

➤ The Northern District decision is posted at nylj.com.

Amendment constitutional rights over his arrest and detention in Oswego in 2009.

At this stage of the litigation, Kahn said he finds persuasive the

allegations contained in a 2013 report by the Brennan Center's Immigrant Rights Clinic at New York University School of Law and Families for Freedom.

cv-0797 on Jan. 29.

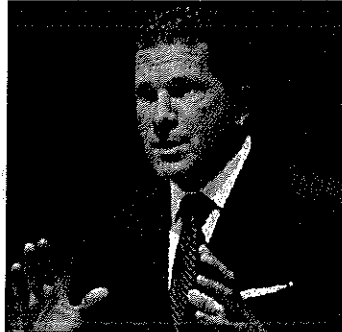
The judge added, "It is altogether plausible that some causal relationship exists between: (1) a policy that exclusively » Page 2

Tacopina Sues Daily News, Two Reporters, Kerik for Defamation

BY ANDREW KESHNER

PROMINENT defense attorney Joseph Tacopina has hit the New York Daily News, two of its reporters and disgraced former police commissioner Bernard Kerik with a \$15 million defamation action, alleging the trio schemed in a "clever, but corrupt plan" to have Kerik file a "meritless" disciplinary complaint that would clear the way for the newspaper to publish a libelous article questioning Tacopina's ethics.

Although reporting statements such as those in the disciplinary complaint are privileged under



Joseph Tacopina

New York Civil Rights Law §74, which applies to a fair and true report of judicial proceedings, Tacopina's suit insists the privilege

dissolved in a case with "a unique and outrageous set of facts" when journalists Nathaniel Vinton and Michael O'Keeffe allegedly conspired to avoid liability by premising their story on a purportedly bogus grievance they "induced" Kerik to file.

The federal suit, *Tacopina v. Kerik*, 14-cv-749, said neither Civil Rights Law §74 nor the litigation privilege—which shields parties from defamation allegations for statements made in connection to judicial proceedings—"protect people from purposefully, and in bad faith, engineering a situation where they may assert these privileges to protect themselves

from the consequences of making statements they know to be defamatory."

It seeks \$10 million against the Daily News and the reporters, and \$5 million against Kerik.

Daily News Assistant General Counsel Matthew Leish said in a statement, "The claims are completely without merit and the allegation that the Daily News' reporters were involved in some sort of conspiracy is simply absurd. We will file our response in due course."

The suit, filed Wednesday in the Southern District, marks the latest round in a legal fight between Tacopina, of Tacopina » Page 6

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Defamation

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Seigel & Turano, and Kerik, his former client—a brawl that now involves two journalists and one of the largest newspapers in the country.

Last month, Kerik sued Tacopina in New Jersey federal court for alleged misconduct that Kerik claims contributed to his 2009 tax fraud conviction (NYLJ, Feb. 5).

Tacopina countered a day later with a defamation suit against Kerik in Manhattan Supreme Court, attacking Kerik for, among other things, telling the Daily News reporters that Tacopina “discussed privileged conversations” with prosecutors in 2007.

Tacopina denies the allegation, pointing to Southern District Judge Stephen Robinson’s 2010 holding in Kerik’s federal criminal case that Tacopina’s statements to prosecutors “cannot be considered confidential and privileged.”

The assertion that Tacopina gave up privileged information without his client’s knowledge or consent appears in a Dec. 28 Daily News article Vinton and O’Keeffe wrote with another reporter, which cited a complaint Kerik filed with the Appellate Division, First Department grievance committee.

The state court litigation did not name the paper or the reporters as defendants and has been withdrawn without prejudice, as Tacopina presses his case in the Southern District.

But when scrutinizing the allegedly defamatory article, the state

action said “O’Keeffe and Vinton’s maneuvering have likely insulated the Daily News from a libel suit. However, in the process, they betrayed Kerik. While the allegation made by Kerik in his Bar complaint, as well as in a subsequent frivolous lawsuit filed by Kerik, are privileged, his prior statements to O’Keeffe and Vinton are subject to suit.”

Tacopina’s attorney in the federal lawsuit, Judd Burstein of Manhattan, explained the shift from state to federal court: “What’s changed is I woke up in the middle of the night, I said wait a minute, that’s wrong.”

He said he was aided by matters such as conspiracy law and the Restatement of Torts, Second, noting the fair reporting privilege did not apply when the underlying statement was made “under a collusive arrangement ... for the purpose of conferring the privilege.”

The federal action, in explaining the reporters’ alleged motive against Tacopina, noted Vinton and O’Keeffe had covered the story of performance enhancing drugs in professional baseball and are “obsessed with ridding the sports world of performance enhancing drugs.”

Tacopina represents New York Yankees third baseman Alex Rodriguez, arguably the most high-profile player to be accused of using the banned substances.

The suit said the two reporters purported to “accurately and dispassionately report facts” but reached a “new low” when covering Major League Baseball’s dispute with Rodriguez by “obviously

slanting” their coverage towards the league and allegedly deciding to “discredit Tacopina with factually inaccurate allegations” owing to his defense of Rodriguez.

The reporters “found a willing partner for this endeavor in Kerik,” said the complaint.

The complaint said that prior to the article’s publication, one of Tacopina’s lawyers, Lanny Davis of Lanny J. Davis & Associates, told the reporters “they were mistaken” if they thought they could attribute defamatory claims to an anonymous source, which Davis thought was Kerik, and then invoke their privilege to refuse identifying the source.

On the morning before publication, O’Keeffe called Davis to tell him Kerik had just filed a disciplinary complaint, and they were writing a story on the filing. The suit said when Davis confronted O’Keeffe about the coincidence of Kerik filing a complaint and O’Keeffe’s plans to do a story, O’Keeffe replied, “I don’t reveal our sources and tactics.”

Burstein said he could not recall a case with a similar set of facts, saying the defendants should be “very concerned about what discovery will show.”

Kerik’s attorney in the New Jersey federal action, Athan Tsimpedes of Washington D.C., said in an email that he had not yet read the complaint, “but I understand that it is an all too familiar defense tactic to blame the victim or the media to shift the focus.”

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