

**Zappin v Bragg**

2025 NY Slip Op 31045(U)

March 31, 2025

Supreme Court, New York County

Docket Number: Index No. 156594/2024

Judge: Alexander M. Tisch

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

-----X

ANTHONY ZAPPIN,

Petitioner,

- v -

ALVIN L. BRAGG JR., NEW YORK COUNTY DISTRICT
ATTORNEY'S OFFICE,

Respondent.

INDEX NO. 156594/2024

MOTION DATE 08/27/2024,
10/02/2024,
01/03/2025

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 33
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 46, 47, 48, 49,
50, 51, 52, 53, 54
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65,
66
were read on this motion to/for SANCTIONS

In this proceeding, petitioner seeks documents from respondents District Attorney Alvin
L. Bragg, Jr., (DA Bragg) and the New York County District Attorney's Office (DANY).
Petitioner requested these documents, some being Brady material, to assist him in his defense
against a misdemeanor criminal proceeding for making a false report (Motion Sequence 001).
Now, petitioner seeks either an order or a declaratory judgment that he is entitled to the
documents, or a writ of mandamus for their production. Petitioner also seeks damages for the
violation of his civil rights pursuant to 42 U.S.C. § 1983 from respondents' failure to produce
those documents.

After respondents filed their answer in this proceeding, petitioner filed an amended petition (Motion Sequence No. 002) with similar claims. Petitioner subsequently filed a motion for sanctions, claiming respondents and ADA Caroline S. Williamson, who signed the verified answer to the amended petition, made false statements in that document (Motion Sequence No. 003).

#### **I. MOTION SEQUENCE NUMBER 001- THE ORIGINAL PETITION**

Motion Sequence Number 001, the original petition, is denied as moot, as it is superseded by the amended petition (NYSCEF Doc. No. 34). While the time to amend as of right pursuant to CPLR § 3025 had run and respondent had answered the petition, DANY responded to the amended petition with a “Supplemental Verified Answer” (NYSCEF Doc. No. 46) and made no objection to the amendment. Accordingly, the amended petition will be deemed the active petition and Motion Sequence Number 001 is denied as moot.

#### **II. MOTION SEQUENCE NUMBER 002- THE AMENDED PETITION**

In his amended petition, petitioner claims that, after Justice Matthew F. Cooper presided over Zappin’s divorce case, Justice Cooper and non-party Kevin M. Doyle, Principal Staff Attorney for the Attorney Grievance Committee (which brought a proceeding against petitioner, resulting in his disbarment), arranged for DA Bragg to bring a false misdemeanor criminal proceeding against Zappin. Petitioner alleges DANY failed to turn over witness statements provided by Justice Cooper, Doyle, and others. Petitioner claims the statements contain exculpatory material that should have been disclosed either as *Brady* material or in response to his common law right of access request. Petitioner now seeks to compel their production in his first three causes of action sounding in the common law right of access. Petitioner also seeks the production of *Brady* materials in claims four and six, which seek a writ of mandamus (four) and

assert a violation of petitioner's civil rights under 42 USC 1983 (six). The last claim and claim five, also asserting violation of petitioner's civil rights under 42 USC § 1983, also seek monetary damages for violations of his civil rights by the withholding of these documents.

#### A. Claims Seeking Documents

In the amended petition, Zappin asserts five causes of action seeking the production of documents, or declarations stating he is entitled to those documents, sounding in the common law right of access (Count 1, 2, and 3), and pursuant to *Brady v Maryland* (373 US 83 [1963]) (Counts 4 and 6).

The common law right of access is a "general right to inspect and copy public records and documents, including judicial records and documents" (*Nixon v Warner Communications*, 435 US 589, 597 [1978]). This right is generally invoked in seeking access to court documents and judicial proceedings (*see, e.g., Matter of Herrick v Town of Colonie*, 211 AD3d 1146, 1147 [3rd Dept, 2022]; *Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). Here, petitioner argues a common law right of access to the records he requested in his March 6, 2024, letter to DA Bragg (attached as Exhibit 1 to Zappin Aff., NYSCEF Doc. No. 37). DANY states that it previously sent the requested materials to petitioner in response to one or more of his six prior FOIL requests seeking the same items (Todd Fitch letter to Zappin dated March 12, 2024, attached as Exhibit V to Zappin Aff., NYSCEF Doc. No. 30).

*Brady v Maryland* established that the prosecution is required to "disclose to the defense evidence in its possession both favorable and material to the defense" (*People v Vilardi*, 76 NY2d 67, 73 [1990]). Petitioner asserts respondents have such *Brady* material and failed to turn it over to him during the prosecution. Respondents contend they do not.

The specific material petitioner points to as not having been delivered is witness statements by Justice Cooper in which Justice Cooper admits to making complaints about petitioner to the Attorney Grievance Committee. The petition mentions other purported statements by Kevin M. Doyle of the Attorney Grievance Committee and other officials, but those appear to be abandoned, as petitioner focuses solely on a purported statement by Justice Cooper in his reply papers. Petitioner claims respondents have admitted this statement exists because respondents' correspondence mentioned "the judge who reported you to the grievance committee, which ultimately disbarred you" (Lauren Angelo letter to Zappin dated September 18, 2023, attached as Exhibit 5 to Zappin Aff., NYSCEF Doc. No. 41). Petitioner concludes that the respondents must be in possession of a statement in which Justice Cooper admitted having made the complaint. In the Supplemental Verified Answer (NYSCEF Doc. No. 46), DANY clarifies this description of Justice Cooper was based on statements by petitioner, repeating his characterization of the Judge, not on information or witness statements in DANY's possession, and that respondents have no such statements. Petitioner disputes the veracity of this claim, contending that the DANY first made that statement in a 2018 FOIL response letter, before petitioner believed Justice Cooper had been the person to make the report to the Attorney Grievance Committee, so respondents could not be repeating Zappin's characterization. In an article 78 proceeding, the petitioner has the burden of establishing his allegations (*Bergstein v Bd. of Ed., Union Free School Dist. No. 1 of Towns of Ossining, Et Al.*, 34 NY2d 318, 323 [1974]). Petitioner has not met his burden, as his sole basis for arguing the respondents have not given him everything he was asking for is his unsupported claim that they are lying.

Further, pursuant to CPLR 7803(3), "in a proceeding in the nature of mandamus to review...[t]he standard of review [] is whether the agency determination was arbitrary and

capricious or affected by an error of law” (*Anonymous v Comm'r of Health*, 21 AD3d 841, 843 [1st Dept 2005]) quoting *Scherbyn v Wayne-Finger Lakes Bd. of Co-op. Educ. Servs.*, 77 NY2d 753, 758 [1991]). “An agency’s interpretation of the statutes and regulations that it administers is entitled to deference, and must be upheld if reasonable” (*Matter of Delillo v New York State Div. of Hous. and Community Renewal*, 45 AD3d 682, 683 [2d Dept 2007] see also *Gilman v New York State Div. of Housing and Community Renewal*, 99 NY2d 144, 149 [2002]). “It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record” (*Partnership 92 LP v State Div. of Hous. & Cmty. Renewal*, 46 AD3d 425, 428 [1st Dept 2007]). Further, a petitioner is required to exhaust administrative remedies (*Cuomo v James*, 235 AD3d 578 [1st Dept 2025]). Petitioner has not shown he has done so here.

#### **B. Monetary Damages**

In counts five and six of the amended petition, petitioner seeks monetary damages for the alleged violation of his rights pursuant to the Fourteenth Amendment of the United States Constitution for the same alleged failure to produce documents discussed above. 42 USCA § 1983 provides

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

Petitioner claims the respondents’ failure to provide the Justice Cooper’s witness statement, or other *Brady* material, was such a violation. However, the criminal prosecution was terminated, and petitioner was not convicted of a crime. This “negates any alleged violation of his [*Brady*]

rights and extinguishes any § 1983 due process claim that might arise from the alleged suppression of exculpatory evidence” (*Salis v City of New York*, 81 Misc 3d 1209[A] [Sup Ct 2023]; see *Ambrose v City of New York*, 623 F Supp 2d 454, 471 [SDNY 2009]). Nor, as discussed above, has petitioner met his burden to show any undisclosed *Brady* material exists. Accordingly, this cause of action is also dismissed.

### III. MOTION SEQUENCE NUMBER 003- SEEKING SANCTIONS

In Motion Sequence Number 003, petitioner seeks sanctions pursuant to 22 NYCRR 130-1.1 on the grounds respondents misled this Court in their answer to the amended petition, claiming the respondents were “caught dead to rights” making misrepresentations in their verified answer, specifically that they had not withheld *Brady* evidence, as evidenced by DANY’s reference to “the judge who reported you to the grievance committee, which ultimately disbarred you,” as discussed above (Affirmation of Anthony Zappin, NYSCEF Doc. No. 62, ¶ 3, 8). As discussed above, respondents claim the characterization was petitioner’s, and they were just repeating it, not indicating they had received that information in a statement. While petitioner claims he had not made such an accusation, in an October 25, 2017, affidavit filed in a proceeding before the Appellate Division, First Department, in which he sought relief from the Attorney Grievance Committee, petitioner accused Justice Cooper of filing an attorney grievance complaint against him (filed as Exhibit 2 to Zappin Aff., NYSCEF Doc. No. 64, ¶ 82). This accusation predates DANY’s 2018 FOIL response letter, supporting respondents’ position that DANY was repeating petitioner’s characterization of Justice Cooper, rather than admitting anything. Accordingly, and for the reasons discussed above, petitioner has failed to show a misrepresentation by respondents or entitlement to any sanctions. Therefore, this motion also fails.

IV. CONCLUSIONS


For the reasons discussed above, it is hereby

ORDERED that petitioner’s original petitioner (Motion Seq. No. 001) is DENIED AS MOOT; and it is further

ORDERED that petitioner’s hybrid amended petition (Motion Seq. No. 002) is DENIED and all claims dismissed; and it is further

ORDERED that the petitioner’s motion for sanctions is also hereby DENIED and this case will be marked disposed.

This constitutes the Decision and Order of this Court.

<u>3/31/2025</u> DATE					 ALEXANDER M. TISCH, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
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