

STATE OF NEW YORK SUPREME COURT
COUNTY OF ALBANY

MATTHEW A. ROSENBAUM,

Petitioner,

-vs-

Index No.: _____

LETITIA JAMES, Attorney General
of the State of New York,

Respondent.

VERIFIED PETITION

Petitioner, Matthew A. Rosenbaum, for his verified petition, alleges upon information and belief as follows:

1. Petitioner is an individual residing in the State of New York, County of Monroe.
2. Respondent is the duly elected Attorney General of the State of New York.
3. Petitioner is a former justice of the Supreme Court of the State of New York, having served in that office from March of 2005 through December 31, 2019. Petitioner was appointed Supreme Court Justice by Governor Pataki on or about March 22, 2005, and was thereafter elected to serve a fourteen year term in November of 2005.
4. On July 16, 2021, a civil action was commenced against the petitioner and others in the United States District Court for the Western District of New York. That action is entitled *Rebecca Klymn, plaintiff, v. Monroe County Supreme Court, Matthew Rosenbaum, et al., defendants*, 21-cv-6488-JLS (hereinafter the “Klymn action”). A copy of the complaint in the Klymn action is annexed hereto as Exhibit 1.

5. The Klymn action alleges that “at all times relevant to this complaint, Defendant MATTHEW ROSENBAUM (“ROSENBAUM”) was a Supreme Court Justice in Monroe County New York.” (Exhibit 1 ¶20)

6. The Klymn complaint further asserts that the petitioner was at all relevant times “employed by Defendants UCS and OCA and Defendant Monroe County Supreme Court.” *Id.* ¶21.

7. The complaint further alleges that “from March of 2005 until December of 2019, plaintiff [Klymn] was employed as Secretary to Defendant ROSENBAUM.” *Id.* ¶23.

8. The complaint in the Klymn action asserts two causes of action against petitioner and others: her second cause of action is brought under 42 U.S.C. § 1983 for denial of equal protection of law; and her fourth cause of action alleges discrimination on the basis of sex in violation of New York Human Rights Law.

9. Both the second and fourth causes of action in the Klymn action relate to alleged conduct of petitioner occurring within the scope of his employment as a Justice of Supreme Court.

10. By letter dated July 27, 2021, petitioner requested that the Attorney General’s office undertake his defense in the Klymn action, pursuant to Section 17 of the Public Officers Law. A copy of the letter requesting a defense in the Klymn action is annexed hereto as Exhibit 2.

11. By letter dated October 8, 2021, the Attorney General’s Office advised that it denied petitioner’s request for a defense in the Klymn action. A copy of the denial letter is annexed hereto as Exhibit 3.

12. This special proceeding is timely.

13. The complaint in the Klymn action alleges, *inter alia*, hostile work environment and sexual harassment in connection with Klymn's employment as Secretary for the petitioner.

More particularly, the Klymn complaint alleges the following:

- a. Paragraph 21 alleges that "at all times relevant to this complaint, plaintiff was employed by Defendants UCS and OCA at Defendant Monroe County Supreme Court."
- b. Paragraph 23 alleges that "from March of 2005 until December of 2019, plaintiff was employed as Secretary to Defendant ROSENBAUM."
- c. Paragraph 69 alleges that "on a daily basis in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017, Defendant ROSENBAUM continued to touch plaintiff, put his arm around plaintiff, commented inappropriately upon plaintiff's clothing, and address her by demeaning and inappropriate names such as 'sweetie' and 'honey'."
- d. Paragraph 77 alleges that "throughout 2018 and during the first 10 months of 2019, Defendant ROSENBAUM continued to touch plaintiff, put his arm around plaintiff, commented inappropriately upon plaintiff's clothing, and address her by demeaning and inappropriate names such as 'sweetie' and 'honey'."
- e. Paragraph 79 alleges that "throughout 2018 and during the first 7 months of 2019, Defendant ROSENBAUM also continued to require plaintiff to perform personal errands for him during work hours."
- f. Paragraph 80 alleges that "beginning in June 2019, Defendant ROSENBAUM urged plaintiff to take a leave of absence 'to get her head on straight'."
- g. Paragraph 85 alleges that "in August and September of 2019, Defendant ROSENBAUM encouraged or directed his staff to stop speaking to plaintiff."

- h. Paragraph 93 alleges that “on September 9, 2019, Defendant ROSENBAUM advised plaintiff he would not approve her request for leave.”
 - i. Paragraph 146 alleges that “as an employee of Defendant UCS, plaintiff was entitled to a workplace free of sexual harassment and retaliation.”
14. All of the above allegations from the Klymn complaint allege conduct occurring at petitioner’s place of employment.
15. All the above allegations from the Klymn complaint relate to petitioner’s alleged actions occurring within the scope of his employment as a Justice of Supreme Court.

FIRST CAUSE OF ACTION

16. Petitioner repeats and realleges each and every allegation in paragraphs 1 through 15 as though fully set forth herein.
17. Pursuant to Section 17 of the Public Officers Law, petitioner is entitled to a defense of the Klymn action.
18. Respondent has failed to perform a duty enjoined upon her by law—namely, to provide petitioner with a defense in the Klymn action pursuant to Section 17 of the Public Officers Law.
19. By reason of the foregoing, petitioner is entitled to judgment, declaring ..., and further ordering respondent to provide a defense for the petition, pursuant to Section 17 of the Public Officers Law.

SECOND CAUSE OF ACTION

20. Petitioner repeats and realleges each and every allegation in paragraphs 1 through 19 as though fully set forth herein.

21. Respondent's determination to deny petitioner a defense in the Klymn action was in violation of Section 17 of the Public Officers Law, and thereby was arbitrary and capricious or an abuse of discretion.

WHEREFORE, petitioner demands judgment against respondents as follows:

- A. Adjudging and declaring that respondent failed to perform a duty enjoined upon her by Section 17 of the Public Officers Law;
- B. Adjudging and declaring that the October 8, 2021 decision denying petitioner a defense in a pending action was arbitrary and capricious and an abuse of discretion;
- C. Enjoining and ordering respondent to provide petitioner a defense in an action pending in United States District Court for the Western District of New York entitled *Rebecca Klymn, plaintiff, v. Monroe County Supreme Court, Matthew Rosenbaum, et al., defendants*, 21-cv-6488-JLS; and
- D. Granting petitioner such other and further relief as the Court deems just, proper, and equitable.

Dated: January 5, 2022
Rochester, NY

s/David Rothenberg
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