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Art. 78 Motions to Change Venue & Oppositions

Article 78 Litigation Documents

Art. 78 Motion to Change Venue/Opposition - FUSL000148 (2022-04-06)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS _____ X

_____,

Petitioner,

-against-

**NOTICE OF MOTION
TO CHANGE VENUE
OF PROCEEDING**

Tina M. Stanford, Chairwoman, New York State
Board of Parole,

Respondent(s).

_____ X

PLEASE TAKE NOTICE, that upon the annexed affirmation of Suzette Corrine Merritt, Assistant Attorney General, dated April 6, 2022, respondents will move this 4th day of May 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order, pursuant to CPLR §§ 510(1), 511, 7004(c), changing the place of venue from Dutchess County to Orleans County. The above-entitled proceeding is for a writ of habeas corpus pursuant to CPLR Article 70 challenging the parole board denying him release from incarceration.

Dated: April 6, 2022.

Respectfully Submitted,
LETITIA JAMES
Attorney General of the
State of New York
Attorney for Respondent
One Civic Center Plaza Suite 401
Poughkeepsie, New York 12601

BY: 
Suzette Corrine Merritt
Assistant Attorney General

efile

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS _____ X

Petitioner,

**AFFIRMATION IN SUPPORT
OF MOTION TO CHANGE
VENUE OF PROCEEDING**

-against-

Tina M. Stanford, Chairwoman, New York State
Board of Parole,

Respondent(s).

_____ X

Suzette Corrine Merritt, an attorney admitted to practice before the courts of this State, affirms the following under penalties of perjury:

1. I am an Assistant Attorney General, of counsel to Letitia James, Attorney General of the State of New York, attorney for respondents and am familiar with all the facts and circumstances heretofore had herein. I make this affirmation in support of respondents' motion for an order, pursuant to CPLR §§ 510(1) and 511 and 7004(c), changing the place of venue from Dutchess County to Orleans County.

2. The above-entitled proceeding is a petition for a writ of habeas corpus brought by petitioner challenging his prison sentencing.

3. The County of Orleans is the proper venue for this proceeding as the petitioner had his parole board hearing in Orleans Correctional Facility, a housing correctional facility located in Orleans County. C.P.L.R. § 7004, subd. (c).

4. The Parole Board Release Interview took place on November 18, 2020. The incarcerated individual was sitting in Orleans Correctional Facility, in Orleans County, for the interview. The Board was conducting the interview from Buffalo, which is in Erie County. The Board denied release and imposed a 24-month hold. Exhibit 1.

5. Pursuant to CPLR § 506(b), the proper venue in a parole denial proceeding is the judicial district where the determination complained of took place, or where the Board's principal office is located. Matter-of Grochulski v. Dennison, 40 A.D.3d 413 (1st Dept: 2007); see also Matter of Ramirez. v. Dennison, 39 A.D.3d 310, 310 (venue proper where appeal decided). The "material events" leading to the determination for the purposes of the rule are the decision-making process. Matter of Phillips v. Dennison, 41 A.D.3d 17, 23, (1st Dept, 2007). The relevant event is the decision-making process leading to the determination under review. Vigilante v Dennison, 36 A.D.3d 620 (2nd Dept. 2007). Thus, proper venue in a release denial proceeding is where the respondent's principal office is located (Albany County), or where the determination complained of took place. Howard v New York State Board of Parole, 5 A.D.3d 271 (1st Dept. 2004); Schwartz v Dennison, 40.A.D.3d 413 (1st Dept. 2007)..

6. It is respectfully requested that an order be issued changing the place of trial of the above entitled action from the County of Dutchess to the County of Orleans, that proceedings in this matter be stayed pending hearing and determination of this motion, and that respondents be given thirty (30) days after notice of the happening of the latest event, the opening of clerk's minutes file or the assignment of a Supreme Court Justice in the Court of Orleans with accompanying notice to the office of the Attorney General, to serve a return on the petition and make any further submissions on the relator or, if the motion is denied, respondents be given thirty (30) days from the date a copy of the order denying this motion is served upon the office of the Attorney General, in which to serve and file answering papers.

Dated: Poughkeepsie, New York
April 6, 2022


Suzette Corrine Merritt
Assistant Attorney General