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Article 78 Litigation Documents

Art. 78 Motion to Dismiss/Opposition - FUSL000139 (2021-10-29)

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STATE OF NEW YORK COUNTY OF ALBANY
SUPREME COURT

In the Matter of the Application of,

[REDACTED],

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

**NOTICE OF
MOTION TO DISMISS**

[REDACTED]

November 5, 2021

-against-

TINA M. STANFORD, CHAIRWOMAN, NEW YORK
STATE BOARD OF PAROLE,

Respondent(s).

PLEASE TAKE NOTICE that Respondent, Tina Stanford, by her attorney, Letitia James, Attorney General of the State of New York, Jonathan S. Reiner, Assistant Attorney General, of Counsel, interposes the following objections in point of law to the Petition:

The Petitioner failed to obtain this Court’s jurisdiction over Respondent because Petitioner has failed to serve a proper Petition. CPLR 3211(a)(8).

The Petition does not consist of plain and concise statements. CPLR 3014.

PLEASE TAKE FURTHER NOTICE that respondent will move this Court at a Special Term of the Supreme Court, held in and for the County of Albany, at the Albany County Courthouse, on November 5, 2021 at 9:30 a.m., or as soon thereafter as counsel can be heard, to dismiss the proceeding, and alternatively, in the event that the motion is denied, for leave pursuant to CPLR 7804(c) to serve an answer, within sixty days, and for such other relief as may be just and proper.

Dated: Albany, New York
October 29, 2021

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondent
The Capitol
Albany, New York 12224

By: /s/ Jonathan S. Reiner
JONATHAN S. REINER
Assistant Attorney General, of Counsel
Telephone: (518) 776-2641
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TO: Martha Rayner, Esq. (via NYSCEF)
Attorney for Petitioner

STATE OF NEW YORK COUNTY OF ALBANY
SUPREME COURT

In the Matter of the Application of,

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Petitioner,

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For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

November 5, 2021

-against-

TINA M. STANFORD, CHAIRWOMAN, NEW YORK
STATE BOARD OF PAROLE,

Respondent(s).

**MEMORANDUM OF LAW IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS**

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondent
The Capitol
Albany, New York 12224-0341

JONATHAN S. REINER
Assistant Attorney General, of Counsel
Telephone: (518) 776-2641
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PRELIMINARY STATEMENT

“In the early morning hours of February 26, 1988, a young, newly appointed New York City Police Officer, ██████████, sitting in his patrol car outside the home of a witness he was assigned to protect, was shot five times in the head from a distance of two feet.” ██████████ ██████████, 258 F. Supp. 2d 105, 113–14 (E.D.N.Y. 2003). “The testimony adduced at [Petitioner’s] trial established that ██████████ execution-style murder was planned by petitioner and his co-conspirators” to earn a financial bounty from a drug lord who wanted petitioner to “kill a cop.” *Id.* at 114.

Petitioner, by counsel, has commenced the instant proceeding challenging his denial of parole. As explained in more detail below, the proceeding should be dismissed.

ARGUMENT**POINT I****THE COURT LACKS PERSONAL JURISDICTION OVER RESPONDENT**

“An Article 78 proceeding is commenced with the service of a ‘notice of petition, *together with the petition* and affidavits specified in the notice.’” *Lebow v. Lansing Planning Bd.*, 151 A.D.2d 865, 866 (3d Dep’t 1989) (quoting CPLR 7804[c]) (emphasis added). A “notice of petition without a petition [i]s insufficient to commence the proceeding.” *Long Island Citizens Campaign Inc. v. County of Nassau*, 165 A.D.2d 52, 54 (2d Dep’t 1991); *see also Lebow*, 151 A.D.2d at 866 (“in the absence of an accompanying petition, petitioners’ papers are jurisdictionally deficient”).

A petition in an Article 78 proceeding must comply with the statutory requirements for a complaint in an action. *See* CPLR 402. “Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs.” *See* CPLR 3014. Further, “[e]ach paragraph shall contain, as far as practicable, a single allegation.” *Id.*

Although styled as “Petition,” NYSCEF Document 2 is a Memorandum of Law. *Cf. Guptill Holding Corp. v. Williams*, 137 Misc. 2d 935, 938 (Sup. Ct. Albany County 1987) (“a pleading may not be utilized as a subterfuge for a memorandum of law”) *aff’d* 140 A.D.2d 12 (3d Dep’t 1988). The purported petition contains a twenty-seven page section entitled “argument.” Doc. 2 at 9–36. It lacks any numbered paragraphs. *See generally* doc. 2. It contains numerous citations to statutory and decisional authority as well as law review and newspaper articles. *Id.* It is devoid of *concise* allegations of fact. *Id.* It has twenty-six footnotes. *Id.* The purported petition contains none of the indicia of a pleading yet every indicia of a Memorandum of Law.* While “as a general rule, pro se parties’ pleadings are to be ‘liberally construed, and, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers,’” the Court should not excuse Petitioner’s failure to serve a proper petition because he enjoys the assistance of counsel. *Ward v. N.Y.C. Trans. Auth. Trans. Adjud. Bur.*, 63 Misc.3d 750, 751 (Sup. Ct. Kings County 2019) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 [2007]).

As Petitioner never served (or filed) a document approximating an actual Petition, he has not truly commenced this action. *See* CPLR 7804(c) (requiring a petitioner to serve a notice of petition along with a petition). Without service of the proper documents, Petitioner accordingly failed to obtain jurisdiction over Respondents. The Court should dismiss this proceeding.

* The purported petition also contains approximately 11,614 words—far more than the limit of 7,000 words as allowed by Rule 202.8-b(a) of the Uniform Rules for the Supreme Court.

POINT II**IN THE ALTERNATIVE, THE COURT SHOULD DISMISS THE PROCEEDING
BECAUSE THE PETITION FAILS TO COMPLY WITH THE
STATUTORY PLEADING REQUIREMENTS**

If the Court finds that Petitioner acquired jurisdiction over Respondents, the Court should still dismiss this proceeding for petitioner's failure to comply with the pleading requirements set forth in the CPLR. As noted above, a petition must contain "plain and concise statements in consecutively numbered paragraphs" each of which "shall contain, as far as practicable, a single allegation." CPLR 3014. The Petition meets none of these requirements.

"Indeed, it is elementary that the primary function of a pleading is to apprise an adverse party of the pleader's claim and to prevent surprise. Absent such notice, a defendant is prejudiced by its inability to prepare a defense to the plaintiff's allegations." *Cole v. Mandell Food Stores*, 93 N.Y.2d 34, 40 (1999). Here, the Petition fails to contain the plain and concise statements in consecutively numbered paragraphs required by CPLR 3014. As Petitioner failed to comply with these requirements, this Court should dismiss the Petition. *See Green v. Dubray*, 57 A.D.3d 1051 (3d Dep't 2008); *Gerena v. NYS Div. of Parole*, 266 A.D.2d 761 (3d Dep't 1999).

Further, Petitioner's flouting of CPLR 3014 prejudices Respondent. Respondent cannot file an answer admitting and/or denying portions of the petition. Nor can Respondent evaluate the petition for appropriate legal and/or factual defenses. Petitioner has deprived Respondent of a meaningful opportunity of moving to dismiss the petition on a more substantive basis than non-compliance with the rules of pleading.

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CONCLUSION

In view of Petitioner's failure to comply with the pleading requirements of CPLR 3014, the Petition must be dismissed. If the Court denies this motion, Respondent respectfully requests sixty days to submit its answer.

Dated: Albany, New York
October 29, 2021

/s/ Jonathan S. Reiner
JONATHAN S. REINER
Assistant Attorney General

STATEMENT PURSUANT TO 22 NYCRR 202.8-b

I, Jonathan S. Reiner, affirm under penalty of perjury pursuant to CPLR 2106, that the total number of words in the foregoing Memorandum of Law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 854 words. The foregoing Memorandum of Law complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing Memorandum of Law, I relied upon the word count of the word-processing system used to prepare the document.

/s/ Jonathan S. Reiner
JONATHAN S. REINER
Assistant Attorney General