

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of
WILLIAM J. LAWRENCE,

Petitioner,

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

**DECISION AND
ORDER**

- against -

NEW YORK STATE UNIFIED COURT SYSTEM,

Respondent.

Motion Return Date: Albany County Special Term, November 17, 2006

RJI Number: 01-06-ST7140

Index Number: 7340/06

Justice Robert A. Sackett, Presiding

**APPEARANCES: William J. Lawrence
Self-Represented Petitioner
3109 Carman Road
Schenectady, New York 12303**

**Eliot Spitzer, Attorney General of the
State of New York
Attorney for Respondent New York State Unified
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Albany, New York 12224
Risa L. Viglucci, Assistant Attorney General,
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**Gina M. Lopez Summa
Attorney for State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458
Marilyn Balcacer, Esq., of Counsel**

SACKETT, J.:

In this CPLR article 78 proceeding, petitioner, who has been employed as an office worker/secretary with the New York State Unified Court System, Office of Court Administration since 1981, appears to seek review of a determination by the New York State Human Rights Division which found no probable cause to believe respondent had engaged in unlawful discriminatory practices. Petitioner seeks relief in the form of a promotion and back pay.

Respondent New York State Office of Court Administration ["OCA"] moves to dismiss the petition on jurisdictional grounds. Specifically, respondent alleges that petitioner has failed to obtain jurisdiction over the respondent and that he has failed to name or obtain jurisdiction over necessary parties, to wit, the Division of Human Rights [the "Division"] argues that petitioner has failed to comply with the CPLR 7804(d) requirement that the petition be verified.

Respondent State Division of Human Rights has filed a verified answer alleging that the evidence gathered by the Division in the course of the investigation was sufficient to support its probable cause determination and seeks dismissal of the petition.

Petitioner, a male in his early 50's, filed a complaint against respondent with the New York State Division of Human Rights alleging discrimination based on his sex. The gravamen of petitioner's complaint was that between the Fall of 2004 and the Summer of 2005, he applied for numerous promotions to the posted vacancies of court analyst and secretary. More specifically, the records indicate that in January, 2005, he sought a lateral transfer to three separate job positions which were subsequently filled by women. According to petitioner, he was denied these positions because of his gender and not that he lacked the requisite qualifications. After conducting an investigation, the Division found no probable cause to support petitioner's allegations. In dismissing the complaint, the Division determined that:

"The complainant sought advancement in his employment, and to that end, he applied for three separate job postings. Of the qualified candidates, complainant had considerably less direct experience. The reasons for respondent denying complainant the promotions he sought are the product of sound business judgment, and do not appear to be pretexts for discrimination. Respondent found persons more fully qualified for the job postings, and it hired them."

Initially, the record establishes that petitioner failed to effect personal service of the notice of petition and petition upon the Office of Court Administration which has been designated as an office for service of process in actions or proceedings brought against respondent New York State Unified Court System (see Evans Affidavit, ¶4). Petitioner therefore failed to acquire personal jurisdiction over respondent, requiring dismissal of the petition (see CPLR 403[c]; see also Matter

of RECYCLE v Lacatena, 163 AD2d 693, 694 [1990]).

In addition, petitioner served his petition without any notice of petition upon the Attorney General's Office on October 30, 2006 (see Viglucci Affirmation, ¶6). Petitioner's failure to personally serve a copy of the notice of petition on the Attorney General's Office as required by CPLR 7804 (c) requires dismissal (see Matter of Schanbarger v Blum, 90 AD2d 665 [1982], *lv denied* 58 NY2d 603 [1982]).

Respondent OCA further argues that the petition must be dismissed because petitioner failed to name or obtain jurisdiction over the Division of Human Rights which, it claims, is a necessary party to the proceeding (see CPLR 1001[a]). The Court concurs with respondent OCA that as the petitioner appears to be challenging the Division of Human Rights' determination on his underlying complaint and is an entity which "might be inequitably affected by a judgment in the [proceeding]" (CPLR 1001[a]), it indeed is a necessary party to the action. Apparently, petitioner attempted to cure his failure to name the Division of Human Rights as a respondent herein by filing an amended petition, naming the New York State Unified Court System, the New York State Office of Court Administration, and the New York State Division of Human Rights as parties, which was served upon the Office of the Unified Court System and the Office of the Attorney General the day before the return date of the instant proceeding.

By letter dated November 21, 2006, respondent OCA advised this Court that because petitioner failed to seek leave of court prior to serving an amended petition, the petition was rejected and treated as a nullity (see Bd. of Ed. of Florida Union Free School Dist. v DePace, 301 AD2d 521 [2003], *lv denied* 99 NY2d 511 [2003] [the Supreme Court correctly determined that the amended petition insofar as it was asserted against the State Department of Education was a nullity because the petitioner failed to comply with the requirements of CPLR 401]). In turn, by letter dated November 24, 2006, petitioner requested that, in the "interest of justice", this Court accept the amended petition without formal motion practice.

CPLR 401 provides that after a special proceeding has been commenced, "no party shall be joined or interpleaded and no third-party practice or intervention shall be allowed, except by leave of court." Clearly, petitioner did not seek leave of court prior to serving an amended petition joining the Division as a necessary party to the proceeding. Nonetheless, it is apparent that the Division of Human Rights received a copy of the petition and elected to appear and serve an answer, notwithstanding petitioner's failure to name the Division as a necessary party to the action. The Division did not serve an answer to the amended petition.

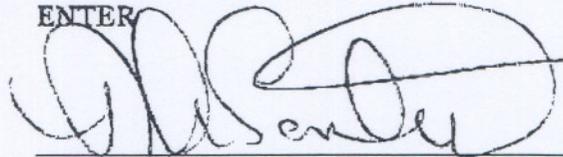
Under these circumstances, the Court grants respondent's motion to dismiss the petition.

However, as to the amended petition, as respondents have suffered no prejudice, it is deemed to have been served upon respondents OCA and the Division. Accordingly, respondents have 20 days from the date of filing of this Decision and Order to file and serve a responses to the amended petition.

This constitutes the Decision and Order of this Court. The original Decision and Order and all papers, with the exception of the certified transcript of the record which will be retained by this Court, is being returned to the Attorney General who is not relieved from the provisions of CPLR 2220 with respect to filing, entry and notice of entry.

Dated: Monticello, New York
January 18, 2006

ENTER

A handwritten signature in black ink, appearing to read "R. Sackett", written over a horizontal line.

Hon. Robert A. Sackett, JSC

Papers considered;

Petition of William J. Lawrence, dated October 26, 2006, with exhibits; respondent OCA's notice of motion to dismiss, and supporting affirmation of Risa L. Viglucci, Esq., dated November 10, 2006, with exhibit; answer of respondent Division of Human Rights, dated November 10, with certified original administrative record; amended petition of William L. Lawrence, dated October 26, 2006; letter of Risa L. Viglucci, Esq., dated November 21, 2006; letter of William J. Lawrence, dated November 24, 2006, with attachments.