No. 14-4765

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Frederick J. Neroni,
Appellant.

On Appeal from the United States District Court for the Northern District of New York

BRIEF OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

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JURISDICTIONAL STATEMENT

The district court, pursuant to its jurisdiction under 28 U.S.C. § 1331, issued an order to show cause why it should not impose a pre-filing injunction on appellant under 28 U.S.C. § 1651. SA1.[1] On November, 26 2014, the district entered a final order and injunction. A8. Appellant filed a timely notice of appeal on December 22, 2014. A9; *see* Fed. R. App. P. 4(a)(1). This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the district court abused its discretion in entering an injunction requiring appellant to seek leave of court to file any document or pleading without leave of court, and in denying appellant's motion to recuse.

STATEMENT OF THE CASE

Appellant Frederick Neroni, a former attorney, has pursued a "barrage of lawsuits" in the U.S. District Court for the Northern District of New York, since his disbarment in 2011. *See Neroni v. Coccoma*, 2014 WL

[1] Citations to the documents in Appendix to Appellant's brief are "A_." Citations to the document in the Supplemental Appendix filed with this brief are "SA_."

2532482, at 1 (N.D.N.Y. June 5, 2014); *In re Neroni*, 926 N.Y.S. 2d 744 (N.Y. App. Div. 2011) (affirming disbarment).

Many of these actions seek to relitigate various state court proceedings and include allegations by Neroni of impropriety and bias by state court judges, agencies, and other state officials. As one state court has noted, Neroni had "a documented history of seeking the disqualification of jurists who have rendered unfavorable decisions" in that matter. *Mokay v. Mokay*, 124 A.D.3d 1097, 1099 n.1 (N.Y. App. Div. 2015). Neroni's recent history in the district court includes the following actions:

- In *Neroni v. Coccoma*, No. 3:13-CV-1340, 2014 WL 2532482 (N.D.N.Y. June 5, 2014) *aff'd,* 591 F. App'x 28 (2d Cir. 2015), Neroni sued New York state judges, court officials, private attorneys, and private law firms, alleging various improprieties and constitutional violations relating to circumstances surrounding his disbarment. The district court dismissed the action, denied various motions to disqualify the court and counsel, and this Court affirmed.
- In *Neroni v. Zayas*, No. 3:13–CV–0127, 2014 WL 1311560 (N.D.N.Y. Mar. 31, 2014), *appeal dismissed*, No. 14-1369 (2d Cir.

Aug. 28, 2014), Neroni sued several New York state judges, the governor, the attorney general and employees of the state Committee on Professional Standards, seeking to raise various claims relating to a post-disbarment investigation of Neroni. The district court dismissed the complaint in part, and this Court dismissed the appeal. The district court subsequently granted defendant's motion for judgment on the pleadings. *Neroni v. Zayas,* No. 3:13-CV-0127, 2015 WL 3544652, at *8 (N.D.N.Y. June 4, 2015), *appeal pending* No. 15-2030 (2d Cir. June 23, 2015).

- In *Neroni v. Grannis*, No. 3:11–CV–1485, 2013 WL 1183075 (N.D.N.Y. Mar. 21, 2013), *appeal dismissed*, No. 13-1568 (2d Cir. Feb 11, 2014), Neroni brought an action against state Department of Environmental Conservation officials alleging improprieties relating to a state court proceeding. The district court dismissed the action, and this Court dismissed the appeal.
- In *Bracci v. Becker*, No. 1:11–cv–1473, 2013 WL 123810 (N.D.N.Y. Jan. 9, 2013), *aff'd*, 568 F. App'x 13 (2d Cir. 2014), Neroni sued a

state court judge and various state officials, claiming bias in state court proceedings. The district court dismissed the complaint, and this Court affirmed.

- In *Neroni v. Becker*, No. 3:12–cv–1226, 2012 WL 6681204 (N.D.N.Y. Dec. 21, 2012), *aff'd in part, vacated in part by* 555 F. App'x 118 (2d Cir. 2014), Neroni sued a state court judge and various state officials, alleging that the judge was biased in state court proceedings. The district court dismissed the complaint. This Court affirmed the dismissal of the complaint and remanded the case for the district court to reconsider, in light of intervening Supreme Court case law, its decision to abstain from adjudicating certain claims. *See* 555 F. App'x 118. On remand, the district court dismissed the complaint, and this Court affirmed. *See Neroni v. Becker*, No. 3:12-CV-1226, 2014 WL 2532479, at *5 (N.D.N.Y. June 5, 2014) *aff'd*, 595 F. App'x 94 (2d Cir. 2015).

In at least one case, Neroni has been sanctioned for his conduct and ordered to pay attorney's fees. *See Neroni v. Becker,* No. 3:12-CV-1226, 2013

WL 5126004, at *3 (N.D.N.Y. Sept. 12, 2013) *aff'd*, 609 F. App'x 690 (2d Cir. 2015).

Following the dismissal of yet another of Neroni's cases "lack[ing] any basis in fact or law," SA1, the district court issued an order to show cause why an anti-filing injunction should not issue. In conformity with this Court's guidance in *Iwachiw v. N.Y.S. Dep't of Motor Vehicles*, 396 F.3d 525, 528 (2d Cir. 2005) (setting forth factors for anti-filing injunctions), the district court found "overwhelming support" for the issuance of an injunction.

First, the court observed that Neroni had a history of vexatious and duplicative litigation. In the United States District Court for the Northern District of New York, Neroni had filed five actions—some of which he represented himself *pro se* and others in which he was represented by his wife, stemming from similar circumstances and against many of the same defendants. SA3. Four of the lawsuits were dismissed in their entirety, and one was dismissed in part. SA3 n2. Second, the district court professed "little doubt that Neroni lacks a good-faith expectation in prevailing in his lawsuits." SA3. Third, the court cited the "unnecessary burden" Neroni's litigation tactics have imposed on the court. *Id.* Finally,

the court observed that previous sanctions, including imposing attorneys fees and costs, have not curbed Neroni's filings, but instead "fueled Neroni's fire and caused him to insist on the court's recusal or disqualification in subsequent litigation." SA4. Having reviewed Neroni's record of filings and considered the factors in this Court's precedents, the district court ordered Neroni to show cause why he should not be enjoined from further filings in the district court without leave of the Chief Judge. *Id.*

Neroni filed a response to the order to show cause which was largely unresponsive. Instead, he raised a host of allegations against judges who had ruled in his previous cases, including allegations of bribery, SA9, conflicts of interest arising from the employment of former law clerks at one particular law firm, SA10-28, 31-54 (attaching law firm website biographies), and improper contacts between judges and litigants by virtue of their respective involvement with an Inn of Court, SA21-24. He also recounted his history of filing recusal motions in his pending cases and repeated allegations of the court's bias against him. SA27-29. In addition, Neroni filed a motion to dismiss and for recusal, repeating many of the same arguments.

Because Neroni "failed to provide sufficient justification for his previous conduct," A1, the district court permanently enjoined him from filing any document or pleading in the Northern District of New York without leave of the Chief Judge and subject to certain requirements. Under the order, any petition for leave must contain: (1) an explanation of whether any defendant to the lawsuit was previously involved in any of Neroni's prior litigation; (2) information about all of Neroni's lawsuits and their status; (3) a description of judgments against Neroni; (4) a description of judgments rendered in favor of Neroni; and (5) a description of sanctions imposed in any case. A3-4. The order required that he file an accompanying affidavit affirming that his present claims are made in good faith. A4-5. The court also denied his motion to dismiss and recuse and certified, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal of the order would not be in good faith. A8.

SUMMARY OF THE ARGUMENT

A litigant who has a demonstrated history of abusing the judicial process and filing vexatious and duplicative lawsuits is properly subject to sanctions, including limitations on the litigant's ability to file future lawsuits. This Court has counselled that a "district court not only may but

should protect its ability" to perform its constitutional functions from the heavy burdens imposed on the courts by such a litigant. *Abdullah v. Gatto*, 773 F.2d 487, 488 (2d Cir. 1985).

None of Neroni's challenges to the district court's pre-filing order have merit. After evaluating the factors set forth by this Court and giving Neroni notice and opportunity to be heard, the district court appropriately exercised its authority to enter a pre-filing order against Neroni. The entry of the order *sua sponte* and outside of the course of one of Neroni's lawsuits is supported by this Court's precedents. The scope of the injunction was appropriate and necessary to permit the district court to evaluate whether future filings are duplicative or vexatious. And Neroni's challenge to the district court's certification under 28 U.S.C. § 1915(a)(3) that any appeal would not be in good faith is meritless.

The District Court properly denied Neroni's recusal motion. And he has pointed to no reasonable basis for questioning the district court judge's impartiality.

STANDARD OF REVIEW

This Court reviews for abuse of discretion orders imposing sanctions, including pre-filing orders. *See United States v. International Bhd. of*

Teamsters, 266 F.3d 45, 49 (2d Cir. 2001); *Gollomp v. Spitzer*, 568 F.3d 355, 368 (2d Cir. 2009). A judge's decision regarding recusal is also reviewed for abuse of discretion. *In re Basciano*, 542 F.3d 950, 956 (2d Cir. 2008).

ARGUMENT

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ENTERING A PRE-FILING ORDER.

A. The District Court appropriately exercised its authority to enter a pre-filing order.

1. Where a litigant has "demonstrated a clear pattern of abusing the litigation process by filing vexatious and frivolous complaints," a court may limit a litigant's normal opportunity to pursue lawsuits. *In re Sassower*, 20 F.3d 42, 44 (2d Cir. 1994). It is "beyond peradventure" that a district court's authority to sanction a litigant who abuses the judicial process by filing onerous and duplicative lawsuits, includes the authority to enjoin the litigant from future vexatious litigation. *Safir v. United States Lines, Inc.*, 792 F.2d 19, 23 (2d Cir. 1986). Indeed, this Court has admonished that, in such circumstances, a "district court not only may but should protect its ability" to perform its constitutional functions from the heavy burdens imposed on the courts by such a litigant. *Abdullah v. Gatto*, 773 F.2d 487, 488 (2d Cir. 1985). Such an authority originates from the

court's traditional power in equity and has been codified in the All Writs Act, 28 U.S.C. § 1651(a) (1976). *See Ward v. Pennsylvania N.Y. Cent. Transp. Co.*, 456 F.2d 1046, 1048 (2d Cir. 1972); *In re Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982).

Exercising this power, courts have imposed sanctions, including prohibiting filings outright in entire categories of cases, requiring leave of court for future filings, and limiting *in forma pauperis* status. *See In re Sassower*, 20 F.3d at 44 (discussing range of sanctions imposed). This Court has availed itself of these procedures when the conduct of a litigant proves it necessary to spare the Court from future burdensome litigation. *See, e.g.*, *In re Martin-Trigona*, 9 F.3d 226 (2d Cir. 1993) (imposing leave of court requirements on a sanctioned litigant in the Court of Appeals); *In re Sassower*, 20 F.3d at 44 (imposing leave of court procedures for filing judicial misconduct complaints). Due to an ever increasing need to protect the judicial system from abusive litigants, the Board of Judges of the

Northern District of New York in 2012 adopted a policy providing for a regularized process for handling these litigants. *See* SA6.[2]

2. The district court did not abuse its discretion in issuing the injunction here. When confronted with a litigant who is abusing the judicial process, this Court has advised district courts to consider the following factors before imposing some type of anti-filing injunction:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Iwachiw v. N.Y.S. Dep't of Motor Vehicles, 396 F.3d 525, 528 (2d Cir. 2005). In this case, the district court considered all of these factors and correctly found that they weighed in favor of restricting Neroni's ability to file future

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[2] This Court may take judicial notice of the policy. *See* Fed. R. Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it: . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); *cf. Schwartz v. Capital Liquidators, Inc.*, 984 F.2d 53, 54 (2d Cir. 1993) (judicial notice of fact based on court's docket entry). The policy is included in the Supplemental Appendix for the court's convenience. SA6.

frivolous lawsuits. Indeed, Neroni has made no argument before the district court or before this Court that attacks the district court's weighing of these factors.

First, the district court correctly found that Neroni had a history of vexatious and duplicative litigation, including five actions in the district court some of which involved overlapping claims and defendants. SA3. Second, the fact that four of the lawsuits were dismissed in their entirety and one was dismissed in part, SA3 n.2, evinced a lack of "a good-faith expectation in prevailing in his lawsuits." *Id.* Third, Neroni has proceeded *pro se* or been represented by his wife as counsel,[3] while the defendants in his various lawsuits have had to retain counsel. Fourth, Neroni's litigation tactics have imposed an "unnecessary burden" on the court and its personnel. *Id.* Finally, previous sanctions, including imposing attorneys fees and costs, have done little to deter Neroni's behavior. SA3-4.

[3] Like Neroni himself, Tatiana Neroni has been sanctioned by the district court for bringing a lawsuit in bad faith. *See Neroni v. Becker,* No. 3:12-CV-1226, 2013 WL 5126004, at *3 (N.D.N.Y. Sept. 12, 2013) *aff'd*, 609 F. App'x 690 (2d Cir. 2015). In addition, she has been suspended from practicing law in New York for similar conduct. *See In re Neroni*, 2015 WL 7118501 (N.Y. App. Div. Nov. 13, 2015).

An injunction is particularly appropriate where the litigant has a history of using litigation to harass judges, such as by repeated attempts at disqualification. *See In re Martin-Trigona*, 737 F.2d 1254, 1263 (2d Cir. 1984) (Litigant's "established practice of resorting to litigation in various fora as a means of harassing anyone who so much as crosses his path in the federal courts . . . requires us to afford protection to such individuals so they may be spared further harassment and so resort to the federal courts by others is not chilled."). In this respect, Neroni is correct that the district judge entering the order "was protecting himself" in entering the order. Br. 17. Properly so. Neroni's "senseless and unduly burdensome" tactics of seeking disqualification of judges who decide his cases consume considerable amounts of the court's resources and prevent the administration of justice. *Cf. Safir*, 792 F.2d at 24 (affirming anti-filing injunction imposed on litigant who, after seeking discovery of the "Nixon tapes" on the belief that Nixon administration officials conspired with defendants to prevent his suit, sought disqualification of a judge in another action because the judge was allegedly a friend of President Nixon). A pre-filing order aimed at screening these abuses was not only reasonable, but it was required to protect the court's processes.

3. The show cause order belies Neroni's suggestions, Br. 6-7, 16-17, that he was not afforded proper notice or the opportunity to respond. The district court's order to show cause set out this Court's standard for imposing filing restrictions, detailed the district court's analysis of the factors and understanding of the record, and permitted Neroni fourteen days to file a response. SA2-4. In a similar case, this Court noted that the district court complied with this court's "unequivocal rule" to provide notice and opportunity to be heard, where the pre-filing order was entered at a hearing nineteen days after court's order warning to the litigant that an injunction might issue. *See Iwachiw*, 396 F.3d at 527-29 (citing *Moates v. Barkley*, 147 F.3d 207, 208 (2d Cir. 1998). Neroni points to no authority requiring more.

4. Nor is there any merit to Neroni's suggestion that the district court's order was improper because it was entered *sua sponte* and outside the course of one of Neroni's many lawsuits. This Court has rejected similar arguments about a district court's jurisdiction to enter an anti-filing injunction *sua sponte*. In *In re Martin-Tragona*, 737 F.2d at 1256, 1261-62, for instance, the litigant had at least three pending cases before the district court, but the district court entered a *sua sponte* show cause order under a

separate caption. Dismissing the suggestion that the district court lacked jurisdiction because there was no case or controversy, the Court explained that "[f]ederal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Id.* at 1261. Requiring a court to wait until a private party obtained injunctive relief against a vexatious litigant, would "endanger[]" the "independence and constitutional role of Article III courts." *Id.* Therefore, "[a] history of litigation entailing 'vexation, harassment and needless expense to other parties' and 'an unnecessary burden on the courts and their supporting personnel is enough.'" *Id.* (alterations omitted) (citing *In re Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982)); *see also Moates v. Rademacher*, 86 F.3d 13, 15 (2d Cir. 1996) (acknowledging that "a district court may impose, sua sponte, an injunction on a party who abuses the judicial process").

5. Neroni's attacks on the scope of the injunction are equally without merit. Br. 19-20. The district court issued a pre-filing order imposing a handful of standard leave-of-court requirements. Pre-filing orders are among the "less drastic" remedies for vexatious litigants, significantly less

harsh than a complete bar on a litigant from filing complete categories of cases. *See In re Martin-Trigona*, 9 F.3d at 229-30.

Moreover, the leave requirements imposed to aid the court in weeding out future frivolous or duplicative lawsuits are reasonable in light of Neroni's filing history. None of these requirements impermissibly "condition" Neroni's access to the courts in the way he suggests. Br. 22.

Rather, the order imposes rather routine requirements to permit the court to assess whether a new claim is an attempt to relitigate meritless claims that have been dismissed or harass those involved in those cases. For instance, the requirement that Neroni disclose the identities of defendants in any new litigation, and particularly whether the defendants were involved in any previous lawsuit, assists the court in screening out new duplicative lawsuits. Similarly, disclosing whether any defendants have been judges, attorneys or court officers in those previous suits helps the court to determine whether Neroni is engaged in a common tactic of vexatious litigants. *See In re Martin-Trigona*, 9 F.3d at 230 ("Making judges defendants in a repetitive series of lawsuits whenever a judge rules against a litigant is also a tactic employed by many vexatious litigants."). These are "reasonable precaution[s]" to protect federal judges, court personnel or

others who are the targets of harassment. *Id.* at 229. The requirement that Neroni disclose the status of any payment pursuant to a past judgment or sanctions order, *see* Br. 21-22 (objecting to such a requirement), is a tool for assessing the adequacy of other sanctions. *Cf. In re Martin-Trigona*, 737 F.2d at 1262 (noting that other sanctions would not be effective in light of litigant's pending bankruptcy proceedings).

Finally, Neroni's repeated protests that the pre-filing order improperly interferes with his pending cases, Br. 8, 10, ignores the language of the pre-filing order that expressly protects his right of access to the courts "in any of his currently pending actions in state or federal court." A7-8.

6. Neroni's challenge to the district court's certification under 28 U.S.C. § 1915(a)(3) that any appeal would not be in good faith fares no better. That certification merely prohibits an *in forma pauperis* appeal here. Since Neroni has not sought *in forma pauperis* status in this appeal, it is unclear how the certification has an adverse effect on him.

In any event, he makes no serious argument that the certification was invalid, nor could he. The Supreme Court has itself imposed an order prohibiting a litigant from filing *in form pauperis* requests for an entire class

of cases, over the objections of two justices that the order improperly blocked the litigant's access to the courts. *See In re McDonald*, 489 U.S. 180, 185 (1989) (order prohibiting litigant from filing *in forma pauperis* requests for extraordinary writ); *id.* at 187-88 (Brennan, J., dissenting).

B. The District Court properly rejected Neroni's recusal motion.

Neroni's motion for recusal of the district court judge was properly denied. He has pointed to no reasonable basis for questioning the district court judge's impartiality. Instead, Neroni repeats his assertions that the district court judge should be disqualified because Neroni's wife had criticized the district court judge's ruling in another case in the comments section of a blog post. Br. 12-13. He further presses his theories that the judges presiding over his cases in district court have "incestuous" ties to a particular law firm, including the fact that the law firm has hired the district judge's former law clerks, and that the judges failed to disclose these allegedly improper ties. Br. 13-15. This conduct is consistent with his vigorous recusal efforts in earlier cases. *See Bracci v. Becker*, No. 1:11-cv-1473, 2013 WL 123810, at 2-3 (N.D.N.Y. Jan. 9, 2013), *aff'd*, 568 F. App'x 13 (2d Cir. 2014); *Neroni v. Becker*, No. 3:12-cv-1226, 2012 WL 6681204, at 4

(N.D.N.Y. Dec. 21, 2012), *aff'd in part, vacated in part by*, 555 F. App'x 118 (2d Cir. 2014).

It is "rare" for "a district judge's denial of a motion to recuse" to be "disturbed by an appellate court." *SEC v. Razmilovic*, 738 F.3d 14, 30 (2d Cir. 2013). There is no basis for disturbing the district court's decision here. Each of Neroni's complaints about the district court judge is based on routine and entirely proper conduct. There is nothing suspect or disqualifying in the fact that the district court judge may have former law clerks employed by a particular law firm. And that fact does not require the judge to recuse himself from hearing a case in which that law firm appears, much less in a related sanctions action. Similarly, litigants may criticize a court's rulings, sometimes harshly, without requiring a judge to recuse himself from the litigant's case. To the contrary, if Neroni's theory were correct, a strategic litigant could disqualify any judge who issues an unfavorable ruling merely by criticizing the judge loudly or harshly enough. *United States v. Bayless*, 201 F.3d 116, 129 (2d Cir. 2000) ("Such a reading of the statute would create a moral hazard by encouraging litigants

or other interested parties to maneuver to obtain a judge's disqualification.").[4]

[4] Neroni gestures to an array of factual and legal arguments with varying degrees of relevance to this appeal. *See, e.g.*, Br. 8-10 (failure to personally serve the order to show case); Br. 12 (violations of rights under the First, Fifth, and Fourteenth Amendments); Br. 25 (constitutional violations and discussion of judicial collusion). For many of these issues, Neroni cites no legal authority and provides no supporting argument or explanation. By failing to raise the issues adequately in his opening brief, Neroni has waived them. *See Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998) ("Issues not sufficiently argued in the briefs are considered waived and normally will not be addressed on appeal."); *id.* at 118 (stating an issue without advancing an argument does not suffice). In any event, these arguments are meritless and not worthy of response.

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

Respectfully submitted,

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DECEMBER 2015

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(A)

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Book Antigua, a proportionally spaced font. I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because it contains 4,051 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

/s/ Jaynie Lilley
Jaynie Lilley

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2015, I filed with the Court in hard copy (6 copies) and through the appellate CM/ECF system. Service will be accomplished through the appellate CM/ECF system and via Federal Express to:

Frederick J. Neroni,
Appellant Pro Se
203 Main Street
Delhi, NY 13753

/s/ Jaynie Lilley
Jaynie Lilley

No. 14-4765

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Frederick J. Neroni,
Appellant.

On Appeal from the United States District Court for the Northern District of New York

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: FREDERICK J. NERONI, **3:14-af-5 (GLS)**

Respondent.

ORDER

On June 5, 2014, this court dismissed Frederick J. Neroni's fifth complaint filed in this District.[1] Like the four other complaints, Neroni's complaint lacked any basis in fact or law.

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[1] *See Neroni v. Coccoma*, No. 3:13-cv-1340, 2014 WL 2532482, at *12, *14 (N.D.N.Y. June 5, 2014) (dismissing action regarding the circumstances surrounding Neroni's disbarment, and an underlying New York state case, pending in Supreme Court in Delaware County brought against a host of New York state judges, court officials, private attorneys, and private law firms, and describing the action as "frivolous, baseless, and vexatious"); *Neroni v. Zayas*, No. 3:13-CV-0127, 2014 WL 1311560, at *1, *12 (N.D.N.Y. Mar. 31, 2014) (dismissing, in part, Neroni's complaint alleging "various constitutional violations related to his disbarment"); *Neroni v. Grannis*, No. 3:11-CV-1485, 2013 WL 1183075, at *1, *14-15 (N.D.N.Y. Mar. 21, 2013) (dismissing action against "a number of New York State officials" regarding the legality of a pond constructed on Neroni's property, noting that the factual allegations upon which the complaint was based were "lengthy and convoluted," and describing the claims as "lacking in legal merit as well as being improperly brought," "legally deficient," and "conclusory and unsupported by any facts on the record"); *Bracci v. Becker*, No. 1:11-cv-1473, 2013 WL 123810, at *1, *30-31 (N.D.N.Y. Jan. 9, 2013) (dismissing action brought against three New York state judges and the state of New York, based on "a continuous and vicious pattern of retaliation by an obviously disqualified judge against an attorney and her clients and family members," and noting that the action was "frivolous and groundless" and that many of the plaintiffs' assertions were "baseless" (internal quotation marks and citations omitted)), *aff'd* 568 F. App'x 13 (2d Cir. 2014); *Neroni v. Becker*, No. 3:12-cv-1226, 2012 WL 6681204, at *1, *4 (N.D.N.Y. Dec. 21, 2012) (dismissing action "predicated on purported personal vendettas, judicial improprieties, and the unconstitutional application of New York statutes in an underlying civil action in which Neroni is presently a defendant" filed against Justice Becker and the state of New York), *aff'd in part, vacated in part by* 555 F. App'x 118 (2d Cir. Feb. 21, 2014); *see also Neroni v. Becker*, No. 3:12-cv-1226, 2013 WL 5126004, at *3 (N.D.N.Y. Sept. 12, 2013) (granting defendants' motion for costs and attorneys' fees and noting that the "action, and the arguments adduced in opposition to [d]efendants' [m]otion to [d]ismiss, were baseless, without foundation, and vexatious" (internal quotation marks and citation omitted)).

It is well settled that, *sua sponte*, "[a] district court may, in its discretion, impose sanctions against litigants who abuse the judicial process." *Shafii v. British Airways, PLC*, 83 F.3d 566, 571 (2d Cir. 1996) (citation omitted). Where a litigant persists in the filing of vexatious and frivolous suits, it may be appropriate to place certain limitations on the litigant's future access to the courts, such as the imposition of an anti-filing injunction. *See Hong Mai Sa v. Doe*, 406 F.3d 155, 158 (2d Cir. 2005) (citation omitted); *see also Shafii*, 83 F.3d at 571 ("The filing of repetitive and frivolous suits constitutes the type of abuse for which an injunction forbidding further litigation may be an appropriate sanction."). Before imposing such limitations, the court should consider:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Iwachiw v. N.Y.S. Dep't of Motor Vehicles, 396 F.3d 525, 528 (2d Cir. 2005) (citation omitted). In addition, the litigant must be given an

opportunity to show cause why an anti-filing injunction should not be entered. *Id.* at 529.

After carefully reviewing the record in this case, the court concludes that unless Neroni shows otherwise, he should be enjoined from any further filings without leave of the Chief Judge. As noted above, Neroni has filed five actions in the Northern District of New York, many stemming from similar factual circumstances and against many of the same defendants, which were all dismissed, at least in part.[2] There is little doubt that Neroni lacks a good-faith expectation in prevailing in his lawsuits—both in the lawsuits in which he represents himself *pro se*, *see Coccoma*, 2014 WL 2532482, and in actions in which he is represented by his wife, Tatiana Neroni, *see Zayas*, 2014 WL 1311560; *Grannis*, 2013 WL 1183075; *Bracci*, 2013 WL 123810; *Becker*, 2012 WL 6681204. Further, Neroni has posed an unnecessary burden on the court and its personnel. Finally, it is apparent that sanctions lesser than an anti-filing injunction would unlikely curb Neroni's excessive and abusive filings, particularly in light of the fact that, in *Becker*, 2013 WL 5126004, at *3, this court imposed

[2] In fact, only *Zayas* was dismissed in part, 2014 WL 1311560, at *1, *12; the others were dismissed in their entirety. *See Coccoma*, 2014 WL 2532482; *Grannis*, 2013 WL 1183075, at *1, *14-15; *Bracci*, 2013 WL 123810, at *1, *30-31; *Becker*, 2012 WL 6681204, at *1, *4.

sanctions on Neroni in the form of attorneys fees and costs, which has only fueled Neroni's fire and caused him to insist on the court's recusal or disqualification in subsequent litigation, *see Coccoma*, 2014 WL 2532482.

Notwithstanding the overwhelming support for the issuance of an anti-filing injunction, fairness and the interest of justice dictate that Neroni be given notice and an opportunity to be heard. *See Iwachiw*, 396 F .3d at 529. As such, he shall have fourteen (14) days from the date of this Memorandum-Decision and Order to show cause, in writing, why he should not be enjoined from any further filings in the Northern District of New York without leave of the Chief Judge.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Neroni shall, within fourteen (14) days of the date of this Order, show cause, *in writing*, why he should not be enjoined from any further filings in the Northern District of New York without leave of the Chief Judge; and it is further

ORDERED that if Neroni does not fully comply with this Order, the court will issue a subsequent order, without further explanation, permanently enjoining Neroni from filing a pleading or document of any kind in any other case in this District without leave of the court; and it is

further

ORDERED that the Clerk shall provide a copy of this Order to Neroni by certified mail.

IT IS SO ORDERED.

October 20, 2014
Albany, New York

Gary L. Sharpe
Chief Judge
U.S. District Court

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

BOARD OF JUDGES

P O L I C Y D O C U M E N T

Policy 23: **Anti-Filing Injunctions**

Category: **Civil and Case Management**

Applicable to: **Chambers Staff and Clerk's Office Staff**

Date Adopted: **August 27, 2012**
Date Amended: **March 24 , 2015**

****

Anti-filing injunctions, as opposed to case-specific sanctions, shall be issued by the Chief Judge and filed in a miscellaneous case.

Adopted June 6, 2007; revisited without modification September 15, 2007; reviewed and adopted with major modifications August 27, 2012. (The proposed Orders, Notices, and Procedures have been uploaded to the District's internal website under the Training and Resource Materials section.) The March 24, 2015 amendment includes the the procedure memo that is followed by the clerk's office when processing these actions.

Advisory Notes:

Unlike "bar orders," which limit a litigant's rights in a pending case, anti-filing injunctions place restrictions on a litigant's right to file a pleading or document of any kind in this District without first requesting permission from the Chief Judge to do so. As such, they are to be issued by the Chief Judge. However, any judicial officer may recommend to the Chief Judge that an anti-filing injunction be issued. To do so, the Judge should make detailed findings, in writing, that address the five factors discussed in *Iwachiw v. New York State Dep't of Motor Vehicles*, 396 F.3d 525, 528 (2d Cir. 2005).

MEMORANDUM

TO: Clerk's Office

FROM: Dan McAllister

DATE: Updated March 23, 2015

SUBJECT: Anti-Filing Injunction Orders/Bar Orders

It is important to note that when a judge has an issue with a litigant that goes beyond a bar order, and the judge is recommending to the chief judge that an Anti-Filing Injunction order be issued, the court will follow the policy adopted by the Board of Judges. The below procedure for handling orders limiting or barring litigants from filing has been approved by the Board of Judges. Please note that you may begin seeing three types of orders, **Bar Orders and Anti-Filing Injunction Orders, and Orders Recommending Litigant be Enjoined by Chief Judge.**

Bar Orders

A Bar Order is an order that can be issued by the presiding judge in a case which bars future filing in a specific case without prior approval by the presiding judge. When this order is issued, it shall be docketed using the event **Bar Order**. This will ensure that the proper personnel are notified and the Bar flag is set.

If a litigant submits documents after the issuance of a bar order, they shall be filed in the case, and the presiding judge shall be notified of such filing. An order may be issued striking or taking other action regarding the filing. If a Striking Order is issued, the original (hard copy paper) documents shall be returned to the litigant, with the electronic image remaining on ECF, with the indication that it was stricken by order. The documents are generally left on ECF so that the Court of Appeals can see what the Court struck and why.

Orders Recommending Litigant be Enjoined by Chief Judge

Periodically, judges will issue orders which recommend the Chief Judge issue an order enjoining a litigant from future filing in this district. **The presiding judge's CRD shall provide a copy of the order recommending the Chief Judge issue an anti-filing injunction order to the Chief Judge's CRD via email.** The Chief Judge will review this matter and if appropriate, issue an Order to Show Cause, giving the litigant 14 days to respond as to why they shall not be enjoined from filing. A miscellaneous case, set up in ECF as **"AF"** will be opened upon issuance of such order. The case will be assigned to the Chief Judge and opened with the order being the first document.

The docketing procedures for these types of Orders will be as follows:

- Use the division and county codes from the original case when **directly** assigning the **"AF"** case to Chief Judge Sharpe
- Do not assign the case to a Magistrate Judge

- Select "special circumstance" from the list of reasons for the direct assignment
- The short title should read "In Re: (party name)"
- Add the party using "In Re" as the role type and as "pro se not allowed to file electronically"
- Create case
- Set "Pro Se" Flag

Anti-Filing Injunction Orders

Anti-Filing Injunction Orders will **only be issued by the Chief Judge**, and prohibit a litigant from filing without prior permission of the Chief Judge. These orders apply only to future cases and have no bearing on pending cases. If a litigant submits filings after the issuance of the anti-filing injunction order, they are to be docketed in this AF case and the Chief Judge's chambers shall be notified. Peggy Conan and Sharon Broton will receive notification via NEF, as they will review the submissions and work with the Chief Judge on further action. **This is the one instance where our Pro Se Staff Attorneys may work on non-prisoner pro se matters.**

The AF case will be a centralized repository to house the documents that are submitted by a litigant who is subject to an anti filing injunction order. The case can be closed after the anti filing injunction order is docketed.

- Docket the order using **Other Orders -> Order - Anti-Filing Injunction**. At the docket text screen, add "as to(party name)" after the "". Indicate in the entry that an order was served upon the individual via certified mail, return receipt. This is all the text that is necessary for the entry. The Anti-Filing-Injunction flag will automatically be set.
- Close the case.
- The ECF Administrators (Bill Glatter, Penny Price, Angela Topa, Dan McAllister) will receive an NEF of the AF case opening
- One of the ECF Administrators will add the **Anti-Filing Injunction** status to the party who was subject to the order
- This status will be stored in the **Filer Status Report**, which is available to all court users to run and view
- ***This report must be referenced when assigning and opening pro se civil cases. If a pro se litigant is on the list, please docket submissions in the AF case, which will then be reviewed by the pro se staff attorneys.**

U.S. DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

In the matter of Frederick J. Neroni,

Respondent.

AFFIRMATION IN OPPOSITION

3:14-af-00005-GLS

Frederick J. Neroni affirms under the penalty of perjury in compliance with federal law that allows to file affirmations in lieu of affidavits:

1. That I was named as Respondent in the above action.

2. That I make this Affirmation in opposition to the court's sua sponte order to show cause.

3. That there was an order rendered in Neroni v. Grannis/Martens v. Neroni on October 23, 2014 (attached herein as Exhibit 1).

4. That no sanctions for frivolous conduct were imposed in that order.

5. That this court dismissed Neroni v. Grannis on Younger abstention ground and is bound by the ruling of the state court which did not impose sanctions upon me.

6. Yet, I have a reason to believe that the ruling in favor of DEC in Neroni v. Grannis/Martens v. Neroni was obtained by the DEC by bribing the presiding appellate judge.

7. I followed the appropriate channels to have these concerns investigated and filed complaints with the New York State Commission for Judicial Conduct and with the U.S. Attorney General's Office, which is already investigating, since spring of this year, as far as I know from the press, corruption in the New York State government as a whole and in the Governor's office specifically.

8. That punishing me based on Neroni v. Grannis at this time is the equivalent of punishing a witness in a federal and state investigation into public corruption, and interfering with such investigation.

9. This court has no authority to interfere into such investigation and should abstain from doing that.

10. I filed a motion to recuse and disqualify this entire court in Neroni v. Coccoma.

11. That motion was denied.

12. While denying the motion, this court failed to mention that attorneys representing some parties in the action, Hiscock & Barclays, LLP (hereinafter "HB"), are practically part of this court.

13. I personally researched HB's website.

14. I do not know when information that I obtained yesterday was placed there, yet, information pertaining to prior employment of HB's associates and partners in this court must be part of public records, this court's records.

15. As the Chief Judge of this court, Judge Sharpe cannot claim he did not know that a large number of associates and partners of HB worked for this very court, some of them very recently.

16. Judge Sharpe cannot claim he did not know that his own recent law clerk went to work for HB.

17. It was a clear appearance of impropriety to not disclose this circumstance to me as a pro se party, and especially under the circumstances when I was making a motion to recuse the court, opposing imposition of attorney fees in favor of HB, claiming disqualification of HB on multiple grounds and pointing out that certain actions of HB constituted attorney misconduct or

representation of non-clients in Neroni v. Coccoma, which did not entitle HB to collect "reasonable attorney fees" for such actions under 42 U.S.C. 1988, applicable only to representation of attorney's own clients in a civil rights action.

18. Such a leniency and selective blindness of Judge Sharpe was instantly explained to me by the involvement and prior employment of various associates and partners of HB with this court.

19. According to HB's website which, no doubt, must be matched by records of this court to which I refer this court, the following HB's attorneys were employed with this court:

a. Brittany E. Aungier, Associate, worked as a Law Clerk to Judge Frederick J. Scullin of this court (Exhibit 2);

b. Yvonne E. Hennessey, Partner, worked as a Confidential Law Clerk to Judge Frederick J. Scullin of this court, and assisted the same judge when he sat "by designation" on the U.S. Court of Appeals for the 2nd Circuit (Exhibit 3);

c. Ms. Hennessey also worked as a confidential clerk to Judge Norman A. Mordue, of this court (id.);

d. Edward G. Melvin II, Partner, worked as a Clerk for Judge Scullin (Exhibit 4);

e. Robert A. Barrer, Partner, worked as a Law Clerk for Judge Howard G. Munson, former Chief Judge of this court (Exhibit 5);

f. David G. Burch, Associate, worked as an office employee for Magistrate David R. Homer of this court (Exhibit 6);

g. Kathryn D. Cornish, Associate, worked as a Law Clerk for Judge Norman A. Mordue, judge of this court (Exhibit 7);

h. Jason Hughes, Associate, was Judge Gary L. Sharpe's own law clerk for two years (Exhibit 8);

i. Jason C. Halpin, Associate, was a Law Clerk to Judge Glenn T. Suddaby of this court (Exhibit 9);

j. Karen Southwick, Associate, was a Law clerk to Magistrate George H. Lowe of this court (Exhibit 10);

k. Kristin L. Walker, Associate, was a "Law Clerk Extern" for Judge David N. Hurd of this court (Exhibit 11);

l. John D. Cook, Partner, was a Law Clerk to Judge Howard G. Munson, of this court (Exhibit 12).

20. At least eleven attorneys of a law firm, four of them partners, were previously employed with the court in positions of clerks and confidential clerks of this court's judges, one of them as a law clerk for the presiding judge Gary L. Sharpe, and neither the attorneys, nor the court deemed it worth mentioning to a pro se party!

21. The appearance of impropriety where a judge awards fees to a law firm, without disclosure that the law firm in question constitutes an employer of choice for outgoing personnel of that same court is simply mind-boggling.

22. Yet, the impropriety does not end here.

23. According to the website of HB, and I refer this court to its own matching records, attorney John P. Langan, the Managing Partner of HB, occupies the following positions:

a. *A judicially appointed* Organizing Member of the Northern District of New York Federal Court Bar Association, and Founding Trustee/Officer (Co-President);

b. *A judicially appointed* Chair for the merit selection panel for appointment of a U.S. Magistrate Judge (Exhibit 13); and, separately

c. *A judicially appointed* Chair for the merit selection panel for re-appointment of a U.S. Magistrate Judge (id.).

24. Thus, the HB's Managing Partner is practically part of this court, which completely disqualifies his firm in appearing before this court, making extremely suspect this court's refusal to disqualify HB and award of legal fees for representation of non-clients (billing items regarding advocacy for a non-client retired judge Eugene Peckham and for a non-client spouse of the Chief Administrative Judge of Upstate New York Michael V. Coccoma, Ellen L. Coccoma).

25. At least, it was a huge appearance of impropriety when the court was ruling in favor of, refusing to see clear misconduct and conflict of interest of and awarded attorney fees in favor of practically a firm where its Managing Partner is playing judicially appointed roles pertaining to selection of judges for that court.

26. The appearance is that an exchange of benefits is possible under such circumstances, Mr. Langan should select judges as the court expects him to and the court is ruling for Mr. Langan's firm.

27. Furthermore, HB's partner John D. Cook, the former Law Clerk of this court's judge Howard G. Munson, is also part of this court's so-called "Local Rules Committee" (Exhibit 12).

28. As such, the perception to a reasonable observer also is that HB, through its partner Mr. Cook, is part of this court, it is making rules of this court by which other litigants (including myself) must live, including rules restricting litigants' access to court through

restriction of page limits for various motions pending at the same time, as the recent change in the rule provided.

29. None of that was disclosed to me by the court or HB.

30. I also noted that Judge Sharpe, the presiding judge on this action, punished me in Neroni v. Becker through award of attorney fees for review by the NYS Attorney General of cases that had nothing to do with me, but referred to cases relating to only my wife (sanctions against my wife unrelated to anything I did or even claims of non-existent sanctions against my wife in criminal appeals where I did not participate) or even to cases of third parties (O'Sullivan v. Hallock, a pro se action by a third party, a private litigation unrelated to Neroni v. Becker).

31. I noted that whenever Judge Sharpe presides over my case, he makes it a point to mention that I am "a disbarred and disgruntled former attorney".

32. Judge Sharpe also made statements in his decision awarding attorney fees to defendants other than state defendants, that I allegedly inappropriately sued judges.

33. That statement was completely irrelevant to the motion in front of Judge Sharpe, but it raises issues that Judge Sharpe's considers the person's or his attorney's status in making his judicial determinations, despite his oath of office requiring him to give equal protection of laws to all litigants and their counsel, without regard to their social status.

34. In the respect of status, I certainly cannot beat HB, attorneys in Neroni v. Coccoma's case, and the New York State Attorney General representing all state defendants in the cases referenced in the *sua sponte* court order of October 20, 2014.

35. To Judge Sharpe, I am not a victim of constitutional violations by the government.

36. To Judge Sharpe, I am, first and foremost, a "disbarred and disgruntled former attorney" who is below the law.

37. HB, on the other hand, is a law firm that has 11 attorneys (including 4 partners) who worked for judges of this court in confidential positions, a managing partner who selects magistrates for this court, a partner who makes rules for this court, as well as the following prominent associates and partners:

a. Douglas H. Barclay, of counsel, former NYS Senator (1965-1984) (Exhibit 14);

b. Neil D. Breslin, of counsel, present NYS Senator, member of the Judiciary Committee (Exhibit 15);

c. Maureen O. Helmer, Partner, former counsel to the NYS Senate Energy Committee (Exhibit 16);

d. Ransom P. Reynolds Jr., of counsel, former special counsel to NYS Senator William Smith (Exhibit 17);

e. William A. Barclay, partner, present NYS Assemblyman of the 124th District (Exhibit 18);

f. Donald M. Mawhinner Jr., of counsel, former Legislative Assistant to NYS Assemblyman Lawrence Rulison (Exhibit 19);

g. Courtney M. Merriman, Associate, Legal Intern to NS Assembly Majority, Office of Counsel (Exhibit 20);

h. Henry J. Nahal, of counsel, administrative assistant to NYS Assembly Speaker Perry Duryea (Exhibit 21);

i. Arthur W. Adelbert, Partner, former special counsel to U.S. Senate Committee on Homeland Security and Government Affairs for the special investigation of Hurricane Katrina (Exhibit 22);

j. Eric T. Glynn, associate, judicial intern for Judge Richard C. Wesley of the U.S. Court of Appeals for the 2nd Circuit, a military veteran and recipient of a Purple Heart (Exhibit 23).

38. The list can go on and on.

39. HB has 205 attorneys listed on their website, as far as I could count, and a large number of them were previously had public employment or are at this time doing some kind of "civic" duty involved with the courts, such as:

a. Sheila A. Gaddis, Partner, member of Attorney Grievance Committee, 7th Judicial District, NYS (Exhibit 24);

b. Catherine T. Wettlaufer, partner, former member of Attorney Grievance Committee, 8th Judicial District, NYS; former member of the Chief Judge's Task Force on Attorney Professionalism and Conduct (Exhibit 25);

c. John Casey, Partner, former member of the Professional Conduct Committee, Appellate Division, Third Judicial Department, NYS (Exhibit 26);

d. Robert Barrer, partner, former member of Attorney Grievance Committee, Appellate Division 4th Department, 5th Judicial District (Exhibit 5);

e. Susan R. Karzoff, partner, former prosecutor for New York State Committee for Professional Conduct (Exhibit 27).

40. There is a whole host of prior prosecutors, both state and federal, among HB attorneys, such as:

a. Brian D. Casey, Partner, former Assistant District Attorney of NYS Schenectady County (Exhibit 28),

b. Thomas J. O'Connor, Partner, Chief ADA of the same county (Exhibit 29);

c. John T. Gutkoski, Partner, Special ADA, Middlesex County, NY (Exhibit 30);

d. Anthony A. Scibelli, Partner, Special ADA, same county (Exhibit 31);

e. Joseph L. Stanganelli, Partner, Special ADA, same county (Exhibit 32);

f. Brian E. Whiteley, Partner, Special ADA, same county (Exhibit 33);

g. Matthew J. Larkin, Partner, ADA, Nassau County, NY (Exhibit 34);

h. Ransom P. Reynolds, Jr., Of counsel, former Chief Trial Attorney, Chemung County DA's office, NY (Exhibit 17);

i. Jerry M. Solomon, of counsel, Chief of Bureau, DA's Office, Erie county, NY (Exhibit 35);

j. Thomas M. Van Strydonck, of counsel, Monroe Cuonty DA's Office (Exhibit 36);

41. There are even former judges among HB attorneys, such as:

a. Gregor N. Macmillan, of counsel, former Administrative Law Judge for NYS Department of Health (Exhibit 37);

b. Bryan A. Maggs, partner, U.S. Army Reserves, Brigade Judge Advocate General (Exhibit 38);

c. Thomas M. Van Strydonck, of counsel, former NYS Supreme Court Justice (Exhibit 36).

42. I do not even mention how many "boards", "trusts", "councils" and "committees" HB attorneys serve on.

43. Since status of parties and counsel appearing in front of Judge Sharpe is obviously a consideration for Judge Sharpe, in Neroni v. Coccoma and Neroni v. Becker I obviously had to lose hands down.

44. Similarly, I will lose in this case hands down, if Judge Sharpe or his court which Judge Sharpe is trying to influence through this case, is continuing to preside, because in all cases referenced in the Order of October 20, 2014, social and political status of my opponents is higher than my own, and I do not believe that a judge who considers social and political status of defendants in a civil rights case as a negative factor against a civil rights plaintiff, should even be on the bench.

45. I cannot compete with such a constellation of prominent individuals, as paraded by HB's website, even though their stellar credentials has nothing to do with the conduct of their law firm in a particular case, yet, obviously, it is difficult for the court to reject arguments from such esteemed individuals and agree that "a disbarred and disgruntled former attorney" may be right, after all.

46. When a plumber is hired, you only need to know how good a plumber he is, not which "boards" he serves on.

47. His civic duties will not fix your toilet.

48. This principle applies even more to attorneys.

49. An attorney should not advertise his prior or present prominent public employment or "civic duties", as such duties have nothing to do with the attorney's performance as an attorney, but has everything to do with how the legal profession currently operates, in both state and federal courts, by "networking", trying to entrench itself with the judiciary by hiring enough former confidential personnel from courts and by serving on enough "committees"

pertaining to court functions to become indispensable to courts and exuding good faith by virtue of having ties with the courts.

50. Since attorneys associated with Neroni v. Coccoma are firmly entrenched in this court, it is clearly an appearance of impropriety for this court to first rule for these attorneys, with glaring errors that are currently on appeal, and then to try to punish me even more by blocking my access to court, because I raised in writing misconduct of the court's pet law firms.

51. Moreover, since Judge Sharpe's sua sponte order to show cause came within a week after my wife criticized Judge Sharpe by his name in a respectable forum Forbes.com, in the blog of a no less respectable contributor George Leef, indicating that Judge Sharpe should learn how to read the 11th Amendment before ordering her to do the same, and that she was arbitrarily punished by Judge Sharpe for correctly reading the 11th Amendment that Judge Sharpe was sworn to protect (Exhibit 39), I have a reason to believe that the whole order to show cause was brought in retaliation against me because of my wife's criticism of Judge Sharpe on Forbes.com, as well as her multiple critical posts of Judge Sharpe on her blog http://attorneyindependence.blogspot.com, and especially the "Assigned Counsel for the Rich" blog which has been in the Top-10 read blogs on my wife's website for months (Exhibit 40)

52. The timing of the "sua sponte" order dated October 20, 2014 is close in time to my wife's criticism of Judge Sharpe on George Leef's blog (attached as Exhibit 39).

53. Moreover, the timing of Judge Sharpe's dismissal and adjudication of my complaint in Neroni v. Coccoma as frivolous, and Judge Sharpe's dismissal of Neroni v. Becker for the second time on remand, both on June 5, 2014, was suspect to me since Judge Sharpe at that time was sued by my wife, pro se, for his court's attempts to monitor her personal, professional and political activities, Neroni v. Peebles, 3:14-cv-00584-GTS-ATB.

54. Attached is a docket report in Neroni v. Peebles (Exhibit 41), clearly showing that the case was brought by my spouse Tatiana Neroni against Judge Sharpe in his individual capacity on May 15, 2014, that my spouse sought $10 mln in damages, and that Summons was issued by this court against Judge Sharpe on in Neroni v. Peebles on May 19, 2014 (id., Dkt. 10).

55. Judge Sharpe cannot pretend he did not know a lawsuit against him was filed in his court at the time he was dismissing my two cases, Neroni v. Coccoma and Neroni v. Becker, and his actions look pretty much like retaliation to me.

56. It is also interesting to mention that, while endorsing, refusing to disqualify and awarding attorney fees for HB in Neroni v. Coccoma, HB's partner John Casey was sued in Neroni v. Peebles by my spouse in connection with my spouse's attempt to verify membership and interactions of this court with attorneys of HB behind closed doors through a social networking organization "The American Inns of Court" where judges are invited to attend monthly receptions for free, while attorney membership fees pay for such receptions.

57. The interesting detail about that is that Judge Lawrence Kahn, the presiding judge on Neroni v. Zayas, and a defendant in my wife's lawsuit Neroni v. Peebles, was listed as President of an American Inn of Court for Intellectual Innovation in Albany before my wife filed the lawsuit (*see* as Exhibit 42 a printout from the Inn of Court's website filed by my wife in Neroni v. Peebles, Dkt 11-9), Judge Kahn's name was suspiciously removed after the lawsuit was filed (*see* Exhibit 43, printout from the same website made after the lawsuit against Judge Kahn was filed), and today I looked up the same Inn of Court, and there was a whole host of judges from this court listed there as members (*see* Exhibit 44, printout from the same Albany Inn of Court for intellectual innovation listing as president, Judge Lawrence Kahn, as "counselor"

magistrate David Peebles, as members Judges Mae D'Agostino and Frederick Scullin, and as the "Program Chair", Douglas Nash from Hiscock and Barclay).

58. Judge's names appeared on the website of the Inn of Court after my wife blogged about the Inn of Court as a secret organization that may be involved in corrupting state and federal judiciary behind closed doors, with a specific reference that Judge Kahn's name was removed from the website of the Albany Inn of Court for Intellectual Property and Innovation (Exhibit 45).

59. So, now there is no question that judges Mae D'Agostino (Bracci v. Becker), Lawrence Kahn (Neroni v. Zayas), David Peebles (Neroni v. Zayas, Neroni v. Becker, Neroni v. Coccoma) who are members or officers of the Intellectual Property and Innovation American Inns of Court did meet *ex parte* with attorneys who either represented defendants in their court cases or who were potential witnesses in their court cases, behind closed doors and while judge's participation in free monthly receptions is likely sponsored by such attorney members in the Inn of Court.

60. To file motions to vacate those decisions in front of judges of this court, in view of the history of bias, conflict of interest and misconduct or appearance of misconduct of judges of these court is an exercise in futility, at least in this court, as such motions will certainly be met with more sanctions designed to silence me from raising issues of public concerns about judicial misconduct.

61. In Bracci v. Becker, I raised the issue that due to Defendant Carl F. Becker's conflict of interest, he was disqualified from presiding over my proceedings and for that reason alone judicial immunity did not apply.

62. John Casey and his law firm, HB, were witnesses in that case.

63. Judge D'Agostino failed to disclose to me or my counsel her membership and possible indebtedness to HB, or the fact that HB's attorneys are members of the Committee for the local rules of the court, and thus part of the court.

64. Apparently, when ruling on the issue of a conflict of interest of a judge, Judge D'Agostino, due to her personal involvement with the law firm in question, did not recognize a conflict of interest for a judge even if it would be screaming in her face.

65. Same refers to Judge David Peebles who seems to be a staple on my cases, while being a Counselor, Trustee and Vice-President in a social-networking organization sponsored and controlled by an HB partner.

66. Same refers to Judge Sharpe who does not seem to have a problem that he tries to block my access to court, and thus, my ability to make motions to vacate decisions in referenced cases, and such an order is suspiciously filed once my wife (and attorney in Neroni v. Zayas, Bracci v. Becker and Neroni v. Becker) continues her personal citizen's and taxpayer's investigation of public records pertaining to gifts conferred upon judges of this court through the American Inns of Court and whether such gifts were properly reported in the judges' financial disclosures.

67. That's exactly the reason why I ask this whole court, in view of financial interest of multiple judges in communication with HB attorneys, and because of ex parte communications of such judges with attorney-members or the attorney-chair of the Inn of Court in question on undisclosed topics, to step down from this case and from all of my cases and allow me to make Rule 60 motions to vacate the decisions in Bracci v. Becker, Neroni v. Becker, Neroni v Coccoma, and the partial dismissal in Neroni v. Zayas before a court whose judges are not indebted or who do not appear to be indebted to opponents or witnesses in my cases, and

where there is no appearance that judges have an opportunity and do communicate with my opponents, parties or witnesses on my cases behind closed doors during receptions sponsored by those opponents, parties or witnesses.

68. IRS records of the Inn of Court in question show as far back as 2012 that Judge Kahn was the President & Trustee for the Intellectual Innovation Inn of Court and that Judge Peebles was Counselor/Vice-President & Trustee.

69. No wonder that Judge D'Agostino, Judges Peebles and Judge Kahn ruled against Respondent who complained, in state court proceedings and in proceedings in front of those judges, about the very law firm that was feeding them (literally) on a monthly basis, if regularity of meetings (and free receptions for judges) is any guide (*see* Exhibit 46).

70. I wonder what other benefit American Inn of Court provided for Judges Kahn, Peebles, D'Agostino and Scullin, was it scholarships for kids, or was it free national and international travel, as other Inns of Court are provided to their members-judges (Exhibit 47).

71. For some reason, Judge Kahn considered it necessary to remove himself from the website of the Inn of Court.

72. Yet, HB attorneys are not that modest.

73. Upon my personal review, several HB attorneys advertise their membership in that particular Inn of Court where Judge Kahn was listed as President (and can be reasonably suspected of ex parte communications with attorney members or receiving perks such as free monthly dinners or more at the expense of that attorney-financed organization):

(a) Elizabeth A. Cominolli, Associate (Exhibit 48);

(b) M. Eric Galvez, Associate (Exhibit 49);

(c) John T. Gutkoski, Partner (Exhibit 50);

(d) Jason C. Halpin, associate, a former law clerk of this court's judge Glenn T. Suddaby (who sua sponte dismissed Neroni v. Peebles, a lawsuit that was potentially hurting his former confidential employee) (Exhibit 9);

(e) Douglas J. Nash, Partner (Exhibit 51);

(f) Michael A. Oropallo, Partner (Exhibit 52);

(g) Bella S. Satra, Associate (Exhibit 53);

(h) Denis J. Sullivan, Partner (Exhibit 54);

61. Eight attorneys, five of them partners of HB and one of them former law clerk of the same judge who dismissed the case sua sponte, blocking discovery of HB's involvement with this court, where one of its judges acknowledged its membership in the same organization as HB attorneys, while it is well known that American Inns of Courts make it a duty for their members to meet once a month, the meetings are not open to the public, the meetings are accompanied by receptions, according to information available about American Inns of Court (see exhibits in Neroni v. Peebles), and judicial members of the Inns of Court eat free, while attorneys pay membership fees that cover those receptions for judges.

62. Under the circumstances, and because membership in American Inns of Court is secret unless voluntarily disclosed by members themselves, I cannot be at all assured that Judge Sharpe himself was not a member, that Judge Sharpe was not wined and dined by HB before he made a ruling in Neroni v. Coccoma, or that Judge Kahn was not wined and dined by HB while misconduct of its partner John Casey was part of the case in Neroni v. Zayas, before Judge Kahn made his partial dismissal in Neroni v. Zayas.

63. Judge Kahn was publicly advertized as president of the same Inn of Court where HB attorneys were members, five of them partners, and one associate who was a law clerk to Judge Suddaby, presiding judge on Neroni v. Peebles.

64. Nobody knows what kind of discussions occurred behind closed doors between Judge Kahn and HB attorneys through the Inn of Court.

65. Nobody knows what kind of discussions were passed through Judge Kahn to Judge Sharpe from those discussions.

66. My wife sued "judicial extern" of Magistrate Peebles for spying against her on the Internet.

67. Judge Peebles was assigned to all cases referenced in the Order of October 20, 2014 with the exception of Bracci v. Becker.

68. In view of unavailability of information about membership and meetings in Inns of Court, and because my wife already caught Judge Peebles "judicial extern" spying on her on the Internet, I cannot rule out that information that the "extern" fished out about my wife on the Internet was not transferred, through Judge Peebles, to Judge Sharpe and Judge Kahn and was not used by Judge Sharpe and Judge Kahn in determination of cases against me.

69. Judge Sharpe and judges of this court sued by my wife in Neroni v. Peebles certainly have a personal grudge against my wife and me as her husband.

70. I was already punished by Judge Sharpe for my wife's alleged actions in Neroni v. Becker.

71. I have a good reason to believe, the second dismissal in Neroni v. Becker and the dismissal and sanctions in Neroni v. Coccoma are also retaliation against me because of my wife's lawsuit against the court in Neroni v. Peebles, and especially that the "order to show

cause" came in within a week of my wife publishing a comment on Forbes.com criticizing Judge Sharpe for inability to read the U.S. Constitution.

72. This court's sua sponte order seeking to block my access to court in what is versed as a "civil rights action" against a "respondent" who is not even close to be a "state actor", and by a judge who just punished that same "respondent" for bringing a civil rights action against attorneys who, the judge said, were not "state actors", is simply bizarre.

73. Judge Sharpe obviously allows himself to do exactly what he just punished me for.

74. I perceive conduct of judge Sharpe in regard to me, in all three cases where he presided, Neroni v. Coccoma, Neroni v. Becker and this one, as a retaliation against me for actions of third parties in violation of my 1st Amendment freedom of association, in violation of my 1st Amendment Petitions Clause/ access to courts, and in violation of my due process right to an impartial judicial review.

75. I also perceive Judge Sharpe's present Order to Show Cause and filing a "civil rights action" against me, right after my wife publicly criticized Judge Sharpe for inability to read the U.S. Constitution, and before my appeals of Neroni v. Coccoma and Neroni v. Becker are decided, as an attempt to influence those appeals and deprive me of access to appellate court.

76. I also have concerns as to what kind of considerations were governing Judge Sharpe in his decisions in Neroni v. Coccoma and Neroni v. Becker, especially since Judge Sharpe punished me in Neroni v. Becker for actions of third parties, and especially since recently I've read a case in the U.S. Court of Appeals for the 2nd Circuit reversing a sentencing by Judge Sharpe based on Judge Sharpe's own unsworn and unqualified expert opinion that people have uncontrollable urges to review child pornography, which Judge Sharpe used as an aggravating factor in sentencing.

77. That was the case U.S. v. Cossey, 632 F.3d 82 (2d Cir., 2011) (included in full herein as Exhibit 55 for the court's convenience) where the U.S. Court of Appeals for the 2nd Circuit, reversed Judge Sharpe on "plain error" despite the fact that the issue upon which the case of reserved was not preserved for appeal, and remanded to a judge other than Judge Sharpe because of inability of Judge Sharpe to be impartial.

78. U.S. v. Cossey case clearly shows that Judge Sharpe has problems with logic, because, if an urge to possess child pornography is, in his view, uncontrollable, then, instead of an aggravating factor, it can be used as a factor nullifying the person's guilt and leading to vacatur of his conviction.

79. Lack of logic that was demonstrated by Judge Sharpe in U.S. v. Cossey is demonstrated by him here, too.

80. Judge Sharpe provides no basis in law or fact to block me from filing in court, verses his "sua sponte proceeding" as a civil rights action, yet files it against a private party, ignores that one of the referenced cases, Neroni v. Zayas, is still pending and is counseled, fails to serve the counsel in Neroni v. Zayas, fails to recognize that in Neroni v. Zayas and Neroni v. Grannis no sanctions were imposed and no finding of frivolous conduct was made, fails to recognize that in dismissals under the Younger abstention, the dismissal is within the discretion of the court and a civil rights plaintiff cannot be punished for the court's discretionary act to acknowledge jurisdiction, but still not take it.

81. The totality of circumstances in how Judge Sharpe rules on cases, as I describe herein, shows no logic, but shows tremendous bias against me and in favor of politically connected attorneys.

82. I definitely will not receive fair treatment from Judge Sharpe or his court, and especially in view of the fact that by this proceeding, Judge Sharpe is trying to influence a proceeding which is still pending, where he is not an assigned judge, and when in another case, Koziol v. King, 6:14-cv-00946-GLS-TWD, another civil rights plaintiff very recently asked Judge Sharpe to harmonize his ruling in denying the plaintiff a TRO with the ruling of Judge Kahn in Neroni v. Zayas that allowed certain causes of action to survive and proceed (see letter to of Leon Koziol to Judge Sharpe, Exhibit 56).

83. This is how Judge Sharpe "harmonizes" Judge Kahn's decision in Neroni v. Zayas with his own decision in Koziol v. King, by trying to block my ability to file any pleadings in this case, over the head of Judge Kahn, and over the case of my counsel in that case, my spouse Tatiana Neroni whom Judge Sharpe obviously hates for her public criticism of him.

84. I do not know why Judge Sharpe has such problems with logic, but I am entitled, especially on a case as important as this one, that can potentially block my constitutional right of access to courts, to have the case reviewed by a neutral, impartial judge, in a neutral, impartial court which is not openly catering to attorneys who were on the opposite side of referenced cases and where such attorneys are not part of that court.

85. I put this court on notice that, based on totality of misconduct of Judge Sharpe I am turning him into appropriate authorities for investigation of misconduct and respectfully request Judge Sharpe and his entire court to recuse from this case in view of irreconcilable conflicts of interest and long history of misconduct and retaliation by this court against me and my spouse.

86. I also demand an evidentiary hearing on the issue whether my access to court should be blocked and on the issue of personal interests of various judges of this court in blocking my access to the court in order to vacate their various rulings based on newly discovered evidence, triable by a jury, where I intend to subpoena records of the Intellectual Innovation Inn of Court in Albany, judges of this court who are confirmed members and/or officers of that Inn and their IRS and court filings, as well as Hiscock & Barclay records and records of its individual attorneys – members of the Inn of Court and witnesses in various proceedings referenced by this court in the October 20, 2014 decision.

87. Since judges of this court are definitely witnesses in such proceedings, I request the court to recuse itself in its entirety.

Dated: October 30, 2014
Delhi, NY

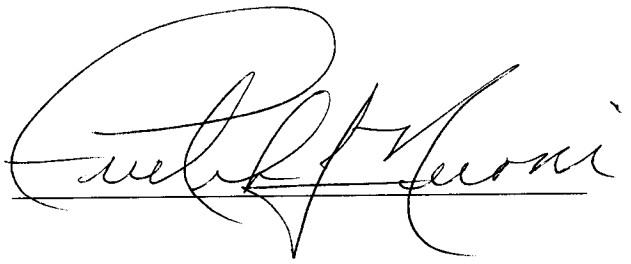

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EXHIBIT 1

EXHIBIT 2

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Brittany Aungier is a litigator who handles a wide array of civil and criminal matters. As a commercial litigator, Brittany represents clients ranging from small businesses to major corporations, in State and Federal Court, and in arbitrations. Brittany also assists businesses and other organizations in conducting internal investigations and responding to criminal subpoenas. As a civil litigator, Brittany represents individuals who have been severely injured as a result of medical malpractice, automobile accidents, and wrongful death claims. Brittany also represents both individuals and entities facing federal and New York State criminal prosecutions.

Brittany is committed to pro bono service and handles a wide variety of pro bono litigation matters. She participates in the Volunteer Lawyer Project, where she defends tenants facing eviction in Syracuse City Court. She also participates in the Say Yes to Education Program, and is an attorney-arbitrator in Small Claims Court of the City of Syracuse.

Brittany is a graduate of Syracuse University College of Law, and was a member of the *Syracuse Law Review*. Brittany previously served as a Student Law Clerk for the United States Attorney's Office for the Northern District of New York, and as a Student Law Clerk for Senior United States District Judge Scullin.

Brittany is a member of the firm's Women's Forum, which helps create opportunities for personal and professional growth among business women throughout the community.

Practice Areas

- Commercial Litigation
- White Collar
- Torts & Products Liability Defense

Education

- Syracuse University College of Law, J.D., *Syracuse Law Review*, Editorial Staff, 2011
- University of California at Berkeley, B.A., 2008

Admitted To Practice

- New York, 2012
- U.S. District Court, Northern District of New York

Memberships & Affiliations

- Onondaga County Bar Association

Civic Activities

- Menorah Park Senior Living Facility Volunteer

Honors

Representative Experience

- Represents local University in connection with Family Educational Rights and Privacy Act (FERPA) compliance and information requests.
- Represents Universities in connection with National Collegiate Athletic Association (NCAA) compliance matters.
- Represents medical malpractice victims in actions involving surgical errors, the failure to diagnose cancer and wrongful death.
- Represents individuals severely injured as a result of automobile accidents.
- Represents manufacturing client in connection with voluntary disclosure of potential violation of the Export Administration Regulations (EAR).
- Represented a private New York university in connection with criminal investigation involving former assistant coach.
- Represented a government contractor in voluntary disclosure of a potential violation of the International Traffic and Arms Regulations.
- Represents an individual in criminal prosecution involving alleged violations of the Clean Air Act.
- Represents government contractor in criminal investigation led by United States Department of Homeland Security.
- Represents a development company in real estate contract dispute.
- Represents a renewable energy company in contract dispute before the American Arbitration Association.
- Provided pro bono trial counsel to an inmate-plaintiff in a federal civil rights matter.
- Provides pro bono trial counsel to a single mother and family who were unlawfully evicted from their home and suffered the loss of personal property.
- Provides pro bono trial counsel to a mother seeking sole custody of her three children.
- Selected as a 2013 Empire State Counsel Honoree by the New York State Bar Association
- Recipient of 2012-2014 Honor Roll of Pro Bono Service for the U.S. District Court for the Northern District of New York

Prior Experience

- U.S. Attorney's Office, Northern District of New York, Law Clerk
- Peter Grenis, Esq., Law Clerk
- Hon. Frederick J. Scullin, Jr., Senior U.S. District Judge, Northern District of New York, Law Clerk

Alerts

- New Interpretation of the Wartime Suspension of Limitations Act

EXHIBIT 3

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Practice Areas

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- Environmental
- Commercial Litigation
- Regulatory
- Oil & Gas

Education

- State University of New York at Geneseo, B.A., 1993
- Northeastern University School of Law, J.D., 1997

Admitted To Practice

- New York
- Pennsylvania
- Massachusetts
- U.S. Court of Appeals, 2nd Circuit
- U.S. District Court, Northern District of New York
- U.S. District Court, Western District of New York
- U.S. District Court, Southern District of New York
- U.S. District Court, Eastern District of New York
- U.S. District Court, District of Massachusetts

Memberships & Affiliations

Yvonne Hennessey is a Partner in our Energy, Environmental, Regulatory and Commercial Litigation Practice Areas and serves as Co-Chair of the Environmental Practice Area. Yvonne represents commercial and industrial clients on a wide range of environmental matters involving federal and state permitting, compliance, civil and administrative enforcement, and government relations.

She also represents clients in the oil and gas sector on a broad variety of issues involving well permitting and project siting, air aggregation and water withdrawals, compulsory integration, administrative adjudication, civil litigation, legislation, lobbying compliance and investigations by the New York State Attorney General's office.

Yvonne has assisted corporate clients, both large and small, in a variety of matters including those related to the Clean Air Act (CAA) and related state regulations, the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the New York State Coastal Management Program, the National Environmental Policy Act (NEPA), the New York State Environmental Quality Review Act (SEQRA), and other state and federal environmental statutes and regulatory programs that apply to project permitting and siting.

Yvonne has also represented clients in every aspect of complex litigation in a broad range of litigation matters, including commercial, regulatory and leasing disputes. Her litigation work includes extensive experience in Article 78 proceedings, including challenges under SEQRA, and her regulatory work includes election, ethics, and lobbying law compliance.

Yvonne is the lead contributor to the firm's blog *Energy Matters: Energy Law Updates and Observations*. Yvonne is a member of the firm's Diversity Partner Committee and lead's the Albany Office's Diversity Leadership Team which participates in charitable and community events, promotes pro bono activities, and works to further the firm's diversity and inclusion initiatives. She is also an active member of the firm's Women's Forum.

- President, Northern District of New York Federal Court Bar Association (2013-present)
- Member, Energy & Mineral Law Foundation
- Member, Independent Oil & Gas Association of New York
- Member, New York State Bar Association Environmental Law Section's Executive Committee; Co-Chair of Section's Task Force on Legal Ethics; Co-Chair of Section's Energy Committee
- Member, Capital District Women's Bar Association
- Member, Women's Bar Association of the State of New York
- Member, Albany County Bar Association
- Walk Director and Co-Chair of Corporate Sponsorships, Northeastern New York Susan G. Komen Race for the Cure, 2007 and 2008
- Member, Eastern New York Chapter, Air & Waste Management Association

Speaking & Publications

Representative Experience

- "NY Water Withdrawal Just Got Easier For Power Generators," *Law360*, October 23, 2014
- Presenter, "Aggregation of Air Emissions - What Does Adjacency Really Mean?" Hiscock & Barclay Webinar, June 25, 2014
- Keynote Speaker, "Shale Development: A Comparison of How States Are Regulating Hydraulic Fracturing," North Atlantic Chapter of the Society of Environmental Toxicology and Chemistry, 20th Annual Meeting, June 12, 2014
- Presenter, "Aggregation of Air Emissions - What Does Adjacency Really Mean?," AWMA Oil and Gas Environmental Compliance Conference, May 14, 2014
- "Drill Baby Drill!: NY State's Fracking Future," *Law360*, January 9, 2014
- Presenter, "Mineral Rights: What Every Mineral Owner and Lessee Need to Know Now!" NBI Seminars, December 11, 2013
- Presenter, "Hydraulic Fracturing Overview and Potential Areas for Risk," Thinking About Insureds Who Transport Waste Water Resulting from Fracking Operations Seminar, November 12, 2013
- Presenter, "Aggregation of Air Emissions - What Does Adjacency Really Mean?" IOGANY Annual Meeting, November 6, 2013
- Presenter, "Shale Development in New York: A Regulatory Update and Comparison with Neighboring States,"

- Represent an interstate pipeline company proposing to construct a new 120-mile interstate gas pipeline which will connect a Marcellus Shale gas gathering system in Susquehanna County, PA, to interstate natural gas transmission pipelines in Schoharie County, NY.
- Represent a number of commercial clients in Article 78 challenges, defending permits issued by the New York State Department of Environmental Conservation as well as other state and local agencies.
- Represent a company in a pending CERCLA action in the Western District of New York relative to alleged radioactive waste contamination.
- Successfully defended a landfill operator in a legal challenge to a New York State Department of Environmental Conservation permit both before the lower court and on appeal.
- Participated in all aspects of federal and state permitting processes, including Title V and State Pollution Discharge Elimination System permitting, as well as significant environmental review under SEQRA, for electric generating, manufacturing and multiple solid waste management facilities.
- Advise clients on water withdrawal issues, including permitting before the Susquehanna River Basin Commission and the Delaware River Basin Commission as well as under New York State's new water withdrawal statute.
- Involved in the 2008 amendments to the Environmental Conservation Law to accommodate shale development in New York, including the Marcellus and Utica shales.
- Represented industry working group in the environmental review process being conducted by the New York State Department of Environmental Conservation to prepare a Supplemental Generic Environmental Impact Statement relative to high-volume hydraulic fracturing, corresponding regulations and a stormwater permit for high-volume hydraulic fracturing.
- Represent a large interstate pipeline company and industry working group before the United States Army Corps of Engineers to help streamline the permitting process for linear energy projects.
- Part of a legal team that successfully represented a national company in connection with the resolution of multi-million dollar claims under CERCLA and New York's navigation law and common law nuisance doctrine.
- Worked with nationally renowned experts in the field of public health as part of a particulate matter air impact analysis for the siting of a cement manufacturing plant.
- Represented current owner of a State Superfund and hazardous waste site in disputes with the New York Department of Environmental Conservation relative to the need for additional site remediation as well as with prior site owners regarding contractual responsibility for clean-up.
- Represented various natural gas operators in force majeure lease disputes stemming from the current moratorium in New York on high-volume hydraulic fracturing.

Association for Environmental Health and Sciences Foundation 29th Annual International Conference on Soils, Sediments, Water, and Energy, October 24, 2013

- Moderator, "Which Court? State or Federal and Why? Selecting Your Jurisdiction," New York State Federal Judicial Council Advisory Committee CLE, October 22, 2013
- "*Energy Matters: Energy Law Updates and Observations*," Blog Author, Hiscock & Barclay
- "Hot Topics in Real Property Law 2013," NYSBA CLE, September 19, 2013
- "Flaws In NY Court's Ruling Of Recent Natural Gas Cases," *Law360*, May 7, 2013
- "New York Legal Update," IOGANY *Pipeline,* Spring 2013
- "Increasing Federal Regulation: NY Shale Development - Part 2," *Law360*, February 4, 2013
- "Finally Ready To Drill: NY Shale Development - Part 1," *Law360*, January 22, 2013
- Speaker, Expert Fracking Panel Sponsored by the Greater Binghamton Chamber of Commerce, January 3, 2013
- "New York Legal Update," IOGANY *Pipeline,* Winter 2012
- Presenter, Women in Communications & Energy Conference, January 2013
- "Don't Bet On Force Majeure In NY Oil And Gas

- Represent commercial clients, including natural gas operators relative to road use agreements with local municipalities.
- Engaged in a thorough analysis of environmental justice issues relating to a proposed siting project in New York which resulted in a detailed report finding no environmental justice concerns.
- Drafted a comprehensive coastal zone consistency analysis for a proposed siting project, as well as a detailed permit application to the United States Army Corps of Engineers.
- Obtained multiple injunctions from a federal court against newly adopted New York State regulations.
- Engaged in a thorough audit of a major energy provider's election and lobbying law compliance and provided similar companies with legal advice as to permissible election and lobbying activities.
- Successfully assisted clients in organizing political action committees for federal, state and local election activities.

Leases," *Law360*, November 29, 2012

- Presenter, "New York's Shale Resources: A Discussion of Issues for 2013," Associated General Contractors of NYS, November 28, 2012
- Presenter, "Regulatory Update: Year 5 of the SGEIS and All Other Things New York," IOGANY; Cross-Border Panelist on U.S. Regulatory Issues, October, 2012
- "Federal Court Defines Adjacency," IOGANY *Pipeline*, Fall 2012
- Speaker, "Industry Perspective on Marcellus Shale," NYSBA CLE June 15, 2012
- "The Status of Local Preemption under ECL § 23-0303(2)," IOGANY *Pipeline*, Spring 2012
- Speaker, "Industry Perspective on Marcellus Shale," SUNY Albany, March 2012
- Speaker, "Industry Perspective on Road Use Issues," Joint Landowners Coalition Road Use Seminar, October 2011
- Speaker, "Marcellus Shale: An Overview," Southern Gas Association, February 2010
- Moderator and Speaker, "Marcellus Shale: A Primer on Mineral Rights, Leasing and Compulsory Integration," NYSBA, October 2009
- Speaker, "High Volume Hydraulic Fracturing of Marcellus Shale in New York," Air, Waste & Management Association, September 2009

- Speaker, "The Redevelopment of Contaminated Property: New York State's Brownfield Program and Beyond," NYSBA, June 2009
- Speaker, "New Ethics Rules for Environmental Lawyers," NYSBA CLE, April 2009
- "New Attorney Rules of Professional Conduct Take Effect April 1, 2009," NYSBA, Spring 2009
- Co-author, "How to Try a Commercial Case: The Direct Examination," NYSBA CLE 2001
- Co-author, "Environmental Justice, Public Participation and Standing Under the State Environmental Quality Review Act," Albany Law School Symposium 2001

Honors

- *The Best Lawyers in America*, 2013-2015 for Litigation - Environmental
- Selected by Peer Review for Inclusion in *Super Lawyer* Directory2013-2014 for Energy and Natural Resources
- Recognized by the New York State Bar Association in September 2010 as one of the "brightest young members" of the Environmental Law Section

Prior Experience

- The West Firm
- O'Connell & Aronowitz
- LeBoeuf, Lamb, Greene & McRae
- Hiscock & Barclay
- Confidential Law Clerk, the Honorable Frederick J. Scullin, Jr. (former Chief Judge) and the Honorable Norman A. Mordue (Chief Judge), United States District Court for the Northern District of New York, 1998-1999.
- Assisted the Honorable Frederick J. Scullin, Jr. when he sat by designation on the United States Court of Appeals for the Second Circuit, 1999.

Alerts

- New York Court Rejects Sierra Club's Challenge to First Initial Water Withdrawal Permit Issued Under New State Law
- New York Public Service Commission Requiring Odorization of Gathering Lines
- New York Shale Development to Yield Significant Economic Benefits at the Local Level If And When State-Wide Moratorium Lifted
- New York Appellate Court Upholds Drilling Bans

EXHIBIT 4

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Practice Areas

- Labor & Employment

Education

- Syracuse University College of Law, J.D., 1996
- Holy Cross College, 1993

Admitted To Practice

- New York, 1997
- Connecticut, 1997
- U.S. Court of Appeals, 2nd Circuit
- U.S. District Court, Northern and Western Districts of New York
- U.S. District Court, District of Connecticut

Memberships & Affiliations

- New York State Bar Association
- Onondaga County Bar Association
- Federal Court Bar Association for the Northern District of New York

Civic Activities

Edward "Buster" Melvin concentrates his practice in the area of Labor & Employment and has extensive experience representing clients in state and federal court at the trial and appellate levels. He has represented clients before the New York State Division of Human Rights, the Equal Opportunity Commission, the Public Employment Relations Board, the National Relations Labor Board, and in labor arbitration hearings.

Buster is admitted to practice in New York and Connecticut. He is a member of the New York Bar Association, the Onondaga County Bar Association, and the Federal Court Bar Association for the Northern District of New York. He often lectures and provides training sessions for clients that deal with a wide array of labor and employment issues. Buster has been named a *Super Lawyer* for Labor and Employment Law from 2008-2013.

Buster received his undergraduate degree from Holy Cross and his law degree from Syracuse University College of Law. While in law school, he was the Executive Editor of the *Syracuse Law Review* and an Associate Editor of the American Bar Association's *Labor Lawyer*. He is currently very active in his community, serving on various boards and committees.

Representative Experience

- Obtained summary judgment on behalf of county and municipal defendants as to Section 1983 first amendment and false arrest claims in federal court.
- Successfully defended individual in preliminary hearing held in federal court involving non-disclosure and non-solicitation issues in action brought by a national professional recruiting company.
- Defended large hospital in wage and hour-meal break class and collective action in federal court, which resulted in class-wide resolution.
- Represented municipalities in binding arbitration proceedings involving local police unions.

- Vera House, Inc., Board Member, Secretary
- St. Lucy's Church, Finance Committee, Board Member
- St. Lucy's Church, Past President of Parish Council
- Catholic Lawyers Guild, Past President
- McMahon/Ryan Child Advocacy Site, Past Board Member

Speaking & Publications

- "FLSA Compliance/Hot Issues," Public Sector Labor Relations 2014, June 12, 2014
- "Human Resources Update," Healthcare Financial Management Association CNY Chapter, February 27, 2014, and January 24, 2013
- Panel Speaker, "Impeach Justice Douglas," NDNY Federal Court Bar Association, November 29, 2012
- "Federal Court Practice 201: Filing Dispositive Motions," NDNY Federal Court Bar Association, March 15, 2012

Prior Experience

- Costello, Cooney & Fearon, Partner
- U.S. District Court for the Northern District of New York, clerkship for the Hon. Frederick J. Scullin, Jr.

EXHIBIT 5

PEOPLE/ROBERT A. BARRER

ROBERT A. BARRER

Partner

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Robert Barrer has 30 years of trial and appellate experience in the New York Federal and State Courts. Robert routinely counsels a wide variety of clients including large corporations, small businesses and individuals; he is called upon to litigate their complex commercial disputes and serious products liability and tort cases. Robert is the firm's Chief Ethics Officer and Loss Prevention Partner and his practice includes a focus on legal ethics and the defense of professional responsibility claims and professional licensing matters.

Robert has represented automobile manufacturers in disputes with their dealers, and he obtained a defense verdict following a two-week jury trial in Federal Court challenging a dealer termination. He also obtained a defense verdict in a civil rights case for a municipal agency following a six-week jury trial in Federal Court. Robert has obtained summary judgment for his clients in numerous cases involving claims of defective products and medical devices. For many years, he defended a gasket materials manufacturer in 1,700 personal injury and wrongful death actions arising from alleged exposure to asbestos-containing fibers. Robert also has substantial experience defending toxic tort cases including those involving lead paint (defending property owners from claims by residents), insecticides (defending bystander and worker claims) and industrial chemicals (defending employer and third-party claims).

In recognition of his trial experience, Robert was elected as a member of the American Board of Trial Advocates. As part of his commitment to serve the legal profession and his high ethical standards, Robert was appointed by the Chief Judge of the Appellate Division as Chair of the Fifth District Grievance Committee, the body charged with adjudicating misconduct complaints

Practice Areas

- Torts & Products Liability Defense
- Commercial Litigation
- Professional Liability

Education

- Syracuse University College of Law, J.D., *magna cum laude*, 1982
- Skidmore College, B.A., with honors, 1979

Admitted To Practice

- New York, 1983
- U.S. Supreme Court
- U.S. Court of Appeals, 2nd Circuit
- U.S. District Court, Eastern District of New York
- U.S. District Court, Northern District of New York
- U.S. District Court, Southern District of New York
- U.S. District Court, Western District of New York

Memberships & Affiliations

against attorneys. In 2010, Robert received the *Pro Bono* Service Award from the N.D.N.Y. Federal Court Bar Association for his extensive and successful service as a mediator in the District Court's Alternate Dispute Resolution program. He is a frequent lecturer on legal ethics, professional responsibility and federal practice issues and won the Burton Award for excellence in legal writing, presented at the Library of Congress, in recognition of his article "Unintended Consequences: Avoiding and Addressing the Inadvertent Disclosure of Documents."

- Chair (2011-2013), Grievance Committee, NY State Supreme Court, Appellate Division, 4th Dept., 5th Judicial District, Member (2007-2013)
- American Board of Trial Advocates
- Referee, New York State Commission on Judicial Conduct
- Early Neutral Evaluator, Fifth Judicial District, New York State Unified Court System
- Defense Research Institute
- New York State Bar Association, Torts, Insurance and Compensation Law Section, Former Member of Executive Committee
- Northern District of New York Federal Court Bar Association
- Onondaga County Bar Association, former Member of Grievance Committee

Civic Activities

- Panel Member for N.D.N.Y. ADR Program

Speaking & Publications

Representative Experience

- "2014 Ethics and Risk Management Review," CLE presentation for Hiscock Legal Aid Society of Central New York, April 16, 2014
- "Ethics and Risk Management for Legal Services Attorneys," presented to Legal Services of Central New York on February 5, 2014
- "Ethics for Business Litigators" presented as part of Onondaga County Bar Association Program on Successful Strategies for Winning Commercial Cases in New York State, October 2013.
- "Ethical Issues Arising During Handling of a Prisoner Case," presented to the N.D.N.Y. Federal Court Bar Association, October 2012
- "2012 Ethics and Risk Management Review," presented to City of Syracuse Corporation Counsel, July 2012
- "Litigation Misconduct and Professional Ethics," presented to National Grid Legal Department, July 2012
- "Disciplinary Consequences of Lawyer Impairment," presented to County Attorneys' Association of the State of New York Annual Meeting, April 2012
- "Civility: A Complement to General Municipal Law Article 18," presented to Association of Towns Annual Meeting and Training School, February 2012
- "Avoiding Ethical Dilemmas in Day-to-Day Practice," presented to New York State

- We obtained summary judgment for our client, a municipality, that provided emergency medical services in response to a 911 call concerning the Plaintiff who suffered a massive heart attack. While at the scene, the defibrillator and the pads allegedly malfunctioned. By the time a connection to a second defibrillator was made, it is alleged that the Plaintiff suffered severe brain damage. A lawsuit was brought against our client and the manufacturer and distributors of the defibrillator and pads. We obtained summary judgment on all claims and a dismissal of the action based upon governmental immunity. In the first of two successful summary judgment motions, the claims relating to the equipment were dismissed upon the determination that the claimed negligent acts were "ministerial" in nature and there was no showing of the required special relationship. The second summary judgment motion successfully disposed of the medical treatment claim based upon a new court decision from the state's highest court holding that these claims were not proprietary and subject to normal negligence rules. In the absence of a special relationship, and none was established, there could be no municipal liability. The Plaintiff appealed and the dismissal of the action was affirmed both on the ground that the provision of emergency medical services was a governmental function and the lack of special relationship between the municipality and the Plaintiff.

- Obtained dismissal of a prolific pro se plaintiff's federal civil rights claim against our client, a law firm that represented other parties in state court litigation. The plaintiff, whom the federal district court judge termed "a disbarred and disgruntled former attorney," commenced a lawsuit against a host of state court judges, state court officials and private law firms. We successfully argued that the lawsuit was frivolous against the law firm because it was not a "state actor" within the meaning of the controlling federal civil rights statute. The claims against the state court judges and state officials were similarly rejected on the grounds of judicial immunity.

- Obtained summary judgment for our client, the owner and operator of a daycare center, in an action commenced by the parents of a two-year old who sustained a serious injury when a piece of furniture upon which the child was climbing tipped over. When the daycare center opened, it used furniture purchased directly from a nationally known manufacturer. The owner of the daycare center sought and received assurances from the manufacturer that a dress-up center which was free standing was safe and sturdy for use with young children. After receiving the assurances, the furniture was purchased and used in the daycare center. The child suffered a laceration down to her skull and was left with a large scar. A videotape of the incident showed that the child was out of a teacher's sight and grasp for no more than a few seconds. In the lawsuit against the daycare center and the manufacturer, it was established that the dress-up center had been the subject of prior injuries from similar circumstances and, most importantly, had been the subject of a design change to enhance stability. No recall notices were sent nor was any effort made to publicize the facts that the product was dangerous and could lead to serious injury. The Court granted our motion for summary judgment and dismissed both the action against daycare center as well as all cross-claims asserted by the manufacturer. The argument of the manufacturer that the daycare center was guilty of negligent supervision was summarily rejected.

- We obtained summary judgment for our client in a pair of federal civil rights actions commenced by retired disabled police officers who were challenging the manner in which their medical benefits were paid under

Bar Association, November 2011

- "Ethical Issues Arising During Handling of a Prisoner Case," presented to the N.D.N.Y. Federal Court Bar Association, October 2010

- "The Rules of Professional Conduct," presented to National Grid, March 2009

- "Preserving In-House Attorney-Client Privilege," presented to the Niagara Frontier Corporate Counsel Association, September 2009

- "Ethics and Professionalism," presentation sponsored by the Fifth District Grievance Committee of the Fourth Department, October 2008

- "Professionalism and Discipline in the Northern District of New York," presented to the N.D.N.Y. Federal Court Bar Association, May 2008

- "Removal Jurisdiction – Making it a Federal Case," presented to the N.D.N.Y. Federal Court Bar Association, April 2008

- "Damages in Wrongful Death Cases," presented to the New York State Bar Association's Law School for the Claims Professional, June 2007

- "Removal of Personal Injury Actions to New York Federal District Courts," *New York State Bar Association Journal*, Vol. 78, No. 8, October 2006

- "Inadvertent and Advertent Waiver of Attorney-Client and Attorney Work Product Privileges," presented to the

Section 207-c of the New York General Municipal Law. Our client is a third party benefits provider for self-funded health and risk management plans. The Plaintiffs claimed that their civil rights were denied in a conspiracy between their former employer, a municipality, and our client to deny medical treatment in order to save costs. Following extensive discovery and motion practice over several years, we were able to convince the Court that there was no conspiracy and no denial of any medical treatment. Rather, consistent with sound fiscal policy, medical treatment costs were carefully reviewed and reasonable restrictions on the processing and payment of medical bills were employed.

- Obtained summary judgment and dismissal of a legal malpractice action against our clients, a law firm and its principal attorney, based upon the failure of the plaintiff to schedule the claim in his pre-action bankruptcy petition. The case was pending for several years and involved contentious discovery and multiple appeals. It recently concluded with the New York Court of Appeals denying leave to appeal and imposing costs upon the losing plaintiff.

- Represented manufacturer of motorcycles and off-the-road vehicles in a hotly contested challenge to the manufacturer's decision to terminate the franchisee based upon its failure to meet the standards contained in the franchise agreement. Following a six-week jury trial in the United States District Court for the Northern District of New York, the jury returned a verdict of no cause for action in favor of our client thereby validating the decision to terminate the franchise.

- A manufacturer of precision medical devices entered into an agreement with a New York state university for the purchase of a $2.25M nuclear magnetic resonance system. After our client performed and indicated its readiness to deliver the system, the university attempted to cancel the agreement and sought a refund of its deposit. Our client refused upon the ground that it was unable to fully mitigate its damages. We defended the university's breach of contract action and obtained a decision from the United States District Court for the Northern District of New York, affirmed by the Second Circuit, that the university breached the agreement and that there was no right to a refund of the deposit. Following a remand on the sole issue of mitigation of damages, the matter was settled favorably to our client.

- Represented a wholesale pharmaceutical services company in connection with its successful attempt to enjoin a former salesperson from unlawfully competing by contacting customers and using confidential information and trade secrets. The salesperson signed an employment agreement containing a non-competition clause and, although New York limits the scope and duration of such clauses, we were able to prove during a Federal Court preliminary injunction hearing that the scope and duration of the clause were reasonable and should be enforced. Once the preliminary injunction was granted, the salesman consented to all the relief our client was seeking for the duration of the agreement.

- Successfully defended two municipal agencies and one of its officers in a federal civil rights action arising out of the declaration that multi-story dwelling in a college town was not up to the local housing code and therefore unsuitable for use as a college fraternity. The case was complicated by the fact that the house had been sold to the plaintiff by two individuals, one of whom was the former head of the housing board that

N.D.N.Y. Federal Court Bar Association, March 2006

- "Real Evidence for the Trial Practitioner: Expert Witnesses and Admissibility," presented to Lorman Educational Services, February 2006

- "Litigation Conduct, Misconduct and Inadvertent Disclosure," presented to National Grid Legal Department, December 2005

- "Unintended Consequences: Avoiding and Addressing the Inadvertent Disclosure of Documents," *New York State Bar Association Journal*, Vol. 77, No. 9, November 2005

- "Hot Topics in Insurance Agreements," presented to Zurich American Insurance Co., October 2005

- "Warren's Negligence in the New York Courts," Ch. 3 Editor, *Parties Negligent*, *Matthew Bender*, 2005

Honors

subsequently declared the property in violation of the housing code. We obtained dismissal of the punitive damage claim against the officer during the trial and, following a six-week trial, the jury in the United States District Court for the Northern District of New York returned a verdict of no cause for action against our clients. The former owners of the home were found liable for fraud. The Second Circuit affirmed the verdict in all respects.

- Defended a physician accused of professional misconduct and fraud in an eighteen-day administrative proceeding before a panel of the State Board of Professional Medical Conduct. The Board accused the physician of multiple instances of misconduct involving ten different patients arising out of alleged deviations from the standard of care, inadequate recordkeeping and fraud for billing for procedures not undertaken.
- Successfully defended an attorney charged with malpractice and fraud. The spouse who was not represented by our client sued him claiming that he was guilty of malpractice and fraud in the context of a contentious matrimonial action. We established proper conduct on our client's part and this, coupled with a lack of privity, led the Court to grant summary judgment to our client.
- Obtained summary judgment for our clients, medical device manufacturers, by establishing that the product at issue had been a part of a line of business sold to another company. Because the agreement memorializing the sale excluded retained liabilities, the Court held that there was no liability to the Plaintiff who claimed to have suffered severe damages from an overdose of radiation during cancer treatment.
- Our clients manufactured warming blankets for use during surgery and were sued when a young patient developed compartment syndrome on his legs following kidney surgery. We were able to establish that the warming blanket functioned properly and did not cause or contribute to the compartment syndrome. As a result, the Court granted summary judgment to our clients.
- Represented a municipal fair association that sponsored an automobile race at a local fair. The plaintiff was injured when a tire separated from a race car and struck him in the leg. Because the plaintiff had executed a waiver of liability to permit him to be in the pit area and had not paid a fee for admission, he was not considered a user within the meaning of Section 5-326 of the New York General Obligations Law. Accordingly, we were able to ultimately prevail on appeal and had that victory affirmed by the New York Court of Appeals in its first application of this statute.
- Successfully defended our client who was accused of legal malpractice arising out of his representation of an accused in a criminal case. Under New York law, a former client of an attorney who was convicted in a criminal case cannot claim legal malpractice against the attorney without first establishing actual innocence. The incarcerated former client made no claim or showing of innocence and we obtained summary judgment for our client.
- Successfully defended a manufacturer of folding ladders in a claim by an insurance company claims adjuster that the ladder failed causing him to fall and sustain personal injuries. Relying upon expert testimony from a wood materials and ladder expert, we were able to convince the jury that the ladder was not defective and that the sole cause of the fall and injury was

- Recipient of 2010 Pro Bono Service Award by N.D.N.Y. Federal Court Bar Association
- Martindale-Hubbell "AV" Peer Review Rated for Very High to Preeminent Ethical Standards and Legal Ability
- Selected by Peer Review for Inclusion in *Super Lawyer* Directory 2007 - 2014 for Business Litigation
- 2006 Burton Award for excellence in legal writing, presented at the Library of Congress, in recognition of his article "Unintended Consequences: Avoiding and Addressing the Inadvertent Disclosure of Documents," published in the November/December 2005 edition of the New York State Bar Association Journal

Prior Experience

- Law Clerk, Honorable Howard G. Munson, former Chief Judge of US District Court, Northern District of New York

Alerts

- Appellate Division Affirms Dismissal of Negligence Claim Against Municipality Providing Emergency Medical Services
- Police Encounter with Dog Walker Leads to Important Ruling on Fed. R. Civ. P. 68 Offers of Judgment in Civil Litigation
- The Cover Up is Worse than the Crime

the negligence of the plaintiff. The jury returned a verdict of no cause for action following a four-day trial.

- Represented the individual seller of a technology company who claimed that he was wrongfully denied compensation for the sale of products following the purchase of his business by a competitor. The sales agreement provided that the seller would receive a percentage of sales from the business that was sold in the years following the transaction. The buyer underwent a corporate reorganization and claimed that the entity that generated the sales was not the entity that was the subject of the agreement. Arbitration and litigation followed parallel tracks and, after completing the arbitration hearing, the arbitrator awarded our client $1.4M (the full amount sought).

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2015, I filed the foregoing with the Court in hard copy (6 copies) and through the appellate CM/ECF system. Service will be accomplished through the appellate CM/ECF system and via Federal Express to:

Frederick J. Neroni,
Appellant Pro Se
203 Main Street
Delhi, NY 13753

/s/ Jaynie Lilley
Jaynie Lilley