

<b>Matter of Polanco v Annucci</b>
2015 NY Slip Op 32562(U)
December 28, 2015
Supreme Court, Clinton County
Docket Number: 2015-946
Judge: S. Peter Feldstein
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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF CLINTON**

**X**

In the Matter of the Application of  
**WILFREDO POLANCO, #88-A-4853,**  
Petitioner,

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

**DECISION AND ORDER**  
**RJI #09-1-2015-0365.11**  
**INDEX #2015-946**  
**ORI #NY009013J**

-against-

**ANTHONY ANNUCCI**, Acting Commissioner,  
NYS DOCCS, **DR. R. ADAMS, M.D.**, Director of  
Health Hospital and **DR. CARL KOENIGSMANN,**  
**M.D.**, Chief Medical of Albany,

Respondents.

**X**

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Wilfredo Polanco, verified on June 23, 2015 and filed in the Clinton County Clerk's office on July 7, 2015. Petitioner, who is an inmate at the Clinton Correctional Facility, is challenging the adequacy of medical care received at Clinton. In addition, petitioner is apparently challenging the respondents' failure to transfer him to another DOCCS facility to address non-medical safety issues as well as medical issues. Although the *pro se* inmate Petition, verified on June 23, 2015, is hardly a model of clarity, it appeared to the Court that petitioner sought to address, in some fashion, the following medical issues: weight loss in April, May and June of 2015, discontinuance of Ensure, concern(s) with respect to medical boots and concern(s) with respect to back/hip pain associated with degenerative disc disease. In addition to medical issues, the Petition, verified on June 23, 2013, appeared to raise an issue(s) with respect to an enemy or enemies (perhaps staff?) at Clinton. Given the fact the petitioner referenced various inmate grievance proceedings (CL-66810-15, CL-66802-15, CL-66777-15 and CL-66875-

15), the Court anticipated/hoped that respondents' answering papers, which would presumably include copies of DOCCS records with respect to the grievance proceedings, would help to frame the issues that had been inartfully raised in the Petition. Accordingly, an Order to Show Cause was issued on July 15, 2015.

On July 21, 2015 petitioner filed a Notice of Motion, supported by his unsworn, undated "affidavit." Petitioner's affidavit of service with respect to his motion paper suggests that such papers were mailed to the office of the New York State Attorney General in Albany on July 6, 2015, which is prior to the commencement of this proceeding on July 7, 2015 (*see* CPLR§304(a)) and, obviously, prior to the issuance of the Order to Show Cause of July 15, 2015. Petitioner's motion papers did not include a copy of a proposed Amended Petition. His supporting "affidavit," however, referenced various medical issues, including the alleged discontinuance of certain medication (Neurontin?), an unspecified delay in medical consultation through an outside specialist, failure to provide some sort of unspecified injection for back pain and concern(s) with respect to medical boots. Annexed to petitioner's supporting "affidavit" were various exhibits including paperwork related to five inmate grievance proceedings as follows: CL-66875-15 (apparently addressing the issue of threats against petitioner by DOCCS Staff), CL-66771-15 (apparently addressing the issue of in-cell, rather than nurse-administered, medication), CL-66925-15 (apparently addressing petitioner's challenge to the adequacy of the investigation conducted in conjunction with grievance CL-66875-15), CL-66802-15 (apparently addressing issues with respect to medical boots) and CL-66810-15 (apparently addressing the discontinuance of medications). For what it is worth, the Court notes that no copies of final determinations by the Inmate Grievance Program Central Office Review Committee (CORC) were included in the exhibits annexed to petitioner's "affidavit."

The Order to Show Cause of July 15, 2015 directed respondents to serve answering papers on or before August 28, 2015. By letter dated August 4, 2015 Christopher J. Fleury, Esq., Assistant Attorney General, advised chambers that the Plattsburgh Regional Office of the New York State Attorney General had received petitioner's motion papers. Counsel then went on to state as follows: "Petitioner's Notice of Motion and Affidavit in support of his motion are extremely difficult to understand and the relief requested is not entirely clear. It appears that Petitioner is requesting that the Court grant him leave to amend his Petition in this matter. As the Court is aware, Petitioner is still within the time period during which he can amend his Petition by right and without leave of the Court. *See* CPLR §3025. Therefore, there is no need for Petitioner to request such leave by motion or otherwise. If the Court finds it necessary to rule on the motion, Respondents do not object to the Court granting Petitioner leave to amend his Petition. Respondents interpret the Petitioner's 'Affidavit For Amend Valid Claim in Support of Motion of CPLR §217 [sic.]' to constitute the Petitioner's Amended Petition in this matter. As such, our responsive papers will address only the allegations contained therein." In his August 4, 2015 letter counsel also requested an extension of time, to September 11, 2015, to submit answering papers with respect to the Amended Petition.

The Court has received and reviewed respondents' Notice of Motion for a More Definite Statement, supported by the Affirmation of Christopher J. Fleury, Esq., Assistant Attorney General, dated August 25, 2015. According to the respondents' motion papers the Petition - and presumably the Amended Petition (petitioner's Affidavit For Amend Valid Claim in Support of Motion of CPLR § 217 [sic.]) - ". . . is [are] so vague, ambiguous, and nonsensical., e.g., neither I nor my legal assistant can clearly discern what allegations Petitioner makes or what relief he is requesting. In some paragraphs, I can guess, but only guess at what Petitioner is attempting to allege. This is also true of Petitioner's letters

subsequently submitted to the Court... Pursuant to CPLR §3024(a), “[i]f a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a response he may move for a more definite statement...Without a more coherent Petition, Respondents cannot frame an appropriate response to the Petition.” Although he did not specifically oppose respondents’ motion for a more definite statement, petitioner subsequently filed motions seeking the appointment of an “expert witness” on his behalf and for summary judgement. Both of the petitioner’s motions are opposed by respondents.

Although the Court agrees that petitioner’s unsworn, undated Affidavit for Amend Valid Claim in Support of Motion of CPLR §217, filed in the Clinton County Clerk’s office on July 21, 2015, should be deemed an Amended Petition, it shares respondents’ concerns with respect to the clarity of the allegations set forth in that document. Nevertheless this Court, which handles numerous proceedings initiated by *pro se* inmate petitioner’s at various DOCCS facilities, recognizes that in the absence of the availability of assigned counsel both the Court and the Attorney General’s office must, at times, endeavor to make the best of substandard pleadings. Otherwise, scarce judicial resources would be wasted in endless efforts to compel compliance with technical legal requirements by individuals who are all too often ill-equipped to comply. Still, where the Court finds that a *pro se* inmate petitioner’s failure to meet the particularity standard set forth in CPLR §3013 is particularly egregious and that a respondent would be unduly prejudiced if required to attempt a fashion a responsive pleading, dismissal or an order directing the filing of an amended petition would be warranted.

Upon consideration of all the papers submitted by petitioner in this proceeding, the Court, in the absence of the availability of assigned counsel, is not optimistic that an order directing the filing of an additional Amended Petition would produce a significantly improved pleading. The Court’s concerns with the quality of the existing Amended

Petition (petitioner's unsworn, undated Affidavit for Amend Valid Claim in Support of Motion of CPLR §217), however, are tempered by the fact that he is clearly challenging the results of five inmate grievance proceedings, each of which would presumably include a full record, including DOCCS responses at various procedural levels. With petitioner's medical and non-medical challenges so understood, the Court ultimately finds that respondents' motion for a more definite statement should be denied. The Court also finds that petitioner's outstanding motions should also be denied.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

**ORDERED**, that respondent's motion for a more definite statement is denied; and it is further

**ORDERED**, that petitioners' motions for an expert witness and summary judgment are denied; and it is further

**ORDERED**, that respondents serve a copy of their answering papers on the petitioner on or before January 22, 2016, and that they simultaneously mail their original answering papers to the Clerk of the Court for filing, and mail a further copy of said answering papers to the undersigned; and it is further

**ORDERED**, that petitioner mail his original Reply to the respondents' answering papers to the Court Clerk's office, Clinton County Courthouse, 137 Margaret Street, Suite 311, Plattsburgh, New York, 12901 , on or before February 12, 2016.

**Dated:** December 28, 2015 at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice