

1 STATE OF NEW YORK
2 SUPREME COURT : COUNTY OF ULSTER

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4 ~~Elena Ruth Sassower~~, Center for Judicial Accountability,
5 Inc., Elena Ruth Sassower individually and as Director of
6 the Center for Judicial Accountability, Inc., acting on
7 their own behalf and on behalf of the People of the State
8 of New York & the Public Interest,

9 Petitioners/Plaintiffs,

10 - against -

11 Index No. 904235-22

12 New York State Joint Commission on Public Ethics,
13 Legislative Ethics Commission, New York State Inspector
14 General, Kathy Hochul in her official capacity as
15 Governor of the State of New York, Andrea Stewart-Cousins
16 in her official capacity as Temporary Senate President,
17 New York State Senate, et al.,

18 Respondents/Defendants.

19 -----
20 ORDER TO SHOW CAUSE

21 HELD AT: ULSTER COUNTY COURTHOUSE
22 285 Wall Street
23 Kingston, New York 12401
24 JULY 7, 2022

25 HELD BEFORE: HON. DAVID GANDIN

ELENA SASSOWER *unrepresented*
~~Self-represented~~ Litigant for the
Petitioner/Plaintiff
10 Stewart Place
Apartment 2D E
White Plains, New York 10603

NEW YORK STATE ATTORNEY GENERAL
The Capitol
Albany, New York 12224
BY: Stacey Hamilton, ESQ.

BARBARA VAN BLARCUM
Official Reporter
Ulster County Courthouse
Kingston, NY 12401
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1 THE COURT: Good afternoon. Can I have
2 your appearance, please. I'll start with the
3 petitioner/plaintiff.

4 MS. SASSOWER: Elena Sassower,
5 unrepresented individual petitioner/plaintiff.

6 MS. HAMILTON: Stacey Hamilton from the
7 attorney general's office.

8 THE COURT: Is that c-y or e-y?

9 MS. HAMILTON: E-y.

10 THE COURT: I reviewed the procedural
11 history of the case and the filing. I have also
12 reviewed the determination by Judge Lynch and Judge
13 Mackey.

14 Yesterday evening, I think after 10:00
15 p.m., Ms. Sassower, you filed what I believe is the
16 third order to show cause in this action/proceeding
17 seeking provisional relief that you claim needs to
18 be determined today by some dispositive event that
19 is going to happen on July 8th.

20 MS. SASSOWER: Tomorrow.

21 THE COURT: The 7th. Today is the 7th.
22 Yes, July 8th. I correct my prior statement. I'm
23 also aware there is a motion to dismiss pending and
24 I have looked at that as well. To complicate the
25 procedural history a little further, in opposition

1 to that motion Ms. Sassower has indicated an
2 intention to file an amended ^{notice of} petition/complaint,
3 which she has included as an exhibit to her
4 opposition papers. I would like to start with that
5 small procedural point first.

6 Ms. Sassower, Exhibit B to the opposition
7 to the defendant's/respondent's motion to dismiss
8 was an amended ^{notice of} petition.

9 MS. SASSOWER: Exhibit A, your Honor.

10 THE COURT: I apologize. And I think
11 Exhibit B was a summons which implicitly cures the
12 alleged failure to file a summons with the
13 commencement with this action. Do you plan to file
14 those documents and make them the operative
15 pleadings in this action?

16 MS. SASSOWER: Your Honor, I
17 particularized that the paltry dismissal motion
18 made by Assistant District Attorney Rodriguez was
19 frivolous, fraudulent and did not constitute
20 grounds for dismissal by the two cases that he
21 cited.

22 THE COURT: Ms. Sassower, I'm going to
23 interrupt you. I'm not here to argue the merits of
24 that motion. For the court to make rulings in the
25 case, it needs to know what the operative pleadings

1 are or going to be. So just listen to me and
2 please answer my specific questions. Do you intend
3 to file those documents to make them the operative
4 pleadings in this case?

5 MS. SASSOWER: That was an issue for the
6 determination of the court. That's what I posited
7 to your Honor. I said that it was, I did not
8 believe it to be necessary, but I was deferring to
9 you. Insofar as the amended notice of petition, I
10 identified that it would be returnable at a date
11 after the Ethics Commission Reform Act of 2022
12 would be taking affect, which is tomorrow, and
13 therefore the request for injunctive relief would
14 be moot.

15 So I removed that and replaced as the
16 first issue what, with all respect, has to
17 additionally be a first issue here, which is
18 whether or not the attorney general, who appears
19 before you, ~~having~~^{has} made a determination as to the
20 interest of the state pursuant to Executive Law
21 63.1, which predicates the attorney general's
22 position in litigation on a ^{de} termination of the
23 interest of the state. It's not a knee jerk
24 defense of defendants.

25 THE COURT: Ms. Sassower, we are going to

1 get to the subject of your motion. It behooves us
2 all to keep the record clear. I first want to
3 address that point as to your intentions, which you
4 responded clearly.

5 MS. SASSOWER: To the court with respect
6 to Exhibits A and B, which were served on the
7 attorney general as reflected.

8 THE COURT: So before the court today is
9 an order to show cause that was filed last night
10 seeking provisional relief. It's your application,
11 Ms. Sassower. Unless there are procedural issues
12 you want to address, Ms. Hamilton, I'm going to ask
13 Ms. Sassower to be heard on her application.

14 MS. HAMILTON: Okay, your Honor.

15 MS. SASSOWER: I believe that my position,
16 the facts and the law are before the court
17 presented by my, I believe it was four affidavits
18 in support of injunctive relief, TRO preliminary
19 injunction, which I have been seeking to secure
20 since June 7th. It's now a month later. I
21 identified at the outset and thereafter that
22 petitioner's entitlement is as a matter of law,
23 because the issue presented is the
24 unconstitutionality and unlawfulness of the
25 enactment of the Ethics Commission Reform Act of

1 2022 as part of the budget, and that the
2 unconstitutionality unlawfulness was particularized
3 in the verified complaint with substantiating
4 evidence as to which petitioners had a 100 percent
5 likelihood of success on the merits. The only
6 glitch here is that it needed to be heard by a fair
7 and impartial tribunal that was going to address
8 the law and the facts.

9 I further identified, obviously, the
10 grounds for a TRO, the grounds for a preliminary
11 injunction start with substantial likelihood of
12 success on the merits. And the evidence presented,
13 as to which you have on papers, you have on papers
14 nothing that denies, disputes, contests let alone
15 sworn statements or evidence that you don't have,
16 that the enactment violated constitutional
17 provisions, statutory provisions, legislative
18 rules, case law.

19 The second prong, of course, as your Honor
20 is aware, is immediate irreparable injury. You
21 have presently no operative entity, ethics entity
22 that can assume the functions that it is supposed
23 to be operating as of tomorrow.

24 Should I hand up what I emailed to the
25 court this morning, that I ascertained that none of

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the appointments of the 11 commissioners, none of those nominations have been made by the appointing authorities. So there is going to be a void if JCOPE is allowed to pass out of existence ^{despite} ~~because~~ ^{its} of ~~an~~ unconstitutional unlawful enactment. There is nothing replacing it. Is that an immediate irreparable injury? I would say it truly is, because actually there is no, there is not even a forecast as to when members would be nominated, and of course there has to be appointment of staff. So you don't have an operating entity.

Moreover as I identified in the verified petition, which is the subject of the causes of action, the enactment of this so-called Ethics Reform Commission of 2022 was a deceit designed to strip the public of its valuable rights, enforceable through ~~mundaneness~~ ^{mandamus}.

THE COURT: Ms. Sassower, I have to ask you a question. Is there something in the New York State Constitution requiring an ethics commission on either what you call JCOPE or some analogous type body? Is there a constitutional mandate for that type of body?

MS. SASSOWER: We have a constitutional right to the safeguards of the law which are

in significant
1 ~~ins~~ignificant respects ensured by a functioning
2 ethics entity, yes.

3 THE COURT: Can you direct the court to
4 some specific constitutional provision, because I
5 didn't see one in your papers mandating the
6 existence of this type of body.

7 MS. SASSOWER: Okay, I would be happy to
8 examine the constitution and bring the pertinent --
9 but I do not understand how that is, with all
10 respect, germane to the simple issue.

11 THE COURT: Let me explain it to you.

12 MS. SASSOWER: As to whether the enactment
13 of this provision that will take affect tomorrow is
14 constitutional and lawful as to which you have an
15 evidentiary presentation. You have a verified
16 petition. You have sworn affidavits. You have
17 nothing on the other side. You have nothing,
18 nothing to contest, that even disputes, that the
19 enactment is ^{un}constitutional as enacted, ^{un}lawful
20 constitution. ^{al} That's the issue.

21 Now the third prong, in addition to -- so
22 you have substantial likelihood, you have 100
23 percent. There is no evidence. You don't even
24 have a statement. You don't even have, as a matter
25 of law -- I'm here to speak to the issue of what

1 this court's duty is pursuant to Section 6312
2 pertaining to preliminary injunctions. I have met
3 the burden that is mine to present by affidavit and
4 other evidence that there is a cause of action,
5 okay, and that I am, that this cause of action will
6 be prejudiced by the statute taking affect
7 tomorrow, and that the public will be prejudiced,
8 that there is irreparable injury, because you don't
9 have among other things, you don't have an ethics
10 body. Obviously the state deems having an ethics
11 body to be important. Important. So beginning
12 tomorrow, you have presently a disfunctioning
13 ethics body, but you have an ethics body that was
14 enacted without challenge. Here you have a statute
15 that was unconstitutionally and unlawfully enacted.
16 It's all particularized with the evidence. You
17 have nothing. You don't even have -- you don't
18 even have an unsworn statement. It's over. They
19 have not presented to you anything that you can use
20 to deny the petitioners, acting on behalf of the
21 People of the State of New York and the public
22 interest, their lawful entitlement to the granting
23 of ^q TRO, but certainly a hearing, an evidentiary
24 hearing to further prove what is already before
25 you.

1 Now, the third prong, of course, is the
2 equities. There are no equities on the other side.
3 They have made no showing. You have nothing. You
4 granted a hearing. The papers of the petitioner
5 left you no choice, and that's why the order to
6 show cause was framed as it was. It is a matter of
7 law entitlement.

8 Before I pause, you will of course want to
9 hear from the Attorney General, and I trust you'll
10 be good enough to give me a rebuttal. This is
11 Kingston, the first capital of New York State,
12 historic first capital of New York State. I have
13 come up from White Plains where on July 10th at the
14 courthouse, which is just a couple blocks from
15 where I live, where the State of New York was
16 declared. The colony went out of existence when
17 the State of New York was declared, and this was
18 the first capital.

19 This case comes to you from Albany, the
20 present capital. I am here seeking the historic
21 rights of the People to enforcement of the law.
22 I'm asking you to do your job, to do your duty, to
23 demonstrate the independence ^{for} which you have a
24 lengthy tenure. You are paid by the taxpayers.
25 You are sworn by the law to enforce the law I have

1 cited to you. The petitioners have met their
2 burden.

3 Last thing. As I have stated in my June
4 28th affidavit and opposition to Assistant Attorney
5 General Rodriguez's dismissal motion, its only
6 value is for purposes of establishing that the
7 attorney general must be disqualified because the
8 dismissal motion is frivolous, fraudulent,
9 demonstrative, that they have no defense. They
10 have no defense at all. And with all respect, your
11 Honor, the question I would ask you to ask of this
12 assistant attorney general ^{is} who has made the
13 determination as to the interest of the state here,
14 okay, it shouldn't be me, a non-lawyer, who is
15 pleading for your enforcement of the law so the
16 people might be protected with a proper ~~and~~ ethics
17 entity. And of course this case goes way beyond.
18 It's really about the integrity ~~of the~~ ^{and}
19 constitutionality of state government. You have
20 something monumental, significant. You are the
21 most powerful person at this moment in the entire
22 state. You can right this state simply by
23 following the law. I'm not asking you for a favor.
24 I'm asking ^{en} and ~~treating~~ you, notwithstanding that
25 you have a salaried interest here, financial

1 interest that divests you of jurisdiction, as all
2 judges are divested of jurisdiction by reason of
3 the^{if} financial interest.

4 I am asking you to do what the taxpayers
5 have paid you to do, what you are sworn to do, to
6 enforce the law whether or not you like it, whether
7 or not you like the result. The fact is, based on
8 the papers, the papers, you have nowhere to go but
9 to do your duty, to grant the TRO, to put this down
10 for an immediate hearing on the preliminary
11 injunction. Thank you.

12 THE COURT: Thank you, Ms. Sassower.

13 Ms. Hamilton.

14 MS. HAMILTON: Your Honor, I'm going to
15 remain seated, if that's okay.

16 THE COURT: That would be fine.

17 MS. HAMILTON: Thank you.

18 Thank you for hearing us today, your
19 Honor. I would just first note that on the current
20 matter, the petitioner has filed an order to show
21 cause and affidavit. In other words, not the
22 appropriate papers to commence the action. She
23 references in her order to show cause papers
24 previously filed in another action, one that was
25 actually was already decided by I think Judge Lynch

1 prior to this appearance today. The petitioner was
2 afforded an opportunity to appear on those papers
3 and that motion. She failed to appear when that
4 was calendared.

5 Currently the only thing that we have
6 actually been served with is a notice of petition.
7 That's it, nothing else. So petitioner has failed
8 in all respects to meet the requirements for
9 service pursuant so CPLR 78. We filed a motion to
10 dismiss on those insufficient papers. That motion
11 is pending. The petitioner did not file a response
12 to that motion timely, but that's not before the
13 court.

14 MS. SASSOWER: I filed the next day.

15 THE COURT: Ms. Sassower, I'm going to ask
16 you not to interrupt Ms. Hamilton. She gave you
17 courtesy of not interrupting you. You'll have
18 ample time to respond.

19 MS. SASSOWER: Thank you.

20 THE COURT: I would like to ask you about
21 that procedurally, Ms. Hamilton, because the papers
22 that were forwarded to this court indicate that all
23 the papers in this action have been filed under
24 Index Number 904235 of '22. Are you indicating
25 there is some index number relating to some of

1 these papers filed?

2 MS. HAMILTON: It seems petitioner is
3 referencing other papers previously filed. For
4 instance, she references her June 6th, 2022,
5 verified petition and complaint in her order to
6 show cause.

7 THE COURT: Was that not filed under this
8 index number? Let me tell you it was, because I
9 looked at the electronic file. The papers have all
10 been filed under this index number, starting with
11 the verified petition. Give me a moment.

12 I don't have the date it was filed, but I
13 want to say it was June 7th. And Judge Lynch did
14 not dismiss this proceeding with prejudice. He
15 deemed a temporary prior application for
16 provisional relief, ^{as} withdrawn based on Ms.
17 Sassower's indication to the court that she was not
18 going to show up for the hearing. He did not make
19 a substantive determination of the petition.

20 MS. HAMILTON: Right, your Honor. So I'm
21 just simply pointing out in that action the only
22 thing we were served with was a notice of petition,
23 properly served with. In this action we have not
24 been properly served at all, nor have any of the
25 defendants.

1 THE COURT: Ms. Hamilton, that's the same
2 action, the same index number.

3 MS. HAMILTON: As you know, your Honor, I
4 was not the first attorney in this proceeding. My
5 understanding is the June 6th verified petition
6 pertained to the prior proceeding that Judge Lynch
7 ruled on, which had a return date of July 1st.

8 We have only been properly served so far
9 with a notice of petition on that prior one. The
10 petitioner has now commenced another action, where
11 she has filing^{ed} an order to show cause and affidavit
12 bringing in papers from the prior proceeding which
13 were not properly served on respondents, nor has
14 this matter been properly served on respondents.

15 Petitioner is right that she has to prove
16 a likelihood of the success on the merits, and she
17 has woefully failed to do so. She has made nothing
18 more than conclusory statements without evidence
19 whatsoever about unconstitutionality, unlawfulness,
20 et cetera, simply conclusory statements, nothing
21 more. She needs to meet her burden as far as a
22 temporary restraining order and/or a preliminary
23 injunction that petitioner has to show by clear and
24 convincing evidence that she will suffer
25 irreparable harm in the absence of injunctive

1 relief. The alleged irreparable harm claimed by a
2 party seeking a preliminary injunction must be
3 immediate, specific, non-speculative and
4 non-conclusory. Petitioner's allegations are
5 nothing more than non-speculative, and -- excuse me
6 == speculative and conclusory.

7 Furthermore, the alleged irreparable harm
8 cannot be to the public in general. Petitioner has
9 clearly stated in her argument before your Honor
10 that she is bringing this action on behalf of the
11 public in general. To get the preliminary
12 injunction and TRO the harm cannot be to the public
13 in general, it has to be specific to petitioner.
14 She has not claimed any specific or irreparable
15 harm that she will suffer, and it cannot be to the
16 public in general. Before you today she has argued
17 simply that somehow, generally and again
18 conclusory, that the public will be harmed.

19 Second, as far as her right to a temporary
20 restraining order, no temporary restraining order
21 may be granted in an action arising out of a labor
22 dispute as defined in Section 807 of the labor law,
23 nor against a public officer or a municipal
24 corporation of this state to restrain the
25 performance of statutory duties.

1 Petitioner is simply incorrect as to her
2 claims, again just conclusory claims, that there
3 will be no ethics board or entity after JCOPE is
4 dismantled tomorrow. JCOPE is being dismantled and
5 a new entity is immediately going to take affect.
6 That entity will engage in the same ethics issues
7 that JCOPE dealt with.

8 Further, your Honor, as far as irreparable
9 harm, this act, dismantling JCOPE and creating a
10 new entity, became law on April 8th, 2022. It was
11 to take affect 90 days after it became law.
12 Petitioner waited two months before filing any
13 action in this proceeding. So to the extent that
14 she claims there will be some irreparable harm or
15 injury, she has known about this since January and
16 only filed the most recent of her many actions two
17 months ago.

18 Furthermore, the new entity was created to
19 improve the transparency and the trust and the
20 integrity of ethics enforcement. Again, not only
21 is there still going to be an entity to do the
22 things that JCOPE did as far as regulating ethics
23 and public officers, the new entity is going to do
24 those things, simply in a more transparent way.
25 The new entity will be subject to FOIL and the open

1 meetings law like other state agencies. So she has
2 failed to argue irreparable harm again, which her
3 burden is by clear and convincing evidence for a
4 TRO and/or a preliminary injunction.

5 Also, to the extent her papers suggest
6 that the Attorney General's Office is required to
7 recuse themselves or somehow not represent the
8 respondents in this matter, again petitioner has
9 offered nothing more than conclusory statements
10 without any evidence whatsoever to support the
11 notion that the Attorney General's Office is not
12 the proper party to represent the respondents in
13 this proceeding. In fact, the Attorney General's
14 Office is statutorily required to do so pursuant to
15 Executive Law Section 63.

16 If your Honor is inclined to have the
17 office respond to the preliminary injunction on
18 papers, given the fact that we have had less than
19 24 hours notice of this proceeding and our
20 appearance at this proceeding today, we would
21 request a minimum of four weeks to submit papers on
22 the issue of preliminary injunction. Thank you.

23 MS. SASSOWER: May I be heard, your Honor?

24 THE COURT: Yes. Ms. Sassower, I'm going
25 to ask you, I understand my statutory duties, so

1 just direct your comments to the merits of this
2 action.

3 MS. SASSOWER: Thank you.

4 Ms. Hamilton is not sworn. Everything she
5 said is not evidence, and it is replete with one
6 lie after another lie. And if your Honor has at
7 all reviewed the electronic record or the hard
8 copies that I was burdened to furnish, including
9 the original affidavit of service, you know that
10 the attorney general was properly served with these
11 papers. It wasn't just the notice of petition. It
12 was additionally the verified petition complaint.
13 She represented to you that they were only served
14 with a notice of petition. She claimed to you, she
15 lied outrightly to you in making statement after
16 statement that it's all conclusory, that no
17 evidence has been presented. You have a mountain
18 of prima facie open and shut evidence, including
19 with respect to her outrageous --

20 THE COURT: Ms. Sassower, can I ask you to
21 omit the hyperbole. Ms. Hamilton made factual
22 representations to the court. If she was
23 inaccurate there is no need to call her a liar or
24 to claim she has some ulterior motive. She is an
25 advocate for her client, just like you are an

1 advocate for your cause. Part of the reason we
2 resolve things in the courtroom is to address these
3 in a professional and civil manner, so I ask you to
4 abide by that.

5 MS. SASSOWER: So you have no evidence in
6 front of you. You have representations by an
7 attorney general, who if you are conversant with
8 the record, if you have read anything, if you have
9 familiarized yourself with the petition that brings
10 us here and the affidavits that I have submitted,
11 you should be calling her out. But I will address
12 the single aspect of law that she raised with you
13 so that you are not misled as to the matter of law
14 entitlement here to a TRO. You have no evidence.
15 You have nothing on the other side on which to deny
16 this.

17 And I believe that under the statute
18 parenthetically it says, provided that the elements
19 required for the issuance of a preliminary
20 injunction is demonstrated in the plaintiffs'
21 papers, the presentation by the defendant of
22 evidence sufficient to raise an issue of fact as to
23 any such element shall not in itself be grounds for
24 denial of motion. In such event the court shall
25 make a determination by hearing or otherwise

1 whether each of the elements require the issuance
2 of a preliminary injunction exist. Well, you don't
3 have any evidence from this assistant attorney
4 general. You have an unsworn statement, not
5 evidentiary.

6 Now I will address the one aspect of law,
7 less you be misled, which was also thrown out on a
8 previous -- oh, everything is one action, okay. I
9 don't know what she is talking about, other
10 actions, new proceeding.

11 Okay, as to her citation -- give me a
12 moment, please, your Honor. She made some
13 reference about no temporary restraining order may
14 be granted in an action arising out of a labor
15 dispute, nor against a public officer or municipal
16 corporation of the state to restrain the
17 performance of statutory duties. I'm not seeking
18 to restrain the ~~forms~~ ^{performance} of statutory duties. I am
19 seeking to void an unconstitutional statute, ~~to~~ ^{for} a
20 declaration of unconstitutionality. That's what is
21 at issue, the constitutionality, the lawfulness of
22 a statute.

23 Now, she has not briefed anything here.
24 And I do not wish you to be misled, but the point
25 is you have no evidence that refutes, rebuts,

1 contests, denies, disputes any of the mountain of
2 particulars, not conclusory, but particulars in the
3 verified petition, which is, as you know,
4 constitutes a sworn statement for evidentiary
5 purposes. It's a verified sworn petition on top of
6 which you have, I believe, four affidavits, sworn.

7 You have not any affidavit, you have no
8 sworn statement from the attorney general. And
9 from the respondents, all you have are affidavits
10 in which they want to point out to you that they
11 weren't served with a summons. But there is no
12 requirement of a summons to be served. A notice of
13 a petition was served, and I identified that there
14 is no legal authority that that would constitute
15 the basis for dismissal.

16 THE COURT: Thank you.

17 MS. SASSOWER: The attorney general is a
18 respondent. Is a respondent. Is disqualified for
19 interest. Is the subject of Exhibit D, complaint
20 filed with JCOPE particularized resting on a
21 complaint filed with the attorney grievance
22 committee and the Commission on Judicial Conduct
23 for what this attorney general has been doing for
24 her corruption in office.

25 THE COURT: Thank you, Ms. Sassower.

1 Before I rule on the application for provisional
2 relief, I want to clarify some matters
3 procedurally.

4 MS. HAMILTON: May I put one more thing on
5 the record?

6 THE COURT: Sure.

7 MS. HAMILTON: I just want to address
8 the notion that petitioner also has to for a
9 preliminary injunction and/or temporary restraining
10 order demonstrate the strong likelihood of success
11 on the merits given the drastic remedy she seeks,
12 and I would just submit to the court that
13 petitioner has failed to demonstrate the likelihood
14 of success on the merits whatsoever based on
15 ineffective service. Thank you, your Honor.

16 THE COURT: Okay, the verified petition in
17 this action, the only action before me was filed on
18 June 7th. An amended order to show cause was
19 filed on June 9th, made returnable on July 15th.
20 Ms. Sassower, then you filed a notice of petition
21 on June 24th, made returnable on July 1st.
22 Ms. Hamilton, your office filed a motion to
23 dismiss. It was really a cross motion, also
24 returnable July 1st, and then the instant order to
25 show cause was filed. In addition to the verified

1 petition, I have three separate applications before
2 me.

3 And I'd like to understand from you, Ms.
4 Sassower, in a very succinct manner, the
5 application filed last night, does that mean you
6 are withdrawing the order to show cause returnable
7 on July 15th? Not the petition, the substantive
8 matter.

9 MS. SASSOWER: It was never served. When
10 I discovered that Justice Lynch was the twin
11 brother of Michael Lynch, who sits on the Appellate
12 Division, I realized what was going on. I said at
13 that time that I would not -- he is disqualified.
14 He has no jurisdiction. I said I would not serve
15 -- it was never served.

16 THE COURT: Thank you.

17 MS. SASSOWER: I was under no obligation
18 to serve something that was an attempt to sabotage
19 the petitioner's rights. It was better, more
20 efficient to proceed by notice of petition. It's
21 not that I didn't -- I said I wasn't going to show
22 up. I wasn't going to show up because I was not
23 going to serve. I was not interested in proceeding
24 before such a judge who had done what he had done.

25 THE COURT: The notice of petition filed

1 on June 24th seeks a temporary restraining order
2 and a preliminary injunction. In the court's view,
3 that is identical to the relief sought here today.
4 Is that accurate?

5 MS. SASSOWER: Correct.

6 THE COURT: So I'm going to render a
7 determination on the application before the court
8 filed last night with respect to the provisional
9 relief sought in light, and I'm going to amend the
10 return date sought in that notice of petition to
11 give the respondents ample time to respond to that
12 petition.

13 MS. SASSOWER: If your Honor is going to
14 do that, then I would request that Exhibit A be
15 included, because it has as its first branch the
16 issue of the disqualification and the conflict of
17 interest, and the interest of the state, that is
18 the threshold issue with respect to the attorney
19 general.

20 THE COURT: That application is denied.
21 We are either going to proceed on the substance of
22 the verified petition filed on June 7th in
23 conjunction with the relief sought here today, or
24 you are going to independently file an amended
25 petition. I'm not going to make a hybrid of the

1 two documents.

2 MS. SASSOWER: Fine. It's part of the
3 same thing. It's in the other^{and} further relief.

4 THE COURT: That pleading filed on June
5 7th, Ms. Hamilton, your office has submitted
6 affidavits in support of your notice of motion
7 acknowledging service of that.

8 MS. HAMILTON: The notice of petition,
9 your Honor?

10 THE COURT: The petition and the notice of
11 petition, correct.

12 MS. HAMILTON: You mean in our motion to
13 dismiss we acknowledge that we received a notice of
14 petition?

15 THE COURT: And the petition, yes. It's
16 all under this index number, not a prior
17 proceeding. One of your objections in your notice
18 of motion and grounds for assertive dismissal was
19 the failure of Ms. Sassower to comply with the
20 notice provision, the 20-day notice requirement of
21 the filing of a notice of petition.

22 MS. HAMILTON: Yes, your Honor.

23 THE COURT: That is not a jurisdictional
24 ground for dismissal. In the case law it's replete
25 with instructions to the trial court that unless

1 there is prejudice, that that can be cured.

2 So the return date on the notice of
3 petition filed on June 24th is going to be changed
4 right now to give your office ample time to
5 respond. How much time does your office need to
6 respond to the petition?

7 MS. HAMILTON: 60 days, your Honor.

8 THE COURT: It seems a little rich. Can
9 we do more -- how about August 18th?

10 MS. HAMILTON: Okay.

11 THE COURT: If you need additional time
12 you can request it on notice to Ms. Sassower.

13 Ms. Sassower, you are required to file a
14 summons with a plenary action. This is a hybrid
15 action, an Article 78 proceeding in conjunction
16 with a plenary action seeking declaratory relief.
17 There is an outstanding motion to dismiss that
18 portion of the proceedings seeking plenary relief
19 based on your failure to file a summons.

20 Do you intend to cure that defect by
21 serving a summons, also making -- by
22 serving a summons?

23 MS. SASSOWER: I did, your Honor.

24 THE COURT: You did in an exhibit to amend
25 the petition in opposition papers.

1 MS. SASSOWER: I identified that
2 notwithstanding what you are representing as law,
3 there is no law that requires a summons in addition
4 to a notice of petition. And I also identified
5 that I inquired of the clerk of Albany County
6 Supreme Court on that subject, and she informed me
7 that the notice of petition was sufficient. I
8 attested to that in my opposing affidavit which
9 also tells you the law that a summons is not
10 required.

11 Nonetheless, on June 28th, and ^{it} is
12 reflected by Exhibit B, I served a summons. And my
13 question to your Honor in the affidavit, the
14 opposing affidavit in further support of the notice
15 of petition, asked your Honor's guidance as to what
16 you wished me to do.

17 THE COURT: So you served a summons on
18 June 28th; is that correct?

19 MS. SASSOWER: You have the stamp of the
20 attorney general's office.

21 THE COURT: All right. The court will
22 issue a written decision with respect to the
23 remainder of the motion to dismiss.

24 I'll tell you orally from the bench, I
25 have reviewed the pleadings in their totality in

1 depth, and I do not find that they warrant
2 dismissal based on a pleading defect and failure to
3 comply with CPLR 3014. I find the pleadings
4 adequately identify the ten separate causes of
5 action and alleges facts in support thereof to put
6 the respondents/defendants on notice of the claims
7 asserted. I will issue a written decision with
8 respect to that.

9 With respect to the application for
10 provisional relief, it is denied.

11 MS. SASSOWER: What is the basis, your
12 Honor?

13 THE COURT: Ms. Sassower, I'm going to ask
14 you not to interrupt me.

15 A preliminary injunction is a drastic
16 remedy which this court should be cautious to issue
17 as both sides have addressed. The movant is
18 required to demonstrate by clear and convincing
19 evidence the likelihood of success on the merits,
20 the danger of irreparable harm in the absence of
21 provisional relief and the balancing of the
22 equities in its favor.

23 The gravamen of the application before the
24 court has to do with the legislative abolishment of
25 the Judicial Commission on Public Ethics, known as

1 JCOPE --

2 MS. SASSOWER: Joint Commission.

3 THE COURT: Joint Commission, thank you.

4 -- as part of the 2022-23 budget. That
5 commission was a creature of statute created by the
6 legislature. The petitioner fails to identify any
7 legal basis why the legislature cannot now abolish
8 that same commission it created. While it
9 certainly would be good public policy for the State
10 of New York to have an ethics commission that is
11 active and not dysfunctional and investigates, and
12 timely investigates complaints made to it, there is
13 no legal requirement for such a commission
14 identified by the petitioner. Based on that, based
15 on the fact that a new commission is to be
16 appointed to substitute for JCOPE --

17 MS. SASSOWER: The enactment, your Honor,
18 have you not read the papers? It seems like you
19 have not read anything actually. You are paid over
20 \$200,000 a year. You haven't read anything.

21 THE COURT: The court has read the papers,
22 and does not find, while there are procedural
23 irregularities alleged in connection with the
24 drafting and enacting of the budget, the court does
25 not find the petitioner's papers meet the high

1 One moment, Ms. Sassower.

2 The court further finds no grounds for
3 disqualification. That is an extraordinary remedy.
4 The state law of New York requires the state
5 attorney general to represent the state in all
6 matters, and your allegation without factual
7 support that disqualification is necessary would
8 deprive the state of its statutory counsel here
9 today.

10 Finally, while there was no oral argument
11 on this point, to the extent that the petitioner's
12 papers seek removal to federal court, she filed the
13 petition in state court. There are procedures
14 under federal law seeking removal to a federal
15 jurisdiction. You are certainly free to avail
16 yourself to those procedures, but this court finds
17 no grounds or lawful authority at this time to
18 transfer the matter to federal court.

19 MS. SASSOWER: I'd like to make an
20 application. I'd like to put a statement on the
21 record.

22 THE COURT: Hold on a minute.

23 In light of the foregoing, the court is
24 going to sign the order to show cause, however is
25 going to make the return date August 18th, the same

1 date as the date for respondents to file an answer
2 and/or return to the petition. That way the court
3 can address the substance of the allegations at one
4 time in a procedurally more efficient manner.

5 Yes, Ms. Sassower.

6 MS. SASSOWER: Your decision is conclusory
7 and false. Let us begin with your assertion that
8 the attorney general is required to defend public
9 officers sued, as here. You cited no provision of
10 law when you defiantly said this is what ~~we~~^{they} are
11 required to do to defend, and that my assertions to
12 the contrary are groundless.

13 Apparently your Honor does not read the
14 papers, and is not familiar with Executive Law
15 63.1. 63.1 predicates the posture of the attorney
16 general on the interest of the state. The attorney
17 general can either defend or prosecute, depending
18 upon the interest of the state. Where there is no
19 legitimate defense, as here, there is no legitimate
20 defense, only deceit and lies, which is why
21 Ms. Hamilton has engaged in the performance that
22 she has here making statements that you should have
23 ripped into her about, castigated her, held her in
24 contempt for brazenly misrepresenting the record
25 and what is before you. Instead you accepted it.

1 MS. HAMILTON: This motion being our
2 pending motion to dismiss?

3 THE COURT: No, the pending order to show
4 cause we are addressing at present.

5 MS. HAMILTON: Can you repeat your
6 question, your Honor?

7 THE COURT: Would you prefer to address
8 this motion at a separate and prior time to the
9 petition?

10 MS. HAMILTON: I understand, your Honor.
11 We acknowledge service on behalf of the defendants
12 for purposes of this order to show cause in this
13 proceeding.

14 THE COURT: Thank you. Note I'll make
15 that application returnable August 18th, with reply
16 papers being September 2nd. For clarity, that is
17 also the return date of the petition.

18 MS. SASSOWER: Your Honor --

19 THE COURT: Excuse me, Ms. Sassower. You
20 have my ruling.

21 MS. SASSOWER: Well, you asked her how
22 much time she needed. The attorney general's
23 office has 500 plus attorneys. You didn't ask me
24 how much time a non-lawyer would like to respond.

25 THE COURT: How much time would you like

1 to respond?

2 MS. SASSOWER: You have given me how much?

3 THE COURT: 15 days.

4 MS. SASSOWER: Why don't you give ^{me} an
5 equivalent ^{amount of time} to the attorney general, and if I can
6 submit it earlier, I will surely do.

7 THE COURT: The court is not going to
8 adjudicate until the return date. What date do you
9 want?

10 MS. SASSOWER: You gave her how much time,
11 six weeks?

12 THE COURT: I gave her until August 18th.

13 MS. SASSOWER: All right, give me until
14 September 18th.

15 THE COURT: That's a Sunday. How about
16 the 19th?

17 MS. SASSOWER: All right.

18 THE COURT: All right, thank you both. I
19 will upload a signed copy of the order to show
20 cause. I will upload a copy of the decision and
21 order on the motion to dismiss. And we'll look for
22 your papers, Ms. Hamilton, on or before August
23 18th, and your reply by September 19th. The matter
24 will be considered fully submitted as of that date.

25 MS. HAMILTON: Thank you, your Honor.

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THE COURT: Thank you.

MS. SASSOWER: You have no evidence on which to deny the TRO. We'll be back with the granting of the sixth cause of action, and the other causes of action to which they have no defense, summary judgment on every cause of action. Thank you, your Honor.

(WHEREUPON THE PROCEEDINGS WERE CONCLUDED.)

Certified to be a true and accurate transcript.

Barbara VanBlarcum

BARBARA VAN BLARCUM