SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of the Application of STEPHEN GRANT RUSSELL, Petitioner, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules, — against — HON. MICHELLE I. SCHAUER, F.C.J., et al., Respondents.	**MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION** Index No. _____

Petitioner Stephen Grant Russell, pro se

[redacted]

Santa Barbara, California 93101

[redacted]

Dated: May 18, 2026

Public copy: the child's legal name is shown as E.V.; private street addresses and personal email addresses are removed. Otherwise as filed.

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I, **STEPHEN GRANT RUSSELL**, being the Petitioner in the above-captioned proceeding, appearing *pro se*, submit this Memorandum of Law in support of my Verified Petition for relief under Article 78 of the Civil Practice Law and Rules.

PRELIMINARY STATEMENT

This Memorandum of Law is submitted in support of the Verified Petition of Stephen Grant Russell, *pro se*, for relief under Article 78 of the Civil Practice Law and Rules. The Verified Petition advances six independently sufficient causes of action against three Westchester County Family Court actors and the institutional Court, based on the cumulative failure of the Family Court to conform its record and conduct to (i) the binding mandate of the Appellate Division, Second Department, in *Matter of Walsh v. Russell*, 214 A.D.3d 890 (2d Dep't 2023); (ii) the full-faith-and-credit obligations imposed by the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, with respect to three California adjudications of Respondent Walsh's domestic violence liability; (iii) the Family Court's own child-protective mandate as to documented harm to the parties' daughter; (iv) the First Amendment limits on retrospective speech-restriction; and (v) the prohibition against the exercise of judicial authority in excess of authorized powers and without statutory or constitutional foundation.

Six Points follow, each tracking one of the six Causes. Each Point sets out the legal standard with primary-source authority and applies the standard to the documented facts of the Petition. The Verified Petition contains the documentary record on which the legal standards are applied; this Memorandum confines itself to the law.

POINT I — MANDAMUS LIES TO COMPEL CONFORMANCE OF THE FAMILY COURT'S RECORD TO THE APPELLATE MANDATE

A. Standard

Article 78 mandamus under CPLR § 7803(1) lies to compel the performance of a duty enjoined by law where the duty is ministerial as to *whether* to act, even where the official may retain discretion as to *how* to perform. The Court of Appeals in *Matter of Klostermann v. Cuomo*, 61 N.Y.2d 525, 539–540 (1984), squarely held that "[m]andamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought," and that where a statutory directive is mandatory rather than precatory, "it is within the courts' competence to ascertain whether an administrative agency has satisfied the duty that has been imposed on it … and, if it has not, to direct that the agency proceed forthwith to do so." Discretion in performance does not defeat mandamus; only discretion as to whether to act forecloses it. *Id.* at 540. The companion limiting principle was stated in *Matter of Legal Aid Soc'y v. Scheinman*, 53 N.Y.2d 12 (1981) — mandamus "will lie only to compel the performance of a ministerial act, and only where there exists a clear legal right to the relief sought." Together, these decisions frame the rule: the duty must be non-discretionary as to whether to perform; the right must be clear.

B. Application

The duty to conform the Court Management System record on File No. 154703 to the Appellate Division's two holdings in *Matter of Walsh v. Russell*, 214 A.D.3d 890 (2d Dep't 2023), is exactly the kind of ministerial duty *Klostermann* compels. The Appellate Division held — squarely, on the merits, in a published opinion — **two things material to this Point**: **(a) Procedural** — that the order appealed from (the February 2, 2022 order, M.I. Schauer, J.) "was not entered upon the father's default," the Appellate Division reasoning that "[a]lthough the father failed to appear in person at the hearing, his counsel appeared on his behalf and participated in the hearing"; and **(b) First Amendment** — that the speech-restriction was modified by deleting "any existing blogs and likenesses" and substituting blogs "which reference these proceedings or disparage the child's relatives, and any likenesses of the child posted in connection with such blogs," with the order affirmed "as so modified." The Westchester County Family Court is bound by both holdings as law of the case

under elementary appellate-review principles. Three years after the mandate, the Court Management System record continues to classify the February 2, 2022 order as *ORDER ON DEFAULT* on Form GF-16 (8/2010), and the original blanket speech-restriction continues to operate against Petitioner, the book, the blog, and third-party speakers the AD narrowing expressly excludes. Neither conformance requires the exercise of judicial discretion as to outcome; the appellate court has stated the outcome. Each conformance requires only the ministerial act of making the operative record reflect the binding ruling.

Petitioner brought two motions specifically asking the Family Court to conform the record — Motion 14 (Ex Parte Motion to Conform Record under CPLR §§ 5019(a) and 5015(a)(4)) and Motion 15 (Notice of Renewed Ex Parte Motion to Conform Order). Each was dismissed within the same calendar day or the next on a ground, "failure to state a cause of action", that on the face of the CPLR text refers to a defense under CPLR § 3211(a)(7) to an initiating pleading measured against the pleading-sufficiency standard of CPLR § 3013, and has no ordinary application to a post-judgment motion brought under CPLR §§ 5019(a) and 5015(a)(4). Motion 15 expressly anticipated and refuted the dismissal ground on its face; the same recital was applied the next calendar day. Those dismissals are *appealable orders preserved by Notices of Appeal filed under Family Court Act § 1113 and CPLR § 5513(a)*; under *Pirro v. Angiolillo*, 89 N.Y.2d 351 (1996), Article 78 cannot substitute for appellate review of appealable orders. *Id.* at 359. The dismissals are presented in the Verified Petition (¶ 6) as predicate facts demonstrating the Family Court's continuing refusal of the conformance duty, not as objects of certiorari relief in this proceeding.

The mandamus relief Petitioner seeks under Cause I is therefore precisely *Klostermann* mandamus on a ministerial duty: an order from this Court directing the Family Court (on reassignment per WHEREFORE item 7) to enter, within thirty days, a corrective order conforming the Court Management System record to reflect (a) that the February 2, 2022 order was not entered on Petitioner's default, and (b) that the operative speech-restriction is the AD-narrowed restriction. The relief is incident to the broader declaratory recognition under CPLR § 3001 (WHEREFORE Recognition 1) that both appellate holdings bind the Family Court as law of the case. Voidness on

jurisdictional grounds is addressed under Point II below; the AD's "not on default" holding presupposes a substantive hearing in which counsel participated and does not itself reach voidness.

POINT II — DECLARATORY RELIEF AND VACATUR LIE FOR THE JURISDICTIONAL FOUNDATION; THE POST-TAKING REGIME IS VOID *AB INITIO*

A. Standard

CPLR § 5015(a)(4) authorizes vacatur of "a judgment or order . . . upon the ground of . . . lack of jurisdiction to render the judgment or order." The Court of Appeals in *Matter of Lacks v. Lacks*, 41 N.Y.2d 71, 75 (1976), confirmed that "a judgment or order . . . issued without subject matter jurisdiction is void, and that defect may be raised at any time and may not be waived." Section 5015(a)(4) carries **no time bar**, no scienter requirement, and no requirement that the moving party have been a party to the original proceeding. It is the appropriate vehicle for relief from an order entered without subject-matter jurisdiction.

CPLR § 3001 authorizes declaratory judgment to "declare the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." The remedy reaches continuing legal relations, not merely past acts; it is uniquely suited to recognizing the legal effect of established facts.

The UCCJEA statutory architecture, codified at **DRL §§ 76, 76-a, 76-b, 76-c, and 77**, governs interstate child-custody jurisdiction. DRL § 76-c provides that the New York court "has temporary emergency jurisdiction" when a child is present in this state under defined emergency circumstances; § 76-c(3) requires that an order taking emergency jurisdiction "specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction" under §§ 76 through 76-b; § 76-c(4) commands that the New York court "shall immediately communicate with the other court" once informed of a sister-state custody proceeding; DRL § 77 commands that "a record must be made of a communication under this section." The architecture is unambiguous: emergency jurisdiction does not authorize permanent custody adjudication; it authorizes only temporary protective acts pending transfer to the home-state forum.

The **Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A**, establishes federal-supremacy rules for inter-state custody. Section 1738A(b)(3) defines "custody determination" to include "a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications." Section 1738A(g) provides:

> "[a] court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination."

Section 1738A(a) imposes on each state the duty to enforce a sister-state custody determination consistent with the PKPA.

The inherent fraud-on-the-court doctrine supports vacatur of an order procured by fraud that "subverts the integrity of the court itself" without time bar. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244–246 (1944). The doctrine attaches to the continuing perpetuation of orders based on a now-known-false foundation, not merely to the moment of the original procurement. **CPLR § 5015(a)(3)** is an additional statutory vehicle to vacate an order procured by "fraud, misrepresentation, or other misconduct of an adverse party."

B. Application

The Westchester County Family Court has acted for eight years without subject-matter jurisdiction over Petitioner and the child E.W. **Three independent grounds** establish the defect, each independently sufficient under CPLR § 5015(a)(4), supplemented by a **continuing-conduct doctrine** that supports retroactive vacatur of orders entered after the defects became apparent.

Layer 1 — UCCJEA emergency-jurisdiction overreach. The Westchester FC's July 16, 2018 Order to Show Cause taking emergency jurisdiction (Tab 7A; Doc 19 Ex. G; Hon. Gordon-Oliver) cites only DRL §§ 75-g, 76-d, 77-g, 77-h, omits the § 76-c(3) duration period, contains no § 77 communication record, and treats the temporary grant as indefinite via the term "the child shall not be

removed from the State of NY until further order of this court." Petitioner had already filed his California paternity action (*Russell v. Walsh*, FPT-18-377425) with the Cal. Fam. Code § 2040 automatic temporary restraining order in force; Petitioner's SF Superior Court FL-300 — sworn declaration dated July 6, 2018; clerk-stamped filed July 9, 2018, in advance of Walsh's NY verification of July 12 and the Westchester OSC of July 16 — expressly pleaded "Expedite motion to quash based on lack of subject matter jurisdiction" and submitted a sworn declaration identifying the active SF proceeding the Westchester FC was statutorily required to communicate with under §§ 76-c(4) and 77 (Doc 19 Ex. J). The bootstrap counter-argument — that the Westchester FC subsequently acquired home-state jurisdiction under § 76 by way of E.W.'s continuous NY residence — is foreclosed by *Lacks*: the residence period is itself the product of the unlawful temporary grant, not an independent jurisdictional basis. Each Westchester order entered on the July 2018 emergency-jurisdiction predicate exceeds the statutory grant. § 5015(a)(4) vacatur lies.

Layer 2 — PKPA preemption from October 2018 forward. The California paternity action was pending in San Francisco Superior Court from early 2018; the SF court was exercising PKPA-consistent jurisdiction. In October 2018, the SF Superior Court convened a five-day emergency custody hearing at which Respondent Walsh, having actual notice and duly served, failed to appear; the SF court awarded Petitioner primary physical custody. From that order forward, § 1738A(a) bound every state to enforce the SF determination, and § 1738A(g) barred New York from exercising any inconsistent jurisdiction. The Gordon-Oliver TPO of November 7, 2018 (Tab 8; Doc 19 Exs. H, I) is the on-its-face derogation — the order affirmatively required Petitioner to "withdraw [his] Order of Protection in California" and to "contact the California police and state that he does not wish to press criminal charges against Petitioner." The PKPA does not permit a state to require dismantling of sister-state protective process; § 1738A(b)(3)'s inclusion of "permanent and temporary orders" in the "custody determination" definition forecloses any argument that the SF EPO and DVRO are mere preliminary measures unprotected by federal supremacy. *Buechel v. Bain*, 97 N.Y.2d 295, 303–304 (2001), independently establishes the collateral-estoppel effect of issues actually litigated and decided at the SF DV hearing on August 29, 2018, including Walsh's sworn admission to unconsented Seroquel administration. § 5015(a)(4) vacatur lies on PKPA preemption grounds; § 1738A's federal-

supremacy character makes the defect a matter of subject-matter jurisdiction, not merely procedural error.

Layer 3 — Predicate falsification. The representations on which Respondent Walsh invoked Westchester emergency jurisdiction in July 2018 are the same representations Walsh has since sworn-recanted in her November 23, 2020 letter to the Chappaqua Police Department (F-052 / Doc 19 Ex. E): "Mr. Stephen Russell never made a threat to kill myself or our daughter E.V. I would like to withdraw any complaints regarding this made to the police department." The contemporaneous record contradicting the original representations was, at the time of the July 2018 Westchester filing, already on the public record: the SFPD Incident Report from the June 4, 2018 unlawful removal; the Uber recording from June 5, 2018 in which Walsh stated, in E.W.'s presence, "Cops will arrest me for poisoning Steve. But it's Seroquel cause Steve is psychotic"; the SFPD EPO #180494149 against Walsh (Doc 19 Ex. A); the SFPD Special Victims Unit criminal poisoning investigation open and active. The fraud-on-the-court doctrine and CPLR § 5015(a)(3) authorize vacatur of an order procured by representations the petitioner has since told police she had not made truthfully.

Layer 4 — Continuing conduct after notice. From at least November 23, 2020 forward, the Westchester FC has had each defect on its record. Schauer's May 19, 2021 reset, the November 5, 2021 Default 2, the December 3, 2021 and February 2, 2022 orders, Bowman's February 3, 2026 hearing, and the April 21/22, 2026 Motion 14/15 dismissals all occurred while the predicate defects were in the record. The continuing perpetuation of orders based on a now-known-false foundation is itself fraud-on-the-court under the inherent doctrine of *Hazel-Atlas Glass*, 322 U.S. at 244–246, and independently supports retroactive vacatur of orders entered after November 23, 2020.

The relief Petitioner seeks under Cause II is therefore vacatur under CPLR § 5015(a)(4) and declaratory relief under CPLR § 3001 recognizing the foundational defect: the Westchester Family Court's exercise of jurisdiction over the matter is in excess of the authority federal and state law leave to it; the post-taking regime, and all proceedings derivative of it, are void from inception under any of the three independent grounds, with the continuing-conduct doctrine independently supporting

retroactive vacatur. *Lacks v. Lacks*, 41 N.Y.2d at 75, confirms that lack of subject-matter jurisdiction is not cured by passage of time or by the parties' continued participation.

POINT III — THE CALIFORNIA ADJUDICATIONS ARE RES JUDICATA AND BIND THIS STATE

A. Standard

Sister-state judgments are entitled to full faith and credit under United States Constitution Article IV, § 1, and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A. The full faith and credit doctrine binds the New York courts to recognize the legal effect of California judgments rendered with personal jurisdiction over the parties.

Anticipating the counter-argument that the SF protective-order chain is mere preliminary measure unprotected by PKPA: Section 1738A(b)(3) defines "custody determination" to include "a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes **permanent and temporary orders, and initial orders and modifications**." The PKPA's full-faith-and-credit duty under § 1738A(a) reaches both permanent and temporary protective process; the SF Emergency Protective Order #180494149 (July 3, 2018) and the SF DVRO that followed were entered under California Family Code procedures with evidentiary hearing, and bind New York under § 1738A(a). The PKPA permits modification only on enumerated grounds present in § 1738A(f); none apply to permit the Westchester FC's November 7, 2018 order requiring Petitioner to "withdraw [his] Order of Protection in California" and to "contact the California police and state that he does not wish to press criminal charges."

Under New York collateral estoppel doctrine, issue preclusion attaches to specific findings of fact actually litigated and necessarily decided in a prior proceeding between the same parties or their privies. *Buechel v. Bain*, 97 N.Y.2d 295, 303–304 (2001). The party seeking preclusion bears the burden of establishing identity of issue; the party opposing bears the burden of demonstrating the absence of full and fair opportunity to litigate. The issues actually litigated and decided at the SF DV hearing on August 29, 2018 — including Respondent Walsh's sworn admission of unconsented Seroquel administration; nanny Tedla's eyewitness testimony; the jury's affirmative finding under Cal.

Civ. Code § 1708.6 that Walsh inflicted injury; the jury's negative finding that Walsh did not reasonably believe Petitioner was going to harm her — bind under *Buechel* independent of the PKPA full-faith-and-credit duty.

Declaratory recognition of a sister-state judgment's binding effect under CPLR § 3001 is procedurally distinct from registration for enforcement. The PKPA imposes a duty of recognition that is independent of any registration step; declaratory recognition is the appropriate vehicle for binding the Family Court to the legal effect of the California adjudications.

B. Application

Three California adjudications establish Respondent Walsh's domestic violence liability against Petitioner — each with full and fair opportunity for both parties to litigate, each rendered with personal jurisdiction:

The **July 9, 2018 San Francisco Domestic Violence Restraining Order** (PDF_SF_DVRO_JUL2018), the prior California judgment on the merits (following evidentiary hearing) that Petitioner invoked before Hon. Wayne A. Humphrey on January 26, 2021 and that Hon. Humphrey declined to give effect to.

The **August 29, 2018 SF DV trial-level findings** (Tab 12 (ExH_03 / PDF_DV_TRIAL_TRANSCRIPT)), including Respondent Walsh's sworn admission, on the record at Tr. p. 76, lines 7–16, that she gave Petitioner Seroquel "on at least two occasions" without his knowledge, "to affect his behavior," because she "was really concerned." Respondent Walsh further elaborated at Tr. p. 76, lines 22–26 that she "told a few other people that I had done it" and intended to "one day tell Mr. Russell." The admission is reciprocally memorialized in Walsh's own DV-120 response form (C-6). Eyewitness corroboration: nanny Abrehet Tedla's July 9, 2018 sworn declaration (¶ 9), filed in *Russell v. Walsh*, San Francisco Superior Court Case No. FPT-18-377425, that she witnessed Respondent Walsh drug Petitioner on at least two occasions and that Walsh told Tedla and Dan Ochoa that she "did it all the time" (LEGAL-TEDLA-DECL).

The **February 16, 2022 SF Superior Court civil jury verdict in *Russell v. Walsh*, CGC-18-570137**, affirmed at A165356 (Cal. Ct. App. 1st Dist., Div. 4, Sept. 15, 2023). Five verdict forms —

VF-1301 Battery, VF-1601 IIED, VF-3900 finding of malice/oppression/fraud, VF-DV under Cal. Civ. Code § 1708.6, and VF-5001 General Verdict — all against Respondent Walsh; total damages $325,000 (final judgment $332,080.74 with 10% interest); Walsh's cross-complaint dismissed with prejudice.

The findings of fact in those three adjudications were actually litigated and necessarily decided. Respondent Walsh had full and fair opportunity to litigate in each forum. Declaratory recognition under CPLR § 3001 binds this State and its Family Court for purposes of any future determination in File No. 154703 turning on factual issues already adjudicated in California — including, without limitation, factual issues bearing on best-interest determinations under DRL § 240 and factual issues bearing on protective-order determinations under FCA § 821 *et seq.*

POINT IV — MANDAMUS AND DECLARATORY RELIEF TO COMPEL THE WITHHELD FCA § 1034 INVESTIGATION POWER ON DOCUMENTED HARM TO THE CHILD

A. Standard

Family Court Act § 1034 (Power to Order Investigations) vests the Family Court with the power, on its own motion or on petition, to order the appropriate agency to investigate whether a child is being abused or neglected. The statute is **discretionary as to the method** of investigation — medical examination, preliminary inquiry, guardian-ad-litem appointment, expert report, CPS referral, evidentiary hearing — but the **whether** to exercise the power is reviewable where the court has completely refused to consider the question over documented allegations. Under *Matter of Klostermann v. Cuomo*, 61 N.Y.2d 525, 539–540 (1984), mandamus reaches the non-discretionary *whether* even where the *how* retains discretion. The court cannot simply ignore documented allegations of abuse to a child within its protective jurisdiction.

FCA § 1012(e)-(f) defines "abused" and "neglected" child for the purposes of the statutory framework. **FCA § 1024** authorizes emergency removal where a child is in imminent danger. **Social Services Law § 413** imposes mandatory-reporting duties on professionals with knowledge of suspected abuse — including, in their representative capacities, the Attorney for the Child (under FCA

§ 241 / 22 NYCRR § 7.2(d) governing AFC duties), social services workers, law enforcement, and court personnel. **SSL § 422** establishes the State Central Register as the recipient of reports. **FCA § 1031** governs the initiation of formal Article 10 child-protective proceedings by petition from a designated presenter; § 1031 is not subject to mandamus directing the Family Court to *initiate* an Article 10 proceeding, but § 1034 is subject to mandamus directing the Family Court to *exercise its investigation power* on documented allegations. The doctrinal distinction is critical: the Article 78 directs discharge of the § 1034 investigation power (the *whether*); the Article 10 petition is a procedural vehicle the investigation may produce if the facts warrant it.

CPLR § 3001 authorizes declaratory relief recognizing institutional conduct as a matter of legal relations. Where the cumulative record documents complete refusal of the § 1034 power over years on convergent allegations, declaratory recognition of the refusal supports the connected procedural cures.

B. Application

The Verified Petition documents (¶¶ 29–39) that multiple independent adult witnesses documented injuries to E.W. and raised concern contemporaneously: both parents, the court-appointed visitation supervisor; a contemporaneous body diagram and written supervisor's report; the Chappaqua Police Department's responding officers (Detective Ragni); a court-filed letter by Petitioner's mother, a retired registered nurse with no party status; the published admissions of Respondent Walsh's own sister, Brienne Walsh, documenting a multigenerational family pattern of abuse — the 2010 published Brienne Walsh passage describing maternal disciplinary conduct "dig her nails into your forearm" supplies family-pattern context for the 2019 body-diagram documentation of E.W.'s injuries, including a deep pinch mark described as finger-width apart (the point is not independent adjudication of the 2010 episode but the institutional record's contemporaneous documentation of child injury alongside family-history material and caregiver concern, with no adequate inquiry following); and Respondent Walsh's own contemporaneous Instagram posts from the Walsh-compound attic ("I really can't stand living here and things get's bad when I say I want to leave").

The Family Court's failure here was the *whether* duty: no investigation under any methodology was performed. The institutional response on the convergent record was not investigation, but contradiction, minimization, silence, or removal of the reporting actors. No medical examination was ordered; no preliminary inquiry was conducted; no guardian ad litem was appointed; no expert report was sought; no referral was made to ACS or the State Central Register under SSL § 413; no evidentiary hearing was held; no record reflecting investigation under any method was made. The Court's only substantive judicial action on the documented bruises was to strike the court-appointed supervisor's contemporaneous report from the record under the direction "Forget about when the reports were done" (ExSS_02 § E). AFC Jackman put the word "bruises" in scare quotes and characterized the documented neck mark as a "drool rash"; SSL § 413 was not discharged. Walsh's then-attorney Guttridge wrote the court that the bruise reports were "utterly untrue" — directly contradicted by the Chappaqua Police's own written record. The protective process, court-appointed supervisor LaMelle, was removed at Walsh counsel's instance after the supervisor's sworn affidavit reporting the September 2019 darkened-vehicle confrontation. Linda Russell's filed letter expressly asked the Court to "issue a summons to Steve and Maura Walsh"; no summons issued.

The relief Petitioner seeks under Cause IV is **mandamus under CPLR § 7803(1) directing the reassigned Family Court to discharge the unperformed FCA § 1034 investigation power** on the cumulative record set forth above, with the choice of methodology reserved to the reassigned Court's discretion (medical examination, preliminary inquiry, guardian-ad-litem appointment, expert report, CPS referral, evidentiary hearing). The relief is **declaratory under CPLR § 3001** that the State's exercise of authority over E.W. has not been accompanied by inquiry adequate to the documented record — a recognition that informs the scope of the procedural cures sought in connected causes (reassignment, void regime, prohibition). The relief asked is not for this Court to enter a child-protective order or to initiate an FCA Article 10 proceeding under § 1031; it is for an order directing the reassigned Family Court to exercise the § 1034 power it has refused to exercise for eight years. If the § 1034 investigation produces facts warranting a child-protective proceeding, the Article 10 petition is initiated by a designated presenter in the ordinary course under § 1031.

POINT V — PROHIBITION AND DECLARATORY RELIEF LIE AGAINST RETALIATION AGAINST PROTECTED WHISTLEBLOWER ACTIVITY

A. Standard

CPLR § 7803(2) prohibition lies to prevent a court from acting "without or in excess of jurisdiction." *Matter of Holtzman v. Goldman*, 71 N.Y.2d 564, 569 (1988), confirms that prohibition is available to prevent a court from "exceeding its authorized powers in a proceeding over which it has jurisdiction" — not merely to challenge subject-matter jurisdiction over the proceeding as a whole. The Court of Appeals in *Matter of Rush v. Mordue*, 68 N.Y.2d 348, 354 (1986), set the limiting principle: prohibition will not lie as a means of seeking collateral review of mere trial errors of substantive law or procedure, "however egregious the error may be." The remedy is discretionary, granted only where there is a clear legal right and where alternative remedies (typically appeal) are inadequate.

CPLR § 3001 declaratory relief reaches institutional conduct independent of any individual order under review. Where the documented record supports a finding that procedural rulings have been used as instruments of retaliation against constitutionally protected speech, declaratory recognition of the absence of any case-specific factual finding that could support continued operation of the speech-restriction is appropriate state-law procedural-review relief.

Petitioner expressly reserves claims for relief under 42 U.S.C. § 1983 and § 1988 for the federal forum. The state-law procedural-review framing does not require this Court to enter a constitutional-tort judgment; it asks for declaratory recognition that no case-specific factual finding has been or could be made on this record, and prohibition under § 7803(2) of the continued operation going forward.

B. Application

The procedural cures stand independently of any framing about motive. The Court should declare under CPLR § 3001 that the Appellate Division's narrowing is the operative scope of any speech-restriction, that no case-specific factual finding supporting application of the original blanket provision (or application of the AD-narrowed restriction to the book, the blog, or third-party speakers the AD narrowing expressly excludes) has been entered on the record; should prohibit under CPLR § 7803(2) continued operation of the speech-restriction beyond the AD-narrowed scope; and should direct under

CPLR § 7803(1) (mandamus) the reassigned Family Court to discharge the omitted DRL § 237 / FCA § 438 fee reviews. The retaliation framing below is offered as supporting pattern evidence for the Point VI reassignment cure — Petitioner's whistleblower work is the protected activity the procedural pattern tracks in time — and is *not* the basis for retaliation-specific relief under Article 78. Petitioner expressly reserves claims under 42 U.S.C. § 1983 for the federal forum.

The Verified Petition documents (¶¶ 40–46) that Petitioner's protected speech and regulator filings have addressed not one expert but an unusually interlinked court-appointed-professional ecosystem in this case — one in which professional advancement, recurring appointments, and procedural continuity have intersected with the same underlying case history. The five-actor advancement pipeline at ¶ 40 is documented public-records evidence of that interlinkage, not a basis for relief in this proceeding. Hon. Gordon-Oliver's recusal "without comment" in 2019 — over (in counsel's contemporaneous words) "issues relating to cronyism in the Westchester Court for which [Petitioner] is a registered whistleblower" — predates Petitioner's later documentary work and establishes that the institutional sensitivity to whistleblower exposure was operative from the early stages of the matter.

The speech-restriction at issue here — the November 5, 2021 Order on Default (ExR_02), subsequently narrowed by the Appellate Division on First Amendment grounds — was entered at Linda Russell's visitation conference on a calendar consolidation of eight dockets in Part 17. The OSC was initiated by AFC Donna M. Genovese, dated October 14, 2021, requesting verbatim language that the order entered against Petitioner: "any persons, entities and/or agents acting on his behalf" restrained from posting, uploading blogs, displaying the likeness of Evie, "and disparaging E.V.'s [redacted] relatives" — and that existing postings, blogs, and likenesses be "erased, deactivated and deleted." The order reaches Petitioner's *agents* by name and protects the *Walsh relatives* by name. The OSC was supported by Stephen Walsh, Sr.'s sworn declaration of October 7, 2021 (ExPP_01, ¶ 3): "I do not think there is any merit to any of his accusations against my daughter, Tara." The transcript records Hon. Schauer declaring Petitioner in default at 4:30 PM, **fifty-eight seconds** after the record resumed following a 28-minute off-the-record lawyer conference. No case-specific factual finding identifying a particular publication was made then or in the years since.

The speech-restriction proceedings were accompanied by extra-judicial communication to journalist Michaelanne Petrella, as the Verified Petition documents (¶ 44) — the November 16, 2021 email naming Petrella's sister and stating "You are putting yourself in harm's way." The same vocabulary later appeared in a Westchester court order hand-delivered to SFPD Sergeant Caraway; the San Francisco criminal poisoning investigation examining the documentary record at ¶¶ 24–25 of the Petition closed following that delivery.

The Verified Petition documents (¶ 45) that all fees in the post-taking regime were allocated 100% to Petitioner under "with-adjustment-at-a-hearing" conditions — and the hearing never came. The fees included counsel fees, expert-evaluator fees (including credential-revoked Griffin), supervisor fees (including Farquharson and Gootzeit), and AFC fees including the $46,920 billed by Jackman over 111.8 hours and the fees Petitioner was required to pay AFC Genovese for the defense Genovese mounted of the speech-restriction Genovese herself initiated. At the January 5, 2022 inquest (Tr. p. 12, lines 3–10), Hon. Schauer stated, in colloquy on Genovese's $19,800 contempt motion bundling forensic and AFC fees: "if he were here, I could throw him in jail and let him sit in a jail cell. It might make a payment come a little faster than the process to execute a judgment." Genovese herself bundled the forensic (Griffin) fees with her own AFC fees in the same contempt motion at Tr. p. 12, lines 14–19.

The Verified Petition documents (¶ 46) the temporal proximity of Hon. Schauer's adverse procedural rulings to Petitioner's documented protected activity. Each of the March–April 2026 adverse rulings — the March 10 ACP-impossible service condition, the April 21 / April 22 same-day six-word dismissals — followed within sixteen days of dated protected activity (the February 23, 2026 CJC complaint, the March 30, 2026 AGC opening, the April 5, 2026 28-page response).

Petitioner is entitled under CPLR § 3001 to declaratory relief that no case-specific factual finding supporting any restriction of Petitioner's documentary work has been or could be made on this record, and to prohibition under § 7803(2) of continued operation of the speech-restriction against Petitioner, the book, the blog, or any third-party speaker the appellate narrowing expressly protects.

POINT VI — PROHIBITION, MANDAMUS, CERTIORARI, AND REASSIGNMENT AGAINST THE CONTINUING PATTERN

A. Standards

Four doctrinal vehicles apply.

Prohibition under CPLR § 7803(2) reaches the continuing prospective operation of acts in excess of authorized power. *Holtzman*, 71 N.Y.2d 564; *Rush*, 68 N.Y.2d 348. Prohibition is *prospective* in nature, it stops a court from continuing to act beyond its authority, and is distinct from annulment, which addresses discrete past acts.

Certiorari under CPLR § 7803(3) and (4) lies to review administrative determinations under the arbitrary-and-capricious standard of *Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 230–231 (1974) — courts cannot interfere with an administrative tribunal's exercise of discretion "unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious.'" The four-month limitations period under CPLR § 217(1) runs only when the determination is "final and binding." *Walton v. New York State Dep't of Corr. Servs.*, 8 N.Y.3d 186, 194–195 (2007), holds that a determination is "final and binding" only when "the agency has reached a definitive position on the issue that inflicts actual, concrete injury" and "administrative remedies have been exhausted." Where statutory administrative review is pending, the four-month clock has not commenced.

Mandamus under CPLR § 7803(1) lies to compel an unperformed non-discretionary duty, with no limitations period accruing until the duty is performed. *Klostermann*, 61 N.Y.2d 525; *Scheinman*, 53 N.Y.2d 12.

Reassignment on appearance-of-bias grounds rests on three independent doctrinal predicates: (i) Judiciary Law § 14 (statutory disqualification when the judge is "interested" in any cause); (ii) 22 NYCRR § 100.3(E)(1) (objective appearance-of-bias standard); and (iii) the doctrinal duty to "maintain the appearance of impartiality" articulated in *Corradino v. Corradino*, 48 N.Y.2d 894 (1979). While *People v. Moreno*, 70 N.Y.2d 403, 405 (1987), establishes that the trial judge is generally the sole arbiter of recusal where disqualification is not mandated by specific legal

requirements, the *Moreno* general rule is displaced by specific requirements where present. *Matter of Murphy v. State Comm'n on Jud. Conduct*, 82 N.Y.2d 491 (1993).

B. Application

Prohibition. The four-act procedural-techniques pattern documented at Verified Petition ¶ 47 — the "default" of January 5, 2022 (AD-repudiated); the March 10, 2026 ACP-impossible service condition; the refusal to clarify on the Service Clarification Letter; and the April 21 / April 22, 2026 same-day six-word dismissals under inapposite CPLR § 3211(a)(7) — operates as continuing excess of authorized power. *Holtzman* / *Rush* prohibition reaches the prospective operation of three continuing excesses going forward: (a) Hon. Schauer's continued exercise of jurisdiction on the unconformed regime; (b) continued operation of the speech-restriction provision against book, blog, or third-party speakers protected by the appellate narrowing; and (c) continued enforcement of the support obligation against the void custody predicate. Each independently meets the *Holtzman* / *Rush* standard.

The March 10, 2026 handwritten Order to Show Cause modifications are a *discrete past act* statutorily impossible at issuance — the personal-service condition against an Address Confidentiality Program enrollee under Executive Law § 108, a program designed specifically to shield enrolled parties from personal service. They are subject to annulment under CPLR § 7806 independent of the prospective prohibition.

Certiorari. Respondent Bowman's determinations of February 3, 2026 and March 12, 2026 are arbitrary and capricious within *Pell*. The Tab 60 (Doc 38) preamble finding — "Mr. Russell did not file personal or business income tax returns with the court" — is directly contradicted on the face of the same docket by NYSCEF Tab 61 (Doc 32) (Petitioner's 2025 IRS Form 1040, filed February 9, 2026, six days after the February 3, 2026 hearing). The four-month *Walton* clock has not commenced because Petitioner's timely Family Court Act § 439(e) Objection (NYSCEF Tab 62 (Doc 39), filed March 23, 2026) remains pending. The certiorari cause ripens upon ruling. In the alternative, mandamus under § 7803(1) directs the reviewing Judge under FCA § 439(e) to rule.

Reassignment. Three specific requirements displace the *Moreno* general-discretion rule:

Judiciary Law § 14 disqualifies a judge "interested" in any cause. The filing of this petition naming Respondent Schauer as Respondent in her judicial capacity triggers § 14 by statute, not by discretion. The interest is concrete and personal — the petition asks this Court to recognize that Respondent Schauer's continued adjudication of File No. 154703 is itself the wrong being challenged.

The **§ 439(e) structural conflict** independently requires disqualification: Respondent Schauer is, by way of her assignment to File No. 154703, the reviewing Judge of the pending § 439(e) Objection (NYSCEF Tab 62 (Doc 39)) — an Objection that refutes findings underlying her subordinate Magistrate's order — while her own record-conformance conduct is the subject of this petition. The conflict is beyond *Moreno* discretion; the reviewing-judge role and the challenged-judge role cannot coexist on the same matter.

The **22 NYCRR § 100.3(E)(1)** objective appearance-of-bias standard is independently satisfied on the cumulative record set forth in Causes I–VI. *Corradino* ("the better practice for the court to disqualify itself and thus to maintain the appearance of impartiality"); *Murphy*, 82 N.Y.2d 491. The cumulative record — the AD-repudiated default characterization, the impossible service condition, the inapposite dismissals, the recusal cascade, the AFC succession pipeline, the elevation of the AFC who defended the speech-restriction subsequently narrowed by the Appellate Division on First Amendment grounds — is more than sufficient to meet the objective standard.

Reassignment to a judicial officer outside the Ninth Judicial District is required.

CONCLUSION

For the reasons set forth above and in the accompanying Verified Petition, Petitioner respectfully requests that this Court grant the relief sought in the Petition's WHEREFORE: the four foundational recognitions (Recognitions 1–4) and the six consequences that flow from them (Consequences 5–10), inclusive of the stay, costs, and preservation, without waiver, of all claims under 42 U.S.C. § 1983 and § 1988 reserved for the federal forum.

CERTIFICATION OF WORD COUNT

I hereby certify pursuant to 22 NYCRR § 202.8-b that this Memorandum of Law contains approximately 6,554 words, exclusive of the caption, table of contents, table of authorities, signature block, and this certification. The word count was determined by the word-count function of the word-processing system used to prepare this document. This Memorandum of Law complies with the 7,000-word limit set forth in 22 NYCRR § 202.8-b(c).

Dated: May 18, 2026
Santa Barbara, California



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End of Memorandum of Law.