Cir. 2019) (citation omitted). Although Sawicki seeks leave to amend, doing so would be futile because she cannot overcome claim preclusion and the immunities that bar her claims. *See U.S. ex rel. Atkinson v. PA. Shipbuilding Co.*, 473 F.3d 506, 516 (3d Cir. 2007) ("Repleading is futile when the dismissal was . . . based on some legal barrier other than want of specificity or particularity.").

An appropriate Order follows.

¹² To the extent that Sawicki alleges a procedural due process claim, that also fails because Sawicki repeatedly had meaningful opportunities to be heard. *See* (Compl. ¶¶ 125–26, 141, 143, 165); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795 (1983). And though Sawicki complains that Ammons and Vance hurt her reputation through defamatory statements, "reputation alone is not an interest protected by the Due Process Clause," *see Versarge v. Township of Clinton*, 984 F.2d 1359, 1371 (3d Cir. 1993).

App.25

BY THE COURT:

/s/ Gerald J. Pappert

Gerald J. Pappert, J.

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL No. 1-21-CV-2031

MARIANNE SAWICKI,

Plaintiff,

v.

MICHAEL M. KIPPHAN, et al.,

Defendants.

Judge Jennifer P. Wilson

MEMORANDUM

Plaintiff Marianne Sawicki (“Sawicki”) filed her second amended complaint, alleging First Amendment retaliation, violations of due process, and conspiracy against various individual defendants, the County of Huntingdon (“County”), and the Borough of Huntingdon (“Borough”) for actions allegedly taken against her because of her civil rights advocacy within the county. (Doc. 85.) Each defendant has moved to dismiss the second amended complaint for failure to state a claim upon which relief can be granted under

Federal Rule of Civil Procedure 12(b)(6) and immunity grounds. (Docs. 88, 90, 91, 106.) For the reasons that follow, the court will grant the motions and dismiss the second amended complaint with prejudice.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The court will begin by describing the parties and their respective roles. At all times relevant to this action, Defendant Judge George Zanic (“Judge Zanic”) was the President Judge of the Court of Common Pleas of Huntingdon County. (Doc. 85, ¶ 13.) Defendant Angela Robinson (“Robinson”) was the Court Administrator for the Court of Common Pleas of Huntingdon County.¹ (*Id.* ¶ 14.) Defendant Michael M. Kipphan (“Kipphan”) was the solicitor for Huntingdon-Bedford-Fulton Area Agency on Aging (“AAA”), a municipal agency. (*Id.* ¶¶ 7, 9.) Defendant Lori Heaton was an Aging Care Manager Supervisor at AAA. (*Id.* ¶ 8.) Defendant Christopher B. Wencker (“Wencker”) was an attorney who contracted with Huntingdon County to provide legal representation to indigent criminal defendants. (*Id.* ¶ 10.) Defendant Honorable David G. Smith (“DA Smith”) was the elected District Attorney for Huntingdon County.² (*Id.* ¶ 11.) Finally, Defendant Richard A. Wilson (“Wilson”) was the solicitor for Defendant Borough of

¹ Collectively, Judge Zanic and Robinson will be referred to as “Judicial Defendants.”

² Together with Defendant Huntingdon County (“County”), Kipphan, Heaton, AAA, Wencker, and DA Smith will be referred to as “County Defendants.”

Huntingdon (“Borough”). (*Id.* ¶¶ 15, 16.) County of Huntingdon (“County”) is also a Defendant. (*Id.* ¶ 12.)

Sawicki was a licensed attorney in the Commonwealth of Pennsylvania, practicing through the Law Office of Marianne Sawicki, LLC (“Law Office”). (*Id.* ¶ 13.) Sawicki retired her law license in March 2022 because of deteriorating health.” (*Id.*) Prior to retirement, however, Sawicki alleges that the Law Office pursued advocacy on behalf of “individuals who suffered oppression through abuse of governmental power[,]” including advocating for “humane conditions of confinement in the state and federal prisons, religious freedom for incarcerated Muslims, racial justice, disability accommodation, adequate medical care for prisoners, and strict accountability of government agencies for their infringement of civil liberties.” (*Id.* ¶ 61.) Sawicki was the only attorney at the Law Office. (*Id.* ¶ 62.) Besides engaging in litigation, the Law Office also advised other civil rights litigators and prisoners on topics such as the Prison Litigation Reform Act. (*Id.* ¶ 65.) Prior to the COVID-19 pandemic, Sawicki regularly visited prisons in the surrounding area. (*Id.* ¶ 67.) Sawicki also spoke as a guest speaker at prisons, high school, college, and law school classes. (*Id.* ¶ 68.)

Sawicki begins her second amended complaint by describing her interactions with Judge Zanic prior to the fall of 2019, in his former capacity as the elected District Attorney of Huntingdon County. (*Id.* ¶¶ 18–40.) Descriptions of the relevant time period begin in September 2019, when Sawicki alleges that the Borough police filed criminal charges against Barbara

Kissinger (“Kissinger”) for animal abuse, and the Borough also filed a civil lien against Kissinger’s home. (*Id.* ¶¶ 42, 43.) Sawicki alleges that a hearing regarding the demolition of Kissinger’s home was held without appropriate notice while Kissinger was hospitalized. (*Id.* ¶ 44.) Demolition of the home occurred while Kissinger was incarcerated for the criminal charges. (*Id.* ¶ 47.) The hearing was allegedly discussed at the Huntingdon County Courthouse by Clerk of Orphan’s Court, Virginia Cooper, DA Smith, Heaton, Judge Zanic, and his deputy. (*Id.* ¶ 130–32.) Friends of Kissinger’s contacted Sawicki regarding the situation, and Kissinger’s friends retained Sawicki on November 2, 2019. (*Id.* ¶ 49.)

On November 3, 2019, Sawicki began requesting records from the Borough’s office regarding Kissinger’s home and the meeting where its demolition was discussed. (*Id.* ¶¶ 74, 75, 85–90.) It appears that the Borough provided all requested documents on this topic. (*Id.* ¶¶ 75, 85, 87.)

On November 5, 2019, Sawicki requested an escort by the Huntingdon County Sheriff’s office in order to go to Kissinger’s home because Sawicki believed Kissinger was in a dangerous situation. (*Id.* ¶ 76.) The sheriff’s office informed Sawicki that they could provide the escort if a judge “gave leave.” (*Id.*) Accordingly, Sawicki called Robinson and requested a time to speak to Judge Zanic. (*Id.*) Robinson declined to set up a time to meet, and informed Sawicki that she

must bring a proposed order.³ (*Id.*) Sawicki complied with this request and returned with a proposed order. (*Id.* ¶ 78.) Robinson showed the proposed order to Judge Zanic, who directed Sawicki to file a petition. (*Id.*) Sawicki did so and went to the law library to wait for a meeting with Judge Zanic. (*Id.*) After an unspecified amount of time, Robinson returned to Sawicki and stated that Judge Zanic would not see her and that he had contacted the Pennsylvania State Police regarding the potential hostage situation involving Kissinger. (*Id.* ¶ 79.) Sawicki alleges that Robinson and Zanic agreed to deny Sawicki an opportunity to speak with Judge Zanic. (*Id.* ¶ 133.) Later that day, Sawicki met with Kissinger twice and gave Kissinger clothing to wear to court. (*Id.* ¶¶ 81, 84.)

On the morning of November 6, 2019, Sawicki and Wilson had a telephone conversation regarding the civil lien case against Kissinger’s home, during which

³ Sawicki alleges that her request to speak with Judge Zanic was pursuant to Huntingdon County Court of Common Pleas Local Rule 208.3(A)(6) and Robinson’s and Zanic’s actions throughout this encounter were “irregular.” (*Id.* ¶¶ 76, 78.) Huntingdon County Local Rule 208.3(A)(6) provides “[m]otions seeking emergency relief may be presented directly to the President Judge on any date the court is in session. An order detailing the manner of disposition and service will be entered by the President Judge after consideration of the motion. Notice shall be given in advance to opposing counsel or any unrepresented party of the date and time of presentation of any motion for emergency relief.” Thus, Sawicki’s allegation that it was “irregular” for Robinson to refuse to set up a time for Sawicki and Judge Zanic to discuss the matter is not properly based on the Local Rule because Sawicki herself had not followed the Local Rule given that she did not initially file a motion.

she advised Wilson of the Borough's potential liability. (*Id.* ¶ 89.) Sawicki alleges that after this call, Wilson called Judge Zanic and DA Smith to get advice on what to do regarding the Borough's potential liability. (*Id.* ¶ 134.) In the afternoon of November 6, 2019, Kissinger officially retained Sawicki to represent her in both the criminal and civil lien case. (*Id.* ¶ 92.) Thus, Sawicki entered an appearance on behalf of Kissinger on November 6, 2019, on the criminal docket. (*Id.* ¶ 93.) No attorney was listed for Kissinger prior to Sawicki's entry of appearance. (*Id.* ¶ 93).⁴ Sawicki also filed a waiver of appearance at arraignment on Kissinger's behalf. (*Id.*)

On November 7, 2019, Sawicki appeared at Kissinger's arraignment on Kissinger's behalf, but Kissinger was initially not present because Sawicki told her that she did not need to attend. (*Id.* ¶¶ 94, 96.) However, Wencker and Heaton contacted Kissinger and threatened her with arrest unless she came to the courthouse, and they also told Kissinger that Wencker was Kissinger's attorney of record, not Sawicki. (*Id.* ¶¶ 96, 136.) Kissinger then came to the courthouse, where Sawicki attempted to speak with Kissinger, but was physically blocked from speaking with her by an employee sent by DA Smith. (*Id.*) After the arraignment, Sawicki went to the AAA office to try to speak with Heaton, who was unavailable. (*Id.* ¶ 97.) Sawicki left a letter with Kipphan instead,

⁴ Although Sawicki states that no other attorney had entered their appearance for Kissinger at this point, the second amended complaint also alleges that Wencker had been Kissinger's attorney in her criminal case. (*Id.* ¶ 80.)

which Sawicki alleges explained Kissinger’s civil lien case. (*Id.* ¶ 98.) Additionally, during the lunch break that day, Zanic called the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) to lodge a disciplinary complaint against Sawicki and enlisted Wencker to submit a statement in the action against Sawicki’s law license. (*Id.* ¶¶ 137, 148.) Sawicki was unaware of this phone call at the time. (*Id.* ¶ 158.)

Sawicki met with Kissinger on November 9, 2019, and confirmed that she wanted Sawicki to represent her in both the criminal and lien cases. (*Id.* ¶¶ 101.) Sawicki entered her appearance in the civil case on November 12, 2019, and handled the hearing scheduled for that day. (*Id.* ¶ 102.) Thereafter, Sawicki began litigating the lien case. (*Id.* ¶ 107.)

Sawicki then wrote to Wencker on November 14, 2019, requesting his file on Kissinger’s criminal case. (*Id.* ¶ 104.) On November 18, 2019, Sawicki filed a complaint with the Board about Wencker’s conduct during Kissinger’s criminal case. (*Id.* ¶ 108.) On November 19, 2019, Sawicki filed an investigation request against Judge Zanic with the Judicial Conduct Board. (*Id.* ¶ 109.)

Sawicki served formal discovery requests on Wilson on November 25, 2019, and notified the Borough of her intent to serve a subpoena. (*Id.* ¶ 111.) Wilson sought assistance from DA Smith, who then sought to intervene and filed a motion to quash subpoena. (*Id.* ¶¶ 112, 113.) Sawicki continued to litigate the case, filing briefs in opposition to the motion to quash filed by DA Smith and a motion to stay proceedings filed by the Borough. (*Id.* ¶¶ 114[,], 116.)

During the time period of December 2 through 6, 2019, Wilson, Heaton, and Wencker all tried to convince Kissinger to stop litigating the civil lien case and remove Sawicki as her attorney. (*Id.* ¶140.) On December 10, 2019, Judge Zanic and Robinson allegedly persuaded Public Defender Frederick Gutshall to “cooperate in the appointment of county-paid counsel[,]” even though Sawicki was her counsel, there was no application for a public defender, and Kissinger was financially ineligible for a public defender. (*Id.* ¶ 141.)

Sawicki alleges that Judge Zanic called Paul Killian of the Board to verbally complain about Sawicki, and falsely accuse her of professional misconduct. (*Id.* ¶¶ 147–49.) Sawicki contends that Judge Zanic asked Killian to initiate disciplinary proceedings against her despite knowing that Sawicki had not violated any of the Rules of Professional Conduct. (*Id.*)

Sawicki alleges that all individual defendants learned of her “inquiries and court filings” throughout November and December, 2019, and “shared a purpose of deterring [Sawicki] from advocating for the civil rights of Ms. Kissinger or anyone else[,]” and “[i]ndividual defendants retaliated against [Sawicki] for her civil rights advocacy by taking steps to deprive the Law Office of its financial and personal resources” (*Id.* ¶¶ 144–46.) Sawicki alleges that individual defendants knew the Law Office could not operate if its only attorney lost her license, and they also knew no other local attorneys would join the firm to take up its advocacy work. (*Id.* ¶¶ 151, 152.) Sawicki further alleges “[d]efendants understood that every hour

[Sawicki] expended in defending her license from administrative attack was an hour that could not be spent on advocacy.” (*Id.* ¶ 153.)

Sawicki alleges that Wencker, Judge Zanic, and Robinson provided false information to the Board to initiate a disciplinary action against her. (*Id.* ¶¶ 155–57.) Thereafter, the Board began an investigation. (*Id.* ¶¶ 160–70.) Sawicki submitted a response to the Board in August 2020. (*Id.* ¶ 168.) Having been alerted by Board requests for information that a disciplinary proceeding had begun against her, Sawicki requested records under the Right to Know Law from the County, Borough, and AAA. (*Id.* ¶ 172.) These requests were litigated all the way to the Commonwealth Court of Pennsylvania, which directed the Court of Common Pleas to hold a hearing, which has yet to happen. (*Id.* ¶¶ 172–82.)

The Board continued its investigation, receiving written statements from Judge Zanic, Wencker, Robinson, Kipphan, Wilson, Heaton, and DA Smith. (*Id.* ¶¶ 183–210.) Sawicki alleges that each individual defendant conveyed false information with the purpose of “put[ting] a stop to [Sawicki’s] advocacy for civil rights and to shut down the Law Office, in retaliation for [Sawicki’s] activity during November through December 2019, because that activity was bringing to light the wrongful practices of the Borough, County, AAA, and the individual defendants that deprived Ms. Kissinger of her home and her liberty.” (*Id.* ¶¶ 193, 195, 203, 209.)

The Board filed a petition for discipline against Sawicki in September 2021. (*Id.* ¶ 212.) Sawicki alleges the petition is virtually identical to the Board’s

first request for information and contains multiple misstatements. (*Id.* ¶¶ 212–15.) Sawicki hired counsel and used Law Office funds in order to defend her license. (*Id.* ¶¶ 216, 217.)

The Board held hearings on the Petition for Discipline against Sawicki on February 16 and 17, April 27, May 10, and August 29 and 30, 2022. (*Id.* ¶ 219.) Sawicki asserts that Judge Zanic, Wencker, and Robinson falsely testified during these hearings. (*Id.* ¶¶ 221–25.) The Board entered a prima facie showing of a violation, and then filed proposed findings of fact and conclusions of law on November 7, 2022. (*Id.* ¶ 227.) Sawicki filed a brief contesting those findings on January 3, 2023. (*Id.* ¶ 228.) After this briefing, the Board filed a Report and Recommendation that was “virtually identical” to its prior findings. (*Id.* ¶ 229.) Sawicki filed exceptions to the Report on March 21, 2023, and oral argument was held on April 10, 2023. (*Id.* ¶ 231.) The matter was adjudicated by the Board on April 20, 2023, but as of the time of filing the second amended complaint, no decision had been published. (*Id.* ¶ 232.)⁵

Additionally, Sawicki alleges that the Borough, County, and AAA have policies and practices that caused her injury. Specifically, she alleges that the Borough “maintains an improper practice of hiring

⁵ The court notes that the Board recommended a suspension of one year and one day, and the Supreme Court of Pennsylvania has since adopted that recommendation. *Office of Disciplinary Counsel v. Sawicki*, No. 107 DB 2021 (S. Ct. Order Dec. 22, 2023.) The court takes judicial notice of this determination, but it does not factor into the analysis provided below.

employees through cronyism and nepotism,” and then retains these employees without sufficient review and disregard for incompetence. (*Id.* ¶ 234.) She alleges that Wilson was hired “without regard to the caliber of his legal skills or the quality of his character[,]” and remains employed despite evidence of incompetence. (*Id.* ¶ 235.) Sawicki alleges these mistakes led to the mishandling of the Kissinger matter, and but for this policy, Sawicki would not have sustained the constitutional injuries she alleges. (*Id.* ¶ 238.)

Sawicki alleges that the County has the same policy of “cronyism and nepotism.” (*Id.* ¶ 240.) This policy, allegedly, has resulted in cost cutting which has led to a lower standard of representation provided by contract-conflict counsel, hiring of unqualified law clerks, and the closing of the law library. (*Id.* ¶¶ 241–45.) These cost cutting measures resulted in errors in the Kissinger case, which, when pointed out by Sawicki, caused Judge Zanic and DA Smith to retaliate against her. (*Id.* ¶¶ 246, 247.)

Lastly, Sawicki alleges that the AAA has an “improper practice of overriding the relevant statutory imperatives and legal procedures so as to facilitate quick resolutions to complex situations ... [.]” (*Id.* at ¶ 251.) Additionally, the AAA has a policy of “requiring unlicensed employees to give legal advice to elderly clients on a range of issues, and to disregard any contrary legal advice even if it comes from a licensed attorney.” (*Id.* ¶ 252.) These policies resulted in Heaton “manipulating” Kissinger, causing Sawicki to experience the constitutional injuries alleged. (*Id.* ¶ 257.)

Those injuries include exhausting the funds of the Law Office to defend her law license and handing off

her pending cases, thus terminating an income stream. (*Id.* ¶¶ 259, 260.) Sawicki voluntarily retired her law license on March 4, 2022. (*Id.* ¶ 254.) However, Sawicki still continues to advocate for civil rights through correspondence and telephone calls, and the instant litigation. (*Id.* ¶ 266.) Sawicki alleges that her physical and mental health have deteriorated because of defending her license and litigating this case. (*Id.* ¶ 273.)

The second amended complaint alleges First Amendment retaliation for Sawicki's requests for records, deprivation of Sawicki's liberty interest in the practice of law without substantive due process, and deprivation of Sawicki's property interest in the Law Office funds without substantive due process against all defendants. (*Id.* ¶¶ 274–87.) Additionally, Sawicki alleges a conspiracy to deprive her of her constitutional rights against the individual defendants. (*Id.* ¶¶ 288-90.)⁶

Sawicki initiated this action by filing a complaint on December 5, 2021. (Doc. 1.) An amended complaint was filed on February 22, 2022, alleging First Amendment retaliation and violations of Due Process under 42 U.S.C. § 1983. (Doc. 29.) All defendants filed motions to dismiss, which were fully briefed. (Docs. 38, 39, 40, 41, 57.) The court granted the defendants' motions to dismiss on the basis that the amended complaint failed to state a claim of First Amendment retaliation and due process violations.

⁶ The court notes that, while Sawicki alleges various policies by the municipal entities, she does not include a *Monell* claim in the cause of action section.

(Doc. 84.) Specifically, regarding the First Amendment claim, the court held that Sawicki had not alleged that she had engaged in protected activity through the civil rights advocacy of the Law Office. (Doc. 83 at pp. 15–19.)⁷ The court also held that Sawicki had not properly alleged a deprivation of the liberty interest of her law license because disciplinary proceedings had not yet ended, and she had not sufficiently alleged a property interest in the Law Office or that Defendants had deprived her of that interest. (*Id.* at 22–25.)

Thus, on May 31, 2023, Sawicki filed the amended complaint, the pleading now before the court. (Doc. 85.) On June 14, 2023, the Borough, Wilson, and the County all filed separate motions to dismiss. (Docs. 88, 90, 91.) On July 14, 2023, the Judicial Defendants filed a motion to dismiss. (Doc. 106.) All motions have been briefed and are ripe for review.

JURISDICTION AND VENUE

This court has jurisdiction under 28 U.S.C. § 1331, which allows a district court to exercise subject matter jurisdiction in civil cases arising under the Constitution, laws, or treaties of the United States. Venue is appropriate under 28 U.S.C. § 1391.

STANDARD OF REVIEW

In order “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted

⁷ For ease of reference, the court utilizes the page numbers contained in the CM/ECF header.

as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Conclusory allegations of liability are insufficient” to survive a motion to dismiss. *Garrett v. Wexford Health*, 938 F.3d 69, 92 (3d Cir. 2019) (quoting *Iqbal*, 556 U.S. at 678–79). To determine whether a complaint survives a motion to dismiss, a court identifies “the elements a plaintiff must plead to state a claim for relief,” disregards the allegations “that are no more than conclusions and thus not entitled to the assumption of truth,” and determines whether the remaining factual allegations “plausibly give rise to an entitlement to relief.” *Bistrrian v. Levi*, 696 F.3d 352, 365 (3d Cir. 2012).

When ruling on a motion to dismiss under Rule 12(b)(6), the court must “accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” *Phillips v. Cnty of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)). In addition to reviewing the facts contained in the complaint, the court may also consider “exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents” attached to a defendant’s motion to dismiss if the plaintiff’s claims are based upon these documents. *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010)

(citing *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)).

The pleadings of self-represented plaintiffs are to be liberally construed and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Fantone v. Latini*, 780 F.3d 184, 193 (3d Cir. 2015), as amended (Mar. 24, 2015). Self-represented litigants are to be granted leave to file a curative amended complaint even when a plaintiff does not seek leave to amend, unless such an amendment would be inequitable or futile. See *Est. of Lagano v. Bergen Cnty. Prosecutor's Off.*, 769 F.3d 850, 861 (3d Cir. 2014); see also *Phillips*, 515 F.3d at 245. A complaint that sets forth facts that affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 106 (3d Cir. 2002).

DISCUSSION

Stating a claim for a §1983 civil rights violation requires a plaintiff to “demonstrate that the conduct complained of was committed by a person acting under color of state law and ‘that the conduct deprived him of rights, privileges, or immunities secured by the Constitution.’” *Carter v. City of Phila.*, 989 F.2d 117, 119 (3d Cir. 1993) (citing *Robb v. City of Phila.*, 733 F.2d 286, 290–91 (3d Cir. 1984)). Because a constitutional injury is a necessary prerequisite to Sawicki’s Section 1983 claims, the court will first determine whether Sawicki has adequately pleaded constitutional violations in her second amended complaint.

A. First Amendment Retaliation

On the First Amendment retaliation claim, the County Defendants argue that Sawicki has no First Amendment right in her civil rights advocacy because the Law office does not operate as a non-profit. (Doc. 93, pp. 22, 23.) They also argue that there was no retaliatory action by these Defendants because the Board took the adverse action, not County Defendants. (*Id.* at 23.) Finally, they argue that there is no causal connection between Sawicki's civil rights advocacy and any misrepresentations to the Board. (*Id.* at 23, 24.)

Wilson filed his own motion to dismiss and brief in support. On the retaliation claim, Wilson argues that Sawicki has not alleged that she engaged in protected activity because she did not allege that she was advocating on behalf of a "non-profit political advocacy organization engaging in its own expressive or associational activity." (Doc. 98, p. 14.)

Sawicki argues in response that she was retaliated against for the protected activity of requesting public records from the Borough. (Doc. 100, p. 37.)⁸ She further argues that this act was a part of the civil rights advocacy of the Law Office, and thus, was a protected activity. (*Id.* at 38–43.) She states that the retaliatory action was causing the Board to initiate disciplinary proceedings and eviscerate her law practice. (*Id.*

⁸ The arguments regarding the First Amendment retaliation claim in her brief in opposition to Wilson's motion to dismiss are identical to her arguments in opposition to the County's motion. *Compare* Doc. 100 with Doc. 103.

at 43.) She argues that she has alleged a causal connection because Judge Zanic called the Board the day after she initially began asking the Borough for records. (*Id.* at 44.)

To plead a plausible First Amendment retaliation claim, a plaintiff must allege “(1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action.” *Thomas v. Indep. Twp.*, 463 F.3d 285, 296 (3d Cir. 2006). In her amended complaint, Sawicki frames her First Amendment retaliation claim as follows:

Because the plaintiff’s requests for public documents brought to light certain wrongful actions and omissions on the part of Borough, County, AAA, and their employees or agents named as defendants in this action, each defendant engaged in wrongful activities adverse to the plaintiff for retaliatory purposes with intent to cause the plaintiff to desist from litigation and other advocacy for civil rights, which are activities protected by the First Amendment to the United States Constitution.

Doc. 86, p. 86. Sawicki further explains in her surreply:

Count One alleges retaliation for activity protected by the First Amendment. The protected activity was: asking to review Borough’s public records. The retaliation alleged was: the false report phoned in to the Disciplinary Board on

November 7, 2019, preceded by communication among some of the defendants and then buttressed by all individual defendants during the next several years.

Doc. 116, p.10 (emphasis in original). The court finds that Sawicki's framing of her claim in her surreply, Doc. 116, is an accurate representation of the amended complaint. Unfortunately, the parties' arguments do not address the claims framed in this manner.

Instead, the parties argue over whether Sawicki had a First Amendment right to engage in civil rights advocacy through the practice of law. Specifically, they argue over the applicability of several cases examining the scope of the First Amendment right that attorneys have when soliciting clients. *See Nat'l Ass'n for the Advancement of Colored People v. Button*, 371 U.S. 415, 4361 (1963); *In re Primus*, 436 U.S. 412, 426–31 (1978); *Jacoby and Myers, LLP v. Presiding Justices of 1st, 2^d, 3^d, and 4th Dept's of Sup. Ct. of N.Y.*, 852 F.3d 178, 186 (2d Cir. 2017).

These cases involve challenges to state law rules of professional conduct prohibiting attorneys from soliciting clients in certain ways. Grounded in *Button*, this line of cases generally stands for the proposition that certain attorneys have a First Amendment right to solicit clients in certain ways because the attorney works for a group that engages in political association beyond just the litigation branches of the organization. *Button*, 371 U.S. at 431 (holding the NAACP engages in litigation as a form of political expression and thus has a First Amendment right to solicit clients through referral); *In re Primus*, 436 U.S. at 431–32 (ACLU “engages in litigation as a vehicle for effective

political expression and association, as well as a means of communicating useful information to the public” and thus has a First Amendment right to solicit clients through referrals); *Jacoby & Meyers*, 852 F.3d at 186 (holding that a for-profit law firm did not have a First Amendment right to associate with its clients because it was not engaged in expressive political activity). These cases protect the rights of lawyers engaged in certain types of advocacy to solicit clients because the advocacy the lawyers engage in is one way for these clients to access the courts and exercise their rights. *In re Primus*, 436 U.S. at 426.

These cases are inapposite because they all arise in the context of an attorney soliciting clients and how these rights may or may not be circumscribed by state regulations. There are no allegations that Sawicki was retaliated against for soliciting clients. While Sawicki alleges that the Law Office engages in civil rights advocacy generally, she does not allege that defendants retaliated against her for exercising the First Amendment right to solicit clients (even assuming she has a First Amendment right to solicit clients as a private attorney). Additionally, Sawicki argues that the First Amendment protects civil rights advocacy *generally* – not specifically with respect to soliciting clients.⁹ All of this aside, Sawicki actually alleged that

⁹ The court notes that Sawicki also argues that civil rights advocacy is “professional speech” as recognized by *King v. Governor of N.J.*, 767 F.3d 216 (3d Cir. 2014). *King* recognized “professional speech” as a unique category of speech under the First Amendment and applied intermediate scrutiny to determine if a New Jersey law violated the First Amendment rights of therapists. *Id.* at 237. This case was abrogated by *Nat’l Inst. of Family*

she engaged in the protected activity of asking to review the Borough's records. As such, the court will determine whether this is a protected activity.

Most cases regarding requests for records arise from a context in which the governmental entity denied access to the requested records. *See PG Pub. Co. v. Aichele*, 705 F.3d 91, 104 (3d Cir. 2013). These types of claims have their own analytical framework, which is not pleaded here,¹⁰ and there is no allegation that Sawicki did not receive the documents she requested in November 2019. Thus, the second amended complaint has not properly raised this type of claim.

There is scant case law regarding the right of citizens, generally, to request documents. However, relying on the general First Amendment right of private citizens to speak and the right to petition the government for redress of grievances, the Eleventh Circuit

and Life Advocates v. Becerra, 138 S. Ct. 2361, 2372, which expressly rejected the idea that professional speech is a separate category of speech and applied the recognized categories of content-based restrictions and commercial speech. In any event, Sawicki has not alleged that Defendants retaliated against her for "civil rights advocacy," as explained above.

¹⁰ *PG Pub. Co.* explains the legal test for examining an individual's right to access the government and how the Third Circuit has expanded its scope. The test is often called the "experience and logic test" and requires a "two-prong evaluation of 'whether the place and process have historically been open to the press' and 'whether the public access plays a significant positive role in the functioning of the particular process in question.' Where both prongs of the test are satisfied, 'a qualified First Amendment right of public access attaches.'" *Id.* (citation omitted.)

has held that “a citizen’s public records requests and lawsuits against the government can clearly constitute protected First Amendment activity.” *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1288–89 (11th Cir. 2019). The Third Circuit has also recognized that “except for certain narrow categories deemed unworthy of full First Amendment protection—such as obscenity, ‘fighting words’ and libel—all speech is protected by the First Amendment.” *Eichenlaub v. Township of Indiana*, 385 F.3d 274, 382–83 (3d Cir. 2004). Accordingly, Sawicki requesting records from the Borough office is speech protected by the First Amendment.

Second, in order to state a claim for First Amendment retaliation, Sawicki must plead that there was “retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights[.]” *Thomas*, 463 F.3d 285. This is an objective determination of “whether the act would deter a person of ordinary firmness, not whether the plaintiff was deterred.” *Shutt v. Miller*, 724 Fed. App’x 112, 114 (3d Cir. 2018). “Determining whether a plaintiff’s First Amendment rights were adversely affected by retaliatory conduct is a fact intensive inquiry focusing on the status of the speaker, the status of the retaliator, the relationship between the speaker and the retaliator, and the nature of the retaliatory acts.” *Suarez Corp. Industries v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000) (standard accepted by the Third Circuit in *McLaughlin v. Watson*, 271 F.3d 566, 573 (3d Cir. 2001)). Thus,

When a public official is sued for allegedly causing a third party to take some type of adverse action

against plaintiff's speech, we have held that defendant's conduct must be of a particularly virulent character. It is not enough that defendant speaks critically of plaintiff or even that defendant directly urges or influences the third party to take adverse action. Rather, defendant must "threaten" or "coerce" the third party to act.

McLaughlin, 271 F.3d at 573. Accordingly, "in the absence of a threat, coercion, or intimidation intimating that punishment, sanction, or adverse regulatory action will follow, such speech does not adversely affect a citizen's First Amendment rights even if defamatory." *Id.*

As noted above, the alleged retaliatory action was Judge Zanic making a false report to the Board. There is no allegation that Judge Zanic or any defendant, directly retaliated against Sawicki, such as defaming her or humiliating her publicly. There are no allegations that Judge Zanic threatened the Board to bring a disciplinary petition or threatened Sawicki herself with bringing a disciplinary petition. There are also no allegations that Judge Zanic, or any defendant, coerced any Board member throughout the disciplinary hearings. There are only the allegations that individual defendants lied during their participation in the disciplinary proceedings, and the conclusory allegations that the Board adopted these lies wholesale because Judge Zanic was a judge, despite the extensive investigation and hearings conducted by the Board. (Doc. 85, ¶ 230.) Besides Sawicki's belief that the Board inappropriately relied on Defendants' statements, there is no retaliatory act which

brought the requisite “quantum of governmental authority to bear[]” against Sawicki. *Mirabella v. Villard*, 853 F.3d 641, 651 (3d Cir. 2017) (citing *Novoselsky v. Brown*, 822 F.3d 342 (7th Cir. 2016) which held that a government official filing an attorney discipline complaint was not a retaliatory act sufficient to state a claim for First Amendment retaliation)). Accordingly, because Sawicki fails to allege a retaliatory act, the second amended complaint fails to state a claim for First Amendment retaliation and will be dismissed.

However, even if filing a false disciplinary complaint was a retaliatory act, Sawicki still fails to allege the third element of a First Amendment retaliation claim, which is a causal connection between the protected activity and the retaliatory conduct. “The required link is ‘but-for’ causation.” *Mirabella*, 853 F.3d at 651. Thus, Sawicki must allege that but for her requesting documents from the Borough, Defendants would not have filed a false disciplinary report. “To establish the requisite causal connection a plaintiff usually must prove either (1) an unusually suggestive temporal proximity between the protected activity and the allegedly retaliatory action, or (2) a pattern of antagonism coupled with timing to establish a causal link.” *Lauren W. ex rel. Jean W. v. DeFlaminis*, 480 F.3d 259, 267 (3d Cir. 2007). Here, Sawicki has alleged that Judge Zanic knew of her conversation with Wilson “on or shortly after November 6” and called the Board on November 7. (Doc. 85, ¶¶ 134, 148.) However, she also alleges that on the day that Judge Zanic called the Board, there was commotion in the courtroom regarding Sawicki’s representation of Kissinger, and there had been an exchange between

her and Judge Zanic regarding her attempts to have sheriffs escort her to Kissinger's home. (*Id.* at ¶94.) Moreover, Sawicki avers that Defendants retaliated against her for her civil rights advocacy generally, and not solely this specific records request, and that the November 7 call was in retaliation for events that happened after the call was made. (*Id.* at ¶ 144–46.) Accordingly, Sawicki has not alleged that her document requests were the but for cause of Defendants' retaliatory action.

For these reasons, Sawicki's First Amendment retaliation claim will be dismissed.

B. Due Process

Sawicki alleges both procedural and substantive due process violations for the alleged deprivation of her liberty interest to advocate for civil rights. (Doc. 116, p. 10.) She also alleges both procedural and substantive due process claims for deprivation of her property interest in the LLC and its funds. (*Id.*) The parties that address this claim argue that Sawicki has not stated a claim for a procedural due process violation because the disciplinary process has not yet ended, the named Defendants do not possess the authority to deprive her of her license, and she voluntarily retired her law license. (Doc. 93, p. 26, 27; Doc. 98, p. 14–16.) They also argue that she has not stated a claim for a substantive due process violation because the Law Office funds were not her personal property. (Doc. 93, p. 27, 28; Doc. 98, p. 17, 18.) The court will address each type of due process claim in turn.

1. Procedural Due Process

In order to state a claim for the deprivation of a procedural due process right under § 1983, “a plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment’s protection of life, liberty, or property, and (2) the procedures available to him did not provide due process of law.” *Dunmore Sch. Dist. v. Pennsylvania Interscholastic Athletic Ass’n*, 505 F. Supp. 3d 447, 459 (M.D. Pa. 2020). Even assuming Sawicki has appropriately alleged a property interest sufficient to state a claim for deprivation of procedural due process, there is not a single allegation in the ninety-page second amended complaint that the procedures provided by the Pennsylvania Supreme Court in the disciplinary process failed to provide Sawicki with due process of law. At most, Sawicki alleged that the process is “meager” and she speculates that the Board inappropriately relied on statements by Defendants, rather than her own statements. (Doc. 85, ¶ 230.) This amounts to no more than mere speculation about the sufficiency of the Board’s process or possibly a collateral attack on the decision-making process by the Board. Accordingly, she has not stated a claim for a procedural due process violation.

2. Substantive Due Process

The Third Circuit Court of Appeals has recognized two strands of substantive due process, differentiated by the nature of the government action: legislative versus non-legislative. *Nicholas v. Pa. State Univ.*, 227 F.3d 133, 142 (3d Cir. 2000). Non-legislative, or executive, actions “typically apply to one person or to

a limited number of persons, while legislative acts, generally laws and broad executive regulations, apply to large segments of society.” *Id.* at 139, n.1. Here, it is clear that Sawicki’s claims are non-legislative.

To prevail on a non-legislative substantive due process claim, a plaintiff must first establish a protected property interest to which the Fourteenth Amendment’s protection applies. *Id.* at 139–40. The Third Circuit has required plaintiffs to identify a “particular quality of property interest.” *Id.* at 140. Whether a certain property interest embodies this particular quality is not determined by reference to state law, but depends on whether that interest is “fundamental” under the Constitution. *Id.* The asserted property interest must be considered against the background of constitutional purposes, rationally developed and historically perceived, with respect for the teachings of history and a solid recognition of the basic values that underlie our society. *Id.* (quoting *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 229–30 (1985) (Powell, J. concurring)). The Third Circuit has “so far limited non-legislative substantive due process review to cases involving real property ownership [and has] been reluctant to extend substantive due process protection to other, less fundamental property interests.” *Id.* at 140– 41. The court also notes that the interests protected by substantive due process are different than those interests protected by procedural due process because rights protected by procedural due process derive from state laws, whereas rights protected by substantive due process derive from the Constitution. *See Reich v. Beharry*, 883 F.2d 239, 244 (3d Cir. 1989).

Sawicki alleges deprivation of two separate interests in violation of substantive due process: a liberty interest in conducting civil rights advocacy and a property interest in the operating funds of the Law Office, an LLC. The court will address each in turn, starting with the liberty interest.

“The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within both the ‘liberty’ and ‘property’ concepts of the Fifth and Fourteenth Amendments.” *Piecknick v. Com. of Pa.*, 36 F.3d 1250, 1259 (3d Cir. 1994). More specifically, “[i]t is the liberty to pursue a calling or occupation, and not the right to a specific job, that is secured by the Fourteenth Amendment.” *Id.* Therefore, “[t]o allege a violation of the[] right ‘to hold specific private employment and to follow a chosen profession free from unreasonable government interference, . . . Plaintiffs must allege an inability to obtain employment within the field, not just a particular job or at a specific location or facility.’” *Harmon v. Borough of Belmar*, No. 3:17-cv2437, 2018 WL 6068216, at * 5 (D.N.J. Nov. 20, 2018) (quoting *Culinary Serv. of De. Valley, Inc. v. Borough of Yardley, Pa.*, 385 Fed. App’x 135, 141 (3d Cir. 2010)). Although not expressly adopted by the Third Circuit, it stands to reason that the “the liberty to pursue a calling or occupation” is a fundamental type of interest protected by substantive due process, whereas “the right to a specific job” is not. *See Burns v. Alexander*, 776 F. Supp. 2d 57, 92 (W.D. Pa. 2011).

Here, Sawicki has only alleged that she can no longer pursue the calling of civil rights advocacy through the means of litigation, rather than alleging

that she has been completely foreclosed from advocating for civil rights. In fact, Sawicki specifically alleges that she still does participate in civil rights advocacy, albeit at a diminished capacity. (Doc. 85, ¶ 266.) Moreover, Sawicki voluntarily gave up her law license through retirement. The state did not deprive her of any liberty interest in her ability to practice law, because she had already voluntarily surrendered that interest. Therefore, the second amended complaint fails to state a claim for a substantive due process violation of Sawicki's liberty interest in conducting civil rights advocacy and will be dismissed on these grounds.

Next, the court turns to whether Sawicki has sufficiently alleged a fundamental property interest in the operating funds of the Law Office for substantive due process purposes. Here, Sawicki has alleged that, under state law, she has a property interest in the funds of the LLC by virtue of her role as member.¹¹ However, Sawicki has not provided any authority or support for the assertion that a state law interest in an LLC is the fundamental type of property interest that is protected by substantive due process. Heeding the guidance to expand substantive due process with only the utmost care, the court declines to expand substantive due process here. Therefore, the second amended complaint fails to state a claim for a violation of substantive due process and will be dismissed on this basis.

In conclusion, the second amended complaint fails to state any constitutional violation. Further,

¹¹ 15 PA. CON. STAT. § 8841(f).

Sawicki cannot state a claim under § 1983 against the individual defendants or the municipal defendants because she fails to allege a deprivation of a constitutional right. Similarly, the second amended complaint cannot support a claim for conspiracy to violate another's constitutional rights because she has not adequately alleged a violation of a constitutional right. See *Black v. Montgomery County*, 835 F.3d 358, 372 n.14 (3d Cir. 2016). Accordingly, the second amended complaint will be dismissed in its entirety.

C. Leave to Amend

Federal Rule of Civil Procedure 15(a)(2) provides that “[t]he court should freely give leave [to amend a pleading] when justice so requires.” FED. R. CIV. P. 15(a)(2). The Supreme Court has held that amendment should be freely given, absent “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). In civil rights cases, “courts must offer amendment irrespective of whether it is requested when dismissing a case for failure to state a claim unless doing so would be inequitable or futile.” *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007).

Here, the court finds that amendment would be futile. Having filed three complaints so far, Sawicki has been unable to allege facts which show that she sustained a constitutional injury as a result of the factual

circumstances detailed in her complaints. *See O'Donnell v. Simon*, 362 Fed. App'x 300, 305 (3d Cir. 2010) (upholding district court's denial of leave to amend after second failure to assert a constitutional injury.) Accordingly, any further amendment would be futile, and the second amended complaint will be dismissed with prejudice.

CONCLUSION

The second amended complaint fails to state a claim of First Amendment retaliation or a deprivation of procedural or substantive due process rights. Further amendment would be futile. Accordingly, the second amended complaint is dismissed with prejudice. An order follows.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Judge
Middle District of Pennsylvania

Dated: January 18, 2024

App.55

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

Nos. 24-2033 & 24-2120

NOT PRECEDENTIAL

MARIANNE SAWICKI,
Appellant in No. 24-2033

v.

MICHAEL M. KIPPAN; LORI HEATON; HUNTINGDON-
BEDFORD-FULTON AREA AGENCY ON AGING; CHRIS-
TOPHER B. WENCKER; DAVID G. SMITH; COUNTY OF
HUNTINGDON, PENNSYLVANIA; GEORGE N. ZANIC;
ANGELA ROBINSON; RICHARD A. WILSON; BOROUGH OF
HUNTINGDON, PENNSYLVANIA

RICHARD A. WILSON, BOROUGH OF HUNTINGDON
Appellants in No. 24-2120

On Appeal from the United States District Court for
the Middle District of Pennsylvania
(D.C. No. 1-21-cv-02031)
District Judge: Hon. Jennifer P. Wilson

Submitted under Third Circuit L.A.R. 24.1(a)
on April 29, 2025

Before: KRAUSE, BIBAS, and MONTGOMERY-
REEVES, Circuit Judges

(Opinion filed: May 1, 2025)

OPINION*

BIBAS, Circuit Judge

Marianne Sawicki sued nearly a dozen officials and municipalities for allegedly violating her constitutional rights. The District Court dismissed her second amended complaint and the defendants’ motion for attorney’s fees. We will affirm.

This saga begins with cats. Barbara Kissinger ran a nonprofit cat shelter. In 2019, police stopped her van, detained it, and recovered many cats. According to the complaint, “police locked the van and let it sit on the street with the animals inside for about 36 hours,” causing many of the cats to die. Dist. Ct. Dkt. 85, 2nd Am. Compl., at 17–18 (¶ 42). Yet Kissinger was charged with animal abuse, and solo civil-rights lawyer Marianne Sawicki represented her in that case. She also represented Kissinger in another case: One of the municipalities, Huntingdon Borough, demolished Kissinger’s house and filed a civil lien against her to recover the costs.

Next, we come to allegations of revenge. Sawicki alleges that a judge with a longstanding grudge against her removed her from representing Kissinger in the criminal case. She also claims that the Borough had not given Kissinger the notice required by stat-

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

ute, exposing the Borough to massive liability. To protect the Borough, officials allegedly conspired to stop her by crushing her legal practice and by forcing her to defend her law license. The judge and others reported her to the bar disciplinary board, where they testified that she was erratic and behaved disruptively in ways symptomatic of “severe mental illness.” Dist. Ct. Dkt. 85, Second Am. Compl., at 63 (¶ 187). Sawicki says this bar proceeding cost her not only time and money, but also a “marked deterioration of physical and mental health” that forced her to retire her law license and drastically scale back her remaining pro bono practice. *Id.*, at 85 (¶ 273).

The board found ten ethical violations and recommended suspending her law license for a year and a day. The Pennsylvania Supreme Court did so. *Off. of Disciplinary Couns. v. Sawicki*, No. 3005 Disciplinary Docket No. 3, 2023 Pa. LEXIS 1726 (Dec. 22, 2023) (per curiam).

Meanwhile, Sawicki sued the Borough, the county, the Borough’s lawyer, and various judicial officials in federal court. In her second amended complaint, she alleged First Amendment retaliation against her for her protected advocacy for Kissinger and violations of due process in depriving her of her law practice and its funds. The District Court dismissed that complaint for failure to state a claim and denied leave to amend a third time. Sawicki appeals. We review de novo. *Doe v. Hesketh*, 828 F.3d 159, 166–67 (3d Cir. 2016).

First, Sawicki argues that the District Court lacked jurisdiction because her claims were not yet ripe; she was not suspended until after it dismissed her case. But she concedes that her formal suspension

from practicing law is not her alleged injury. Rather, “[t]he injury identified in the pleading was ... the gradual strangulation of [her] law practice” and “extinguish[ing] her constitutionally protected activity of speaking out in advocacy for civil rights.” Appellant’s Br. at 33. Her complaint devoted sixteen paragraphs to these and other injuries that she had *already* sustained because of the pending disciplinary proceedings. See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (listing both monetary harms and constitutional-rights violations as Article III injuries). Those allegations were enough to show that her claims had ripened. Her injuries were not “dependent on contingent future events that may not occur as anticipated,” like the state’s suspending her law license. *Trump v. New York*, 592 U.S. 125, 131 (2020) (internal quotation marks omitted). They had already happened.

Turning to the merits, Sawicki fails to state a First Amendment retaliation claim. Her allegations boil down to saying that the defendants triggered a state bar investigation to prevent her from litigating civil-rights cases. But “[w]hen a public official is sued for allegedly causing a third party to take some type of adverse action against a plaintiff’s speech, we have held that defendant’s conduct must be of a particularly virulent character.” *McLaughlin v. Watson*, 271 F.3d 566, 573 (3d Cir. 2001). Criticizing the plaintiff or even urging adverse action is not enough; “[r]ather, defendant must ‘threaten’ or ‘coerce’ the third party to act.” *Id.* “[I]n the absence of a threat, coercion, or intimidation intimating that punishment, sanction, or adverse regulatory action will follow, such speech does not adversely affect a citizen’s First Amendment rights even if defamatory.” *Id.* (internal quotation

marks omitted). Sawicki does not clear this hurdle: She never alleges that anyone threatened or coerced the board. Plus, her conclusory conspiracy allegations are implausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Sawicki also challenges the dismissal of her due-process claims. As she concedes, she cannot use a federal district court to appeal a state Supreme Court's disciplinary adjudication. *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486–87 (1983). Instead, she says the officials subverted the disciplinary process by filing false reports and lying to investigators. But that assertion is just her retaliation theory repackaged. So it too crashes into *McLaughlin*'s bar.

And the District Court properly denied Sawicki leave to amend yet again. Amendment would be futile because her theories are baseless, and her proposed third amended complaint did nothing to cure these deficiencies.

Cross-appealing, the Borough and its lawyer say the District Court should have held a hearing on whether Sawicki litigated in bad faith and should have awarded attorney's fees. But as they admit, awarding attorney's fees to a prevailing party in a civil-rights case is discretionary. 42 U.S.C. § 1988(b). We review for abuse of discretion. *Raab v. City of Ocean City*, 833 F.3d 286, 292 (3d Cir. 2016). On these facts, the District Court could have found the lawsuit frivolous and awarded attorney's fees. But given Sawicki's mental impairments, the District Court did not abuse its discretion in choosing not to do so. We will thus affirm both the dismissal with prejudice and the denial of attorney's fees.

App.60

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 25-3581

MARIANNE SAWICKI,
Appellant

v.

RICHARD A. WILSON; CHRISTOPHER B. WENCKER;
GEORGE N. ZANIC; DAVID G. SMITH; ANGELA ROBIN-
SON; LORI HEATON; GLORIA R. AMMONS; SHOHIN H.
VANCE

(E.D. Pa. No. 2:25-cv-04884)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, and HARDIMAN,
SHWARTZ, KRAUSE, RESTREPO, BI-
BAS, PORTER, MATEY, PHIPPS, FREE-
MAN, MONTGOMERY-REEVES,
CHUNG, BOVE, and MASCOTT, *Circuit
Judges*

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

App.61

for rehearing by the panel and the Court en banc is
DENIED.

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: March 13, 2026

Amr/Cc: All Counsel of Record

App.62

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

C.A. No. 25-3581

MARIANNE SAWICKI,
Appellant

v.

RICHARD A. WILSON, et al.

(E.D. Pa. No. 2:25-cv-04884)

Present: KRAUSE, BIBAS and MONTGOMERY-
REEVES, *Circuit Judges*

1. Petition for Rehearing by Appellant Marianne Sawicki treated, pursuant to I.O.P. 10.3.3, as a motion for reconsideration of the Court's Order of 3/5/26 awarding attorneys' fees and single costs.

Respectfully,

Clerk

ORDER_____

The foregoing motion is denied.

By the Court,

s/Stephanos Bibas

Circuit Judge

Dated: April 8, 2026

Amr/Cc: All counsel of record

U.S. Const. amend. I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. XIV § 1 provides, in relevant part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1988 provides, in relevant part:

(b) Attorney's fees: In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Fed. R. App. P. 38 provides:

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

3d Cir. L.A.R. 26.1.2(a) provides:

If any judge of this court participated at any stage of the case, in the trial court or in related state court proceedings, appellant, promptly after filing the notice of appeal, must separately file with the clerk a notice of the name of the judge and the other action, and must send a copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so notify the clerk if, for any reason, appellant fails to comply with this rule fully and accurately.

App.65

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 25-3581

MARIANNE SAWICKI,

Appellant,

v.

RICHARD A. WILSON, ET AL.,

Appellees.

NOTICE OF POSSIBLE JUDICIAL DISQUALIFI-
CATIONS

Appellant Marianne Sawicki, pursuant to Local Rule 26.1.2 of the Third Circuit Local Appellate Rules, respectfully suggests that Judges Kraus, Bibas, and Montgomery-Reeves be disqualified from hearing this appeal, on the basis of their involvement in a prior appeal to this Court. Those honorable jurists served as the panel for appeal No. 24-2033, *Sawicki v. Kipphan, et al.*, which the district court has cited here as “*Sawicki I.*” The non precedential Opinion in the prior matter not only impermissibly extended the precedential holding of *McLaughlin v. Watson*, 271 F.3d 566 (3d Cir. 2001), but also materially departed from facts pleaded. Those errors were identified in a timely petition. See Pet. for Reh’g, doc. 58 of case no. 24-2033. (A copy is appended below.) But the panel declined to rehear that appeal. Some of the law and facts implicated in the prior appeal remain at issue here.

App.66

Moreover, as documented in the rehearing petition, the author of the panel opinion poked fun at the undersigned and apparently deemed the matter risible. See Pet. for Reh'g at 13; see also *id.* at 10 n.6. There is nothing funny about corrupt practices in a state court system, as alleged here, and it surely is beneath the dignity of this Court to use the derogatory trope of *elderly cat ladies* to discredit a sincere, respectful litigant.

For the reasons set forth above, and in view of the errors documented in the unsuccessful rehearing petition for *Sawicki v. Kipphan*, copied below, the members of the panel who decided that appeal should not participate in reviewing this one.

Respectfully submitted,

/s/ Marianne Sawicki

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Date: December 31, 2025.

[Appendix omitted. See doc. 7 of *Sawicki v. Wilson*, case no. 25-3581, 3d Cir. (Dec. 31, 2025).]