

Matter of Montal v Koplen
2023 NY Slip Op 33238(U)
September 14, 2023
Supreme Court, Rockland County
Docket Number: Index No. 033825/2023
Judge: Thomas P. Zugibe
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of

MONA MONTAL, as Chair of the Ramapo
Democratic County Committee, ELUZER GOLD, and
MOSHE FRIEDER,

DECISION AND ORDER

Index No.: 033825/2023

Motion Sequences Nos.: 1 - 3

Petitioners,

-and-

TOWN OF RAMAPO

Intervenor-Petitioner,

-against-

MICHAEL A. KOPLIN, MARINO F. FONTANA, and
LINDA FRANCE, as Presiding Officers of the Ramapo
Republican Committee,

Respondents,

-and-

THE ROCKLAND COUNTY BOARD OF ELECTIONS,

Respondents,

For an Order Pursuant to Sections 16-100, 16-102, and
16-116 of the Election Law, declaring invalid the
Certificate of Nomination purporting to nominate
Respondent-Candidate for the Public Office of Village
Justice in the general election to be held on November 7, 2023
and Restraining the BOARD OF ELECTIONS and
VILLAGE CLERK from Printing and Placing the Name
of Said Candidate Upon the Official Ballots of Such
General Election.

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ZUGIBE, J.

PRELIMINARY STATEMENT

MONA MONTAL (“Montal”), ELUZER GOLD (“Gold”), and MOSHE FRIEDER
 (“Frieder”) (hereinafter collectively referred to as “Petitioners”) make an application pursuant to

N.Y.S. ELECTION LAW (“Election Law”) §§ 16-100, 16-102 and 16-116 by way of Order to Show Cause filed August 7, 2023 as against MICHAEL KOPLIN (“Koplen”), MARINO F. FONTANA (“Fontana”) and LINDA FRANCE (“France”) and the ROCKLAND COUNTY BOARD OF ELECTIONS (“RCBOE”) (hereinafter collectively referred to as “Respondents”) seeking an Order declaring the Certificate of Nomination purporting to nominate Respondent-Candidate Koplen for the public office of Town Justice¹ (“Koplen nomination”) in the upcoming general election to be held on November 7, 2023. In addition, Petitioners seek an Order restraining the RCBOE and the Town Clerk from printing and placing Respondent-Candidate’s name on the ballot.

In addition, Respondent Koplen has filed a motion to dismiss the aforementioned Petition based on the following grounds: (i) Petitioners failed to name a necessary party or parties; (ii) Petitioners did not serve Respondents RCBOE or Koplen in strict compliance with the Order to Show Cause, therefore constituting a jurisdictional defect requiring dismissal of this proceeding; and (iii) Petitioners lack standing to commence this proceeding.

Finally, the TOWN OF RAMAPO (“Town”) intervened in this proceeding by Order of this Court on consent of all parties on August 11, 2023. In connection with its intervention, the Town has filed a Petition in this proceeding seeking a determination that the Certificate of Nomination filed on July 27, 2023 purporting to nominate Koplen as the Republican candidate for the public office of Town Justice is invalid, null and void because said public position was abolished by the Town Board on July 24, 2023, and because no certificate authorizing the BOE to place this position on the ballot as required by Election Law § 4-106 was ever filed by the Town Clerk. In addition, the Town seeks an injunction prohibiting the RCBOE from placing Koplen’s name on the general election ballot.²

¹ The caption and petition both erroneously refer to the position at issue as “Village Justice” when in fact, the position is Town Justice. For purposes of this Decision and Order, the Court will refer to the position that is the subject of this proceeding as a Town Justice position in order to avoid confusion. Further, when the parties were before the Court on August 11, 2023, the pleadings were deemed amended by the Court in this regard. NYSCEF Doc. 14.

² The Town has also raised these arguments in a separate declaratory judgment action pending before this Court under the caption *Town of Ramapo v. Michael A. Koplen and the Rockland County Board of Elections* (Index No.: 034110/2023). As per counsel for the Town, as set forth in more detail at the oral argument which took place before the undersigned on September 7, 2023, the reason the duplicative action was filed was to protect the Town’s interests in having

Each of the aforementioned applications is opposed. The Court will address each of the applications herein. In connection with the applications, the Court has read and considered the following papers designated by NYSCEF as documents 1 through 54, including the oral argument which took place on the record on September 7, 2023, and hereby renders the following Decision and Order:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The relevant undisputed facts are as follows: On June 22, 2023, former Ramapo Town Justice David Fried tendered his resignation from the public position of Town Justice. Prior to June 22, 2023, and since December 30, 2020, the Town of Ramapo had three sitting Justices on the bench. By resolution of the Town designated as 2023-296 and adopted on June 28, 2023, the Town Board accepted Justice Fried's resignation. NYSCEF Doc. 32. By resolution of the Town designated as 2023-334 adopted on July 24, 2023, the Town abolished one of the three Town Justice positions, "effective immediately." NYSCEF Doc. 33. Hence, there was no official Certificate of Vacancy filed by the Town with the RCBOE, as the two remaining Town Justice positions were filled. The issue of whether the abolishment of the third Town Justice position was valid shall be addressed, *infra*. There is no dispute, however, that a resolution reflecting an abolishment was adopted by the Town. On July 27, 2023, a Certificate of Nomination was filed with the RCBOE by the Executive Committee of the Ramapo Republican Committee nominating Koplen for the position of Ramapo Town Justice. NYSCEF Doc. 47.

On August 7, 2023, by Order to Show Cause, Petitioners Montal, Gold, and Frieder filed a Petition seeking to have the Court determine that the Koplen nomination was insufficient, ineffective and invalid. The Court signed the Order to Show Cause, and required appearances of all parties before the undersigned on August 11, 2023. NYSCEF Doc. 6. The Court reserved the briefing schedule relative to the issues raised in the Petition until the return date of August 11, 2023. *Id.*

these issues adjudicated in the event that the Petition in the above-captioned matter is dismissed by the Court on jurisdictional grounds.

On August 11, 2023, all parties appeared by counsel. Koplen represented himself, as well as Respondents Fontana and France.³ In addition to the named parties, the Town appeared by counsel, as well. The Town stated its intent to file a motion to intervene in this proceeding, since one of the challenges to the subject nomination related to the purported abolishment of the Town Justice position. *On consent of all parties*, the Town was permitted to intervene. *See*, Transcript of Proceedings, NYSCEF Doc. 14. This was memorialized by both the So Ordered Transcript (*id.*) of the August 11, 2023 proceedings, and a subsequent So Ordered Stipulation (NYSCEF Doc. 23). By way of this Stipulation, all parties consented to amending the caption of this proceeding to indicate same. NYSCEF Doc. 23.⁴ On the August 11, 2023 return date, the Court set a briefing schedule for all parties to respond to the Petition – including the intervenors. NYSCEF Doc. 14. Since one of the issues raised by Koplen in opposition to the Petition was that service was not effectuated upon him or the RCBOE in strict compliance with the Order to Show Cause, the Court also scheduled a traverse hearing to take place on September 7, 2023.

All the above referenced applications having been fully briefed, on September 7, 2023, the Court conducted a traverse hearing on the issue of service. In addition, the Court allowed all parties to engage in oral argument on the pending applications. NYSCEF Doc. 54.

As the ballots for use in the general election are required to be certified on or before September 14, 2023, this expedited Decision and Order will address all open issues in the pending applications before the Court.

THE PETITION

Motion Sequence #1

The Petitioners in this proceeding are Montal, Gold and Frieder. Montal is the Chairwoman of the Ramapo Democratic Committee, and a duly qualified voter in the State of New York. NYSCEF Doc. 1, ¶1. Gold and Frieder are duly qualified voters in the State of New York entitled to vote in the November 7, 2023 general election. *Id.* at ¶2-3. Both Gold and

³ Curiously, however, the papers filed by Respondent Koplen in this matter indicate that they have been filed on his own behalf, *pro se*, and not on behalf of Respondents Fontana and France.

⁴ Also, by way of this Stipulation, Koplen reserved his right to litigate the issues raised in his motion to dismiss the Petition. NYSCEF Doc. 23.

Frieder filed general objections to the Koplen nomination on July 31, 2023, and specific objections on August 7, 2023. *Id.*

The Petition named the following Respondents: the RCBOE, Koplen as the purported candidate, and Fontana and France as the Presiding Officers of the Ramapo Republican Committee. *See generally, Id.*

As indicated above, Petitioners request that the Court make a determination that the Koplen nomination is insufficient, ineffective and invalid, and therefore null and void, based on a myriad of alleged deficiencies. NYSCEF Doc. 1. As a result of these deficiencies, Petitioners contend that the RCBOE should be restrained and enjoined from printing Koplen's name on the official ballot in the upcoming general election. *Id.*

Specifically, it is alleged in the Petition that the Rules of the Republican Committee of the Town of Ramapo regarding the filling of vacancies were not followed in the nomination of Koplen. The official Rules and Regulations of the Republican Committee of the Town of Ramapo (hereinafter "party rules") were not attached to the Petition, however, all parties stipulated to the admission of the party rules into evidence as Petitioners' Ex. E at the September 7, 2023 hearing. NYSCEF Doc. 54. Petitioners contend that pursuant to the party rules, the Executive Committee had no authority to nominate Koplen for the Town Justice position. NYSCEF Doc. 1, ¶7. Also, Petitioners argue that "upon information and belief", Koplen failed to notify the members of the Republican Committee of his intention to seek nomination. *Id.* Petitioners aver that the Certificate of Nomination itself was insufficient in that a certified copy of the party rules was not attached to the Certificate of Nomination and said Certificate failed to indicate the term for which Koplen was seeking to run. *Id.* Petitioners also argue that the Town's Republican Committee did not have the requisite quorum necessary to conduct business on July 24, 2023. *Id.* Finally, and critically, Petitioners contend that the Town abolished the position at issue in this proceeding, and that as a result, there is no general election for the seat of Ramapo Town Justice. *Id.* at ¶8-9.

The Petition is opposed by Respondents Koplen and RCBOE. Respondents' opposition consisted of jurisdictional arguments based on allegations of improper service. Koplen's opposition consisted of other arguments concerning the validity of the Petition, however, in addition to filing opposition, Koplen also filed (by Order to Show Cause) a motion to dismiss the Petition on numerous grounds. Since Koplen's arguments in opposition to the Petition are

generally also set forth in his motion to dismiss, the Court will address them in the context of the motion to dismiss first.

THE MOTION TO DISMISS

Motion Sequence #2

Koplen contends that this Petition must be dismissed based on improper service. *See*, NSYCEF Docs. 15-17. Specifically, Koplen contends that the RCBOE was not served, and that he also was not served. Koplen points out that when service is not effectuated in strict compliance with the Order to Show Cause, the Petition must be dismissed as a matter of law. In addition to the service argument, Koplen contends that Petitioners failed to name necessary parties in this proceeding, specifically, the Town, the Executive Committee, and the Town and/or County Republican Committees. Koplen further argues that the Petitioners are not members of the Republican Party, and therefore, they lack the standing necessary to commence this application. Based on the foregoing, Koplen requests the Court dismiss the Petition in its entirety.

Koplen also indicates in his motion that the issue of whether the position at issue was abolished is not of the sort that can be determined in this election law proceeding, and that even if it was appropriate to determine this issue in the context of the present proceeding, the failure of the Town to intervene before the expiration of the statute of limitations requires dismissal of the Petition, in any event.

The Court will address each of the arguments raised in support of dismissal, starting with jurisdiction based on alleged improper service.

A. Service of Process – Jurisdiction

The Petition in this instance was commenced by Order to Show Cause. NYSCEF Doc. 6. With respect to service, the Order required, *inter alia*, that Koplen, France and Fontana be served on or before August 7, 2023 by either: (1) personal delivery pursuant to CPLR 308; or (2) personal delivery to a person of suitable age and discretion at Koplen's address as set forth in the Certificate of Nomination and by enclosing same in a securely sealed and duly post paid wrapper addressed to Koplen at said address and by depositing same in a post office branch or box regularly maintained by the U.S. Postal Service in New York State; or (3) affixing the papers to

the Koplen's door at the address set forth in the Certificate of Nomination and by enclosing same in a securely sealed and duly post paid wrapper addressed to Koplen at said address and by depositing same in a post office branch or box regularly maintained by the U.S. Postal Service in New York State; or (4) delivering the papers to a recognized overnight delivery carrier and/or the U.S. Postal Service, waiving the requirement of a signature, addressed to Koplen at the address set forth in the Certificate of Nomination. *Id.*

The Order further required that, with respect to the RCBOE, service be made by leaving a copy of the papers "to either Commissioner of the Rockland County Board of Elections or anyone authorized to accept service on behalf of the [RCBOE] at 11 New Hempstead Road New City, New York, or by email delivery to either Commissioner of the Rockland County Board of Elections or anyone authorized to accept service on behalf of the [RCBOE]" on or before August 7, 2023. *Id.*

The affidavits of service filed with the Court in this proceeding (NYSCEF Doc. 8), same having been entered into evidence at the traverse hearing as Pet. Ex. C and Resp. Exs. 2 and 3, indicate the following: On August 7, 2023, at approximately 4:40 p.m., the papers served upon the RCBOE at 11 New Hempstead Road, New City, New York, by personal delivery to "Michelle Reilly, stated authorized, as Deputy Commissioner, Democrat. Described as white female, black hair, approx. 5'7", 140 lbs, 55 yrs." NYSCEF Doc. 8. In addition, the affidavits indicate that on August 7, 2023, at approximately 4:41 p.m., Fontana and France were each personally delivered the papers by the process server, who knew Fontana and France as the individuals who were served. *Id.* All three affidavits of service were notarized. *Id.*

Of note, there is no affidavit of service from the process server with respect to Koplen.

In opposition to the Petition and in support of the dismissal motion, Koplen and the RCBOE contend service was not properly effectuated upon them.⁵ The Court will address its analysis of service upon Koplen and the RCBOE separately, below.

⁵ Interestingly, Koplen did not raise the argument that *he* was not served in his original opposition papers. NYSCEF Doc. 9. Rather, he focused solely on the failure to serve the RCBOE. In addition, Koplen appeared before the Court on August 11, 2023, the original return date set forth in the Order to Show Cause that initiated these proceedings, and did not object to service as it was effectuated upon him. This argument was first raised by Koplen in his motion to dismiss the Petition, in one sentence in his memorandum of law. NYSCEF Doc. 17, page 5.

Service upon Koplen: In reply to the opposition to the initial Petition, and in opposition to the motion to dismiss, Petitioners argue that on August 7, 2023, Koplen agreed to accept service of the Petition and supporting papers by email. NYSCEF Doc. 40/Pet. Ex. B. Daniel S. Szalkiewicz, Esq. (“Szalkiewicz”), counsel for Petitioners, affirms that on August 7, 2023, he and Koplen spoke by telephone. NYSCEF Doc. 46, ¶5 and NYSCEF Doc. 39, ¶3. During this telephone call, Szalkiewicz affirms that he informed Koplen he was a Respondent in this proceeding, and that he asked him specifically if he would be willing to accept service of the papers in this proceeding via email, as opposed to through a process server. NYSCEF Doc. 39, ¶3. In response, Szalkiewicz affirms that Koplen stated he would be willing to accept service by email. *Id.* Szalkiewicz then affirms that he informed Koplen he would need to confirm this in an email because election law cases are routinely dismissed for lack of proper service. *Id.* Koplen apparently confirmed once again that he would accept service via email, and therefore Szalkiewicz sent him same via email at 4:17 p.m. that day, August 7, 2023, with the papers attached thereto. NYSCEF Doc. 40. Koplen responded to the email at 4:37 p.m. and acknowledged receipt of both the email and the attached Order to Show Cause. *Id.* Szalkiewicz then confirmed in a reply email that Koplen agreed to accept service by email. *Id.* No additional emails were exchanged. Indeed, Koplen admits that he received the papers via email, however he argues that notwithstanding his explicit agreement to accept service in that manner, the Petition must be dismissed because the specific service directives as set forth in the Order to Show Cause were not followed.

It is well established that a failure to serve a necessary party as directed in the Order to Show Cause is a jurisdictional defect and must result in dismissal of the proceeding. *See generally, Marchant v. Echaveste*, 186 A.D.2d 101, 587 N.Y.S.2d 46 (2d Dept. 1992); *Quis v. Putnam County Board of Elections*, 22 A.D.3d 585, 802 N.Y.S.2d 709 (2d Dept. 2005); *Rotanelli v. Westchester County Board of Elections*, 41 Misc.3d 254, 969 N.Y.S.2d 901 (Sup. Ct. West. Cnty. 2013). If service is not effectuated in accordance with the requirements of the Order to Show Cause, there is no question that dismissal of the matter is required, regardless of actual notice of the proceedings within the statutory time period. *See, Rotanelli, supra.*

However, the Court does not have before it a situation where Petitioners’ service method was not made in strict conformance with the Order to Show Cause, and notwithstanding the improper service, the Respondent happened to find out about the proceedings and appear.

Rather, this is a situation (and not an uncommon one) where the Respondent Koplen, an attorney representing himself in these proceedings, agreed to accept service of process by e-mail. This undisputed fact was confirmed in a written email. NYSCEF Doc. 40.

Further, Koplen formally appeared in Court on his own behalf on August 11, 2023, and failed to raise any argument that service was not properly effectuated *upon him*. In fact, Koplen filed opposition papers with this Court which raise the jurisdictional argument *only* with respect to Respondent RCBOE. Koplen's opposition papers specifically set forth that "**the Petitioners failed to serve the Order to Show Cause upon the Rockland [C]ounty Board of Elections as ordered by Judge Zugibe.**" NYSCEF Doc. 9, ¶30 (emphasis in original). Koplen then goes on to detail why, in his opinion, service was improperly effectuated upon the RCBOE. *Id.* at ¶32. Koplen submits affidavits from France and Fontana indicating that although they were served with papers in this proceeding, the RCBOE was not. NYSCEF Docs. 10, 12. There is absolutely no reference to the manner in which Koplen was served in Koplen's opposition papers. It is disingenuous, to say the least, for Koplen to now attempt to state that service upon him was defective and insufficient. Koplen accepted the service. At this point, after formally appearing and not raising his objection, it is deemed waived. The cases cited by Koplen in support of dismissal are inapposite, as those cases do not involve a situation where the party, an attorney, explicitly agreed to accept service and formally appeared in court thereafter and raised no service objection.

Election law cases are frequently – if not always – commenced at the eleventh hour. They are, by their very nature, rushed proceedings. For the Court to hold otherwise on the specific facts of this case would, by its logical conclusion, mean parties commencing these proceedings could never avoid the expenditure of precious time and resources when their opponents, through learned counsel, knowingly and voluntarily agree to accept service of process in a manner other than that set forth in the Order to Show Cause. Blind adherence to form in such situation would, at the very least, ignore the most fundamental directive in the CPLR: that the rules "be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding." CPLR 104.

Service upon the RCBOE: An affidavit of service was filed indicating that the RCBOE was served with process. However, counsel for the RCBOE contends that service upon them was improper. In support of this assertion, RCBOE presents an affidavit from Michelle Reilly,

the Deputy Commissioner of the RCBOE, specifically for the Democratic Party (hereinafter “Reilly”). NYSCEF Doc. 25, Resp. Ex. 1. Reilly affirmed that she was present at the date and time of the alleged service at the offices of the RCBOE. *Id.* at ¶3. Reilly sets forth in her affidavit that at that time, a man and woman who identified themselves as process servers appeared at the front counter. *Id.* at ¶4. Reilly admits she identified herself to the process servers and informed them that neither Commissioner was in the office at that time. *Id.* at ¶5. The process servers then asked her for France and Fontana, who Reilly affirms were both in the office at that time. *Id.* at ¶6. When France and Fontana appeared and identified themselves, the process servers handed them each a set of papers. *Id.* Reilly affirms that she then walked away from the counter, after giving the woman her name. *Id.* at ¶7. Reilly states she was not handed papers or asked to accept service on anyone’s behalf. *Id.* at ¶8. As per the RCBOE’s opposition to the Petition and their papers filed in support of the motion to dismiss same, Reilly’s sworn account of what transpired on August 7, 2023 does not constitute service that complies with the requirements of the Order to Show Cause.

The affidavit of a process server “establishes a prima facie case as to the method of service and, therefore, gives rise to a presumption of proper service[.]” *Brownstone Capital NY, LLC v. Lindsay*, 183 A.D.3d 687, 123 N.Y.S.3d 677, 679 (2d Dept. 2020). Sworn denials of service that contain specific facts will generally rebut the presumption of proper service and necessitate a traverse hearing to resolve. *Id.*

The Court conducted a traverse hearing in the instant matter on September 7, 2023. NYSCEF Doc. 54. The affidavits of service were admitted into evidence. Pet. Ex. C and Resp. Exs. 2 and 3. Respondent RCBOE’s counsel requested that his witness be allowed to testify first, so that she could then leave the courtroom. Therefore, Respondent called the first witness, RCBOE Deputy Commissioner Reilly. Her Affidavit was marked into identification. Resp. Ex. 1. This was the extent of her direct examination.

On cross-examination, Reilly admitted to being asked her name twice. NYSCEF Doc. 54, p. 9. Reilly also testified she believed she was authorized to accept service for the Commissioners. *Id.* at p. 10. Reilly testified that her encounter with the two process servers that entered the RCBOE that day was brief, maybe two minutes, and that she recalls they asked for France and Fontana. *Id.* at p. 11. Since France and Fontana were in that day, and the office was

small such that they could hear, France and Fontana apparently entered. *Id.* at p. 11-12. Reilly admits that when she walked away, she saw papers on the counter. *Id.* at 12.

On cross examination, it was pointed out that the affidavit submitted by Fontana set forth a different sequence/version of events than did Reilly's affidavit. NSYCEF Doc. 54, at p. 14. When asked if it was true, as set forth in the Fontana affidavit, that Reilly engaged in communications with the process servers after France and Fontana were served, Reilly responded "no, it would not." *Id.* at p. 14. Later in her cross examination, Reilly testified that when she left the office that day, she did not notice whether there was paperwork on the front desk or whether any co-workers picked up any papers from the desk. *Id.* at p. 16. Reilly recalled the process servers had papers when they walked in, and that at some point after she went to get France and Fontana, there were papers on the counter. *Id.* at 17.

Mr. Koplen opted not to call any witnesses at this time.

Petitioners' counsel then called each of the two process servers, starting with Mark Sandstrom ("Sandstrom"). Sandstrom testified he has been a process server for thirty (30) years and has made over 100,000 services in this time period. NYSCEF Doc. 54, p. 19. Sandstrom detailed the occurrences that took place after he received an email requesting that he serve the papers in this matter up until he went to the RCBOE with his associate, Claire Ryan ("Ryan") to effectuate service. *Id.* at p. 20-22. Sandstrom stated that upon arrival to the RCBOE, he and his associate entered and announced themselves as process servers. *Id.* at p. 22. Apparently, Sandstrom was told that the commissioners were not available, but that they would get someone in their absence. *Id.* Reilly then appeared and announced herself as the Deputy Commissioner. *Id.* at p. 23. Sandstrom testified he and Ryan were standing side by side at this time, and told Reilly that they were there to serve papers upon the RCBOE. *Id.* Reilly then told them that the commissioners were unavailable and that she was authorized to accept service on their behalf. *Id.* As per Sandstrom, Ryan then took the papers that were in her hand and slid them across the counter in a direction such that Reilly could read them. *Id.* at p. 23-24. After being slid over to her, Sandstrom testified he observed Reilly looking at the papers. *Id.* at p. 24. At the time Reilly left the counter, Sandstrom was engaged in a conversation with France and Fontana. *Id.* at p. 24-25. After Ryan finished getting Reilly's name again, Sandstrom recalls her turning to France and Fontana, and serving them with copies of the papers. *Id.* at p. 25.

Also admitted into evidence through Sandstrom was the e-mail he received from Petitioners' counsel on August 7, 2023 at 4:18 p.m. instructing him to not to serve Koplen, based on the representation that Koplen had accepted service by email. Pet. Ex. B.

Sandstrom testified he did not know Reilly before August 7, 2023, and that he only knew her identity and her title because she identified herself. In his opinion, the service was good. *Id.* at p. 28.

On cross-examination, Koplen pointed out that the affidavits of service for France and Fontana were on different forms than the affidavit of service for Reilly. *Id.* at p. 30-32. Sandstrom testified that this was because his typical form affidavit of service did not work as well under the circumstances surrounding the service effectuated upon Reilly (which he explained in detail), and therefore, he used a better form. *Id.*

Petitioners' next witness was Sandstrom's associate, Ryan. Ryan testified that she has been a process server working with Sandstrom for twenty (20) years, and that during this time period she has made over 30,000 services. NYSCEF Doc. 54, p. 32-33. Ryan corroborated Sandstrom's accounting of the events that took place on August 7, 2023 pertaining to service of process. Ryan's worksheets were admitted into evidence at Pet. Ex. D. Ryan testified that she filled out these worksheets at the time of service. NYSCEF Doc. 54, p. 36-37. Ryan then recounted how she served Reilly with the papers. Specifically, Ryan stated that she had the papers [to serve] in her hand when she walked over to counter where Reilly was. She testified that she took the papers out, put them on the counter, which she recalls was not a big counter, and slid the papers in front of Reilly. *Id.* at p. 38-39. Ryan stated that Reilly walked away from the counter for a period of time, but that after, she took her name again, and wrote it down. *Id.* at p. 39. Ryan testified that she did not know Reilly prior to serving her on August 7, 2023. *Id.* at p. 40. Ryan recalls that Reilly indicated that she was authorized to accept service of the papers. *Id.* Ryan testified that she slid the papers across the counter to France and Fontana in a similar manner to the way she slid the papers to Reilly. *Id.* at p. 41. Ryan also testified as to the reason different forms were used for the Reilly affidavit of service, as opposed to the others. She provided the Court with the same response as Sandstrom. *Id.* at p. 40-41.

Petitioners called no additional witnesses. At this time Koplen called Fontana as a witness, over objection from the Petitioners and the Town, as Fontana had been sitting in the

courtroom while the others all testified, and because Koplen had already stated he did not have any witnesses. The Court noted the objections and allowed Fontana to testify.

Fontana testified that he has been the Deputy Commissioner for the Republicans with the RCBOE for seven (7) years. NYSCEF Doc. 54, p. 45. Fontana stated that the testimony of the process servers was untrue in that Ryan handed the papers to him (as opposed to sliding them) and because it was Sandstrom that handed the papers to France, not Ryan. *Id.* at p. 47. Fontana testified he never saw any papers left out on the counter, or in Reilly's hands. *Id.* at 48. On cross-examination, however, Fontana admitted that his affidavit recounting the events of August 7, 2023 may have included an incorrect time of service. *Id.* at p. 50-51. Fontana also admitted he did not see what transpired between the process servers and Reilly before he and France appeared. *Id.* at p. 53. Fontana confirmed, however, that Reilly, as a Deputy Commissioner, did have authority to accept service on behalf of the RCBOE. *Id.* at p. 54.

At this point, the traverse hearing concluded. The Court did not require the submission of closing memoranda.

The Court determines that service was properly effectuated upon the RCBOE. The testimony is consistent that deputy commissioners have the authority to accept service on behalf of the commissioners when the commissioners are not available. The record is clear that this was the circumstance on August 7, 2023- the Commissioners were not available when the process servers entered.

Further, the Court, after listening to the process servers testify, determines that their consistent accounting as to what happened on August 7, 2023 is absolutely credible. Both Ryan and Sandstrom testified that they announced they were process servers when they entered the RCBOE on August 7, 2023. They also both testified that they were informed the commissioners were not available, and then Reilly appeared and identified herself. Sandstrom and Riley testified they told Reilly they were there to serve papers upon the RCBOE, and that she indicated she could accept service. The papers were then slid across the counter to Reilly by Ryan. Ryan made sure that she had Reilly's correct name.

Sandstrom and Ryan have been process servers for a collective total of 50 years. Their jobs, and the success of Sandstrom's business, depend on their accurate accounting of what happened during a particular service. Ryan maintains worksheets, which she fills out at the time

of service, thus ensuring accuracy. Affidavits of service are then prepared. A process server's job requires the server to maintain acute awareness of the circumstances surrounding service.

In sum, the Court finds the testimony of the process servers extremely credible. This is not to say that Reilly or Fontana were not credible witnesses, but Reilly admitted she was getting ready to leave work for the day and "check out" when the service took place. Further, Fontana admitted that he and France were engaging in conversation with Sandstrom during the time when service was effectuated. There were a few things occurring simultaneously in the office at the time the service took place. Distraction happens. Further, Fontana admitted he was not aware what transpired before he and France entered the room where the service had taken place. The Reilly and Fontana affidavits had inconsistencies. It is the job of the process servers to have observed, and then recorded, the exact time and sequence of events of the service. The Court believes Sandstrom and Ryan did just that in this instance.

Therefore, this Court determines that the RCBOE was properly served. It is of no moment that the document was not directly handed to Reilly and was instead slid over to her on the surface of the counter, as Reilly was made aware she was being served, and the papers were left in her general vicinity. *See, Carver Federal Savings Bank v. Shaker Gardens, Inc.*, 135 A.D.3d 1212, 1213, 23 N.Y.S.3d 685 (3d Dept. 2016).

Based on this Court's determination that Koplen and the RCBOE were served with process, the motion to dismiss the Petition on jurisdictional grounds is denied.

B. Failure to Name a Necessary Party or Parties

Koplen argues that the failure to name the Executive Committee, as well as the Town Committee and/or the County Committee requires dismissal of the instant proceeding. In support of this contention, he relies on the Second Department case of *Curcio v. Wolf*, 133 A.D.2d 188, 518 N.Y.S.2d 694 (2d Dept. 1987). In *Curcio*, which consolidated two proceedings, petitions were filed challenging the validity of certificates of authorization permitting candidates to be designated for nomination. Specifically, the petitions challenged the authority of the committees that issued the certificates of authorization. *Id.* at 189. In the first of the two proceedings, the individual who had in fact presided over the meeting and purported to act as chairperson of the executive committee was not joined as a party to the proceeding. *Id.* In the second proceeding, the credentials of the executive committee that issued the certificates of

authorization was challenged, and yet the executive committee was not joined as a party. *Id.* In each proceeding, the Appellate Division affirmed the lower court's dismissal of the petitions for failure to join necessary parties. *Id.* Based on this reasoning, Koplen contends that the Executive Committee needed to be joined a party to this proceeding.

In opposition to this prong of the motion to dismiss, Petitioners argue that Koplen's argument fails because the interests of the Executive Committee are adequately represented, since the members who signed the Certificate of Nomination at issue were joined as parties. In addition, Petitioners contend that the interests of the Town Republican Committee are also adequately represented insofar as its chair and secretary have been joined as parties.

In support of their argument, Petitioners cite *Matter of Snell v. Young*, 88 A.D.3d 1149, 1150-51, 931 N.Y.S.2d 201 (3d Dept. 2011). In *Snell*, the Third Department determined that since the petition individually named the permanent chair and permanent secretary of the judicial nominating convention as respondents in the proceeding, the interests of the Executive Committee were "adequately represented[.]" *Id.* at 1150-51 (internal citations omitted). Petitioners point out that this reasoning has been applied with consistency. See, for example, the Court's decision in *Marafito v. McDonough* (153 A.D.3d 1123, 1125, 62 N.Y.S.3d 546 (3d Dept. 2017)) wherein it determined that "the interests of the Rensselaer County Independence Party" were "adequately represented in light of the fact that the Chair of the Rensselaer County Independence Party, as well as the individuals who served as the presiding officer and secretary at the meeting of the Rensselaer Executive Committee that resulted in the issuance and filing of the earlier certificate of authorization" had all been joined as respondents. *Id.* at 1125.

In this proceeding, the presiding officers, specifically the chair and secretary of the Executive Committee and the Ramapo Republican Committee, were joined in this proceeding. NYSEF Doc. 1. These individuals also signed the Koplen nomination at issue. NYSCEF Doc. 47.

As a result of the foregoing, this Court determines that the interests of the Executive Committee and the Ramapo Republican Committee have been "adequately represented" in this proceeding. This determination is not inconsistent with *Curcio*. Koplen's motion to dismiss the Petition for failure to join a necessary party is therefore denied.

C. Standing

Koplen also asserts that the Petitioners in the instant proceeding do not have standing to attack the validity of his nomination because non-party members do not, in general, have standing to challenge the validity of a nomination based on allegations concerning the alleged improper actions of another political party in the nomination process.

The Petitioners in the instant matter, as far as the Court knows from the record before it, are Montal, Gold, and Frieder. Though Montal is, as per the Petition, the Chair of the Ramapo Democratic County Committee (NYSCEF Doc. 1, ¶1), Gold and Frieder are only alleged to be duly qualified voters in the State of New York eligible to vote in the November 7, 2023 general election, who filed general and specific objections to the Koplen nomination (*Id.* at ¶2, 3).

Generally, when a party moves to dismiss an action based upon the commencing party's alleged lack of standing, "the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing" as a matter of law. *DLJ Mortg. Capital, Inc. v. Pittman*, 150 A.D.3d 818, 820, 56 N.Y.S.3d 120 (2d Dept. 2017) (internal citations omitted).

Koplen's motion, other than addressing the alleged lack of standing in a footnote in his memorandum of law supporting his motion to dismiss, has failed to meet his burden of establishing the petitioners' lack of standing. NYSCEF Doc. 17, fn.4. In his papers opposing the Petition, Koplen asserts that, "upon information and belief," Gold and Montal are registered Democrats, and Frieder is a registered Republican. NYSCEF Doc. 9, ¶16. These unsupported assertions are insufficient to determine Petitioners lack the requisite standing to commence this proceeding, and in any event, Koplen concedes that Frieder is a member of the Republican party. *Id.*

Koplen's motion to dismiss the Petition on standing grounds is therefore also dismissed. This completes the Court's review of Koplen's motion to dismiss, which is denied.

Prior to addressing the merits of the entirety of the Petition, the Court determines it is appropriate to address the Town's Petition requesting that this Court, in connection with the instant proceeding, determine that the Town Justice position at issue be deemed abolished. Petitioners have fully incorporated the Town's arguments in support of its Petition with respect to this specific issue. NYSCEF Doc. 46, ¶10. To the extent that this Court were to determine the Town Justice position at issue has been abolished, the remaining contentions of the Petitioners and Respondents would be rendered moot.

TOWN'S PETITION*Motion Sequence No. 3*

The Town, proceeding as an intervenor in this action, asks that the Court declare Koplen's nomination invalid, null, and void because: (1) the associated position was abolished by the Town Board on July 24, 2023; and (2) no certificate authorizing the BOE to place the position on the ballot, as required by Election Law § 4-106, was ever filed with the Town Clerk. The Town also seeks an injunction prohibiting RCOBE from placing Koplen's name on the general election ballot. NYSCEF Doc. 26. The Petition in this action requested, *inter alia*, that the Court invalidate Koplen's nomination on the same grounds. NYSCEF Doc. 1, ¶8, 9. Further, the Petitioners have fully incorporated the Town's arguments with respect to this specific issue. NYSCEF Doc. 46 ¶10.

Koplen, in opposing the Petition, argues that: (i) the Town lacks standing under N.Y. Elec. Law § 16-102(1); (ii) the Petition is untimely; (iii) not all necessary parties were joined; and (iv) the Town lacked authority to abolish the position to which he seeks nomination.⁶ NYSCEF Doc. 43. The RCBOE also opposes the Petition on the basis that it is untimely and improperly served. NYSCEF Doc. 45.

Insofar as Koplen characterizes his first argument as one of "standing," that is a clever lawyer's argument that disregards the facts and circumstances of this case. The Court is, of course, aware that the Town is neither an aggrieved candidate, a chairperson of a party committee, nor a person who filed objections, as is required to commence an election law proceeding. Election Law § 16-102(1). The Town is, of course, none of these parties. Koplen ignores however, two crucial points. *First*, all parties—including Koplen—consented affirmatively, on the record in open court and thereafter in a stipulation, to the Town's intervention. *Second*, even if that were not the case and the motion were opposed, no objective observer would deny such a motion: the issues raised in this proceeding will inevitably speak to the Town's rights and responsibilities, its processes and procedures, along with its funding and administration. It would be bound by any forthcoming decision or judgment of this Court insofar as it pertains to the position to which Koplen was purportedly nominated. The Town is an intervenor as of right.

⁶ Although Koplen presents his arguments by way of a memorandum of law in support of a motion to dismiss the Petition, the Court notes that no notice of motion has been filed by any party herein. See 22 NYCRR § 202.8-a(a) ("The movant shall specify in the notice of motion . . . the exact relief sought."). The Court, notwithstanding this infirmity, deems Koplen's submission as general opposition to the Petition.

With regard to timeliness, it is undisputed that the initial Petition was timely commenced. The Town, practically speaking, could not have been made aware that an issue raised in the Petition would implicate the viability of the purportedly abolished Town Justice position *until* it was filed on August 7, 2023. The Town appeared before the undersigned on August 11, 2023, the initial return date, and stated clearly its intention to intervene. As noted above, all parties consented to that request. The Court, accordingly, gave the parties—including the Town—a briefing schedule. To suggest now, with reference to the strict timeframes set forth in the Election Law, that the intervenor's papers are untimely would be unjust under the present circumstances.

As to Koplen's remaining arguments, the Court has already discussed standing, service of process, and failure to join necessary parties in the context of the motion to dismiss. *See* discussion *supra*. The only remaining issue, then, is whether the Town Justice position at the heart of this dispute has been abolished. NYSCEF Docs. 1, 26.

A. The Town's Position

Chapter 40 of the Laws of the State of New York (2002) set forth that the Ramapo Town Board could adopt a resolution, at least one-hundred and fifty (150) days prior to the 2002 general election, determining that the Town shall have three Town Justices. NYSCEF Doc. 28. Shortly thereafter, by resolution 2002-326, adopted on May 8, 2002, the Town added a third Town Justice. NYSCEF Doc. 29. The resolution does not indicate that it was subject to any referendum. By resolution 2016-498, adopted on October 27, 2016, the Town abolished one Town Justice seat. NYSCEF Doc. 30. This resolution, like its predecessor in 2002, does not indicate that it was subject to any referendum. By resolution 2020-527, adopted on December 30, 2020, the Town concluded that restoring a third Town Justice position was in its best interests. This resolution indicated that it was subject to a permissive referendum. NYSCEF Doc. 31. By resolution 2023-296, adopted on June 28, 2023, the Town Board accepted Justice Fried's resignation. NYSCEF Doc. 32. This resolution was emailed by the Town Clerk to the RCBOE on July 28, 2023. NYSCEF Doc. 34. The Town Board concluded thereafter that it was unnecessary to have three seats, and that abolishing would "be of economic benefit" to the Town. NYSCEF Doc. 33. As such, by resolution 2023-334, adopted on July 24, 2023, the Town abolished one Town Justice position "effective immediately." *Id.* No Certificate of Vacancy was filed with the RCBOE, as the two remaining positions were occupied. On July 31, 2023, the Town

notified the RCBOE of the abolishment of the Town Justice position. NYSCEF Doc. 36. The Koplen nomination was filed with the RCBOE on July 27, 2023.

The Town contends that it created a third Town Justice seat under Chapter 40 of the Laws of the State of New York (2002). NYSCEF Doc. 28. Therefore, the Town submits, it has the inherent authority to abolish the position it created. The Town cites myriad decisions in support of this position. *See, e.g., Michaelis v. City of Long Beach*, 46 A.D.2d 772, 773(2d Dept. 1974) (determining that “absent any express constitutional limitation, a legislative body has full and unquestionable power to abolish an office of its creation or to modify the terms of the office, in the public interest”).

Taking this rationale to its next logical step, the Town posits that it can abolish by way of resolution any position it created by way of resolution. The Town relies on the Second Department case of *Moser v. Tawil*, 135 A.D.3d 942 (2d Dept. 2016). In *Moser*, the appellate court affirmed the lower court’s determination that the mayor could not terminate a certain civil service position because the power to create that position rested explicitly with the City’s Board of Estimate and Apportionment. In so determining, the court reaffirmed that “[t]he general rule, when not qualified by positive law, is that the power which creates an office may abolish it in its discretion and this rule applies to municipal offices” *Id.* at 943 (internal citations omitted); *see also Dougherty v. Makowski*, 49 A.D.2d 424, 428 (4th Dept. 1975) (“The power to create an office assumes the power to abolish it.”). Since the Town created a third Town Justice seat by way of resolution, it argues that it necessarily had the authority to abolish that position in the same way (i.e., without a referendum).

Election Law §4-106(4) requires that, within three days after the occurrence of any vacancy in an office required to be filled, the town clerk shall file a certificate indicating the occurrence of the vacancy and the position to be filled with the Board of Elections. The filing of such a certificate has been determined to constitute a condition precedent to filling the vacancy at an election. *See Engel v. Bd. of Elections of State of N.Y.*, 144 A.D.2d 175, 176 (3d Dep’t 1988). Similarly, a Board of Elections cannot be compelled to hold an election to fill a vacancy when no vacancy was certified by the municipality. *See Amato v. Epstein*, 22 A.D.2d 711 (3d Dept. 1964).

Based on the purported abolishment of the position, no Certificate of Vacancy was filed with the RCBOE, as the remaining seats were occupied. In addition, no application to compel

the Town to file the certificate of vacancy with the RCBOE has been commenced. The Town argues, therefore, that the RCBOE had no authority to accept Koplen's nomination.

B. Respondent Koplen and RCBOE's Position

In opposition, the RCBOE argues that it interpreted an e-mail received from the Town Clerk attaching the Town's resolution accepting Justice Fried's resignation (NYSCEF Doc. 34) as a certification of a vacancy. NYSCEF Doc. 45 ("[I]t is difficult to imagine how else this email and its attachment could have been interpreted by the BOE *other* than as a certification by the Ramapo Town Clerk that 'there was an office to be filled.'" (emphasis in original)). This interpretation of the e-mail was especially appropriate, the RCBOE argues, because they did not receive official notice of the Town's resolution abolishing the position until July 31, 2023 (i.e., after they had accepted Koplen's nomination). *Id.*

With respect to the abolishment of the Town Justice position, Koplen contends that the general rule was qualified in this instance by a specific law, N.Y. TOWN LAW ("Town Law") § 60-a. Koplen interprets Town Law § 60-a as requiring a permissive referendum before abolishing any Town Justice position. NYSCEF Doc. 43. Koplen argues further that in 2020, when the third Town Justice seat was reinstated (after having been abolished in 2016), the Town's resolution indicated that the reinstatement of the position was subject to referendum. This fact, according to Koplen, is evidence that a referendum is required by law.

Koplen argues also that the third Town Justice position was not created pursuant to Chapter 40 of the Laws of the State of New York (2002) because that law only applied to the 2002 general election. Koplen avers that the Town Justice seat to which he claims nomination is not the position created in 2002, because *that* seat was abolished in 2016. Therefore, Koplen contends, the seat he seeks is the one "recreated" in 2020, in the middle of Justice Fried's term, and therefore this position is now occupied by Justice Desir.⁷ Thus, since the presently vacant Town Justice position would have required a referendum prior to its abolishment, Koplen contends that his nomination therefor was appropriate.

Finally, Koplen contends that on July 28, 2023, the Town did, in fact, certify to the RCBOE that a vacancy existed. In support of this argument, he relies on the July 28, 2023 e-mail

⁷ What the Court is not clear on is how Koplen can argue that he is seeking a nomination to a currently occupied seat for which the term limit is *not* expiring.

wherein the Town Clerk sent the RCBOE the resolution accepting Justice Fried's resignation. NYSCEF Doc. 43, p. 6.⁸ The clear impact of that e-mail, Koplen posits, is that the RCBOE had the authority to accept his nomination for the position of Town Justice.

C. Analysis and Determination

This Court will not engage in tracing the lineage of seats to determine which specific seat is vacant and which specific seat must be nonexistent. The simple fact is that the Town created a third Town Justice seat pursuant to its authority as set forth in Chapter 40 of the Laws of the State of New York (2002). In the years that followed, the Town abolished and then resurrected a third seat. Then, once again, the Town abolished the third seat. There are, consequently only two Town Justice seats. And both are occupied.

The Town acted within its authority in abolishing the third Town Justice position without a referendum. Town Law § 60-a does not require a referendum in this case. Town Law § 60-a, originally added to the Consolidated Laws in 1976, is entitled "Removal of Town Justices *from Town Board*" (emphasis supplied). Prior to its enactment, it appears that Town Justices were allowed to concurrently serve as members of the town board. Town Law § 60-a requires that in any town where a sitting justice serves as a member of the town board, he or she will continue to serve on the town board until the expiration of their term, at which time a town councilperson will be elected as a member of the town board in place of the Town Justice. *Id.*; see also N.Y.JUR.2D Counties, Etc. § 181 (2023); *Walsh v. Katz*, 17 N.Y.3d 336, 339 (2011) (explaining that, by enacting this law, "the Legislature eliminated the dual role and Town Justices no longer served on town boards"). In that regard, the law states that if the town board determines it is in the best interest of the town, it can adopt a resolution, subject to permissive referendum, *to reduce the number of council members or justices and provide that the term of the town council member first elected shall be for a single two or four year term*. Town Law § 60-a(2). That portion of the law referencing a referendum does not apply to the facts of this case when read in the context of the entire section of the Town Law within which it is contained.

The Town, by resolution, added a third Town Justice seat. This occurred in 2002, and again in 2020. NYSCEF Docs. 29, 31. In 2020, the Town's resolution adding a third Town

⁸ Koplen erroneously refers the Court to the incorrect email, but the Court can infer the email Koplen intended to specify here based on the Court's understanding of his argument. NYSCEF Doc. 43, p.6.

Justice seat was subject to a referendum. The Town had the authority to subject the resolution to a referendum pursuant to Town Law § 94, which states that the Town *may*, on its own motion, submit a resolution to the electors for approval. Absent a statutory requirement that the Town *must* submit a resolution for a referendum, the Town had full authority to abolish the position it created. Indeed, it abolished a Town Justice position without referendum in 2016. NYSCEF Doc. 30.

Based on the foregoing, the Court determines that the third Town Justice position was properly abolished, and there is no vacant Town Justice position for which Koplen may be nominated. The seat does not exist. The nomination, therefore, is invalid, and of no legal force and effect. The intervenor's Petition, as well as the portion of the initial Petition which seek invalidation of the Koplen nomination on this specific ground, are granted.

Moreover, even if this were not the case, without the filing of an official certificate of vacancy as required by Election Law § 4-106(4), the RCBOE lacked authority to accept the nomination, and the position cannot appear on the ballot in the upcoming general election. The argument raised by the RCBOE and Koplen that they could rightfully assume there existed a vacancy by reason of the e-mails set forth in the record is specious at best. An e-mail indicating there has been a resignation may, in fact, beg the question as to whether there is a vacancy – such an e-mail is not, however, the equivalent of a formal certificate of vacancy.

Although this determination renders the remaining contentions set forth in the initial Petition academic, the Court will address each briefly herein, as is the general practice in determining Election Law matters.

REMAINING CONTENTIONS IN PETITION

To the extent that the Court is required to address each argument raised in an election law proceeding, it will now briefly address the remaining purported Koplen nomination insufficiencies that formed the basis of the initial Petition.

Petitioners contend that pursuant to the party rules, the Executive Committee had no authority to nominate Koplen for the Town Justice position. NYSCEF Doc. 1, ¶7. The party rules state, in relevant part, that “the Executive Committee shall also submit to the Town Committee, for their consideration, the names of persons to fill elective positions in Town Government, County Government and the Rockland County Republican Committee.” Pet. Ex. E.

In opposition to this prong of the Petition, Koplen argues that the provision in the Town rules cited by Petitioners has “nothing to do with candidates for Town Justice running in a general election.” NYSCEF Doc. 9, ¶12. Koplen goes on to state that the Republican Town Committee is “not attempting to fill a vacancy on an internal political committee, which is the subject of the by-law, but rather is nominating the undersigned to run as candidate in the general election for Town Justice on November 7, 2023.” *Id.* at ¶13.

The Ramapo party rules do not appear to bestow upon the Executive Committee the authority to nominate candidates to fill elective positions in the Town government. The party rules specifically state that the Executive Committee *shall* submit to the Town Committee, *for their consideration*, the names of persons to fill *elective positions in the Town Government*. Pet. Ex. E. In this instance, the Koplen nomination clearly indicates that it is has been made by the “Executive Committee for the Ramapo Republican Committee for the Town of Ramapo” for an office to be filed at a general election on November 7, 2023. NYSCEF Doc. 47.

It seems to the Court that the party rules for the Town do not give express authority to the Executive Committee to file the Koplen nomination. The nomination, therefore, could have been invalidated on this ground had the position at issue not been abolished.

With respect to Petitioners’ remaining arguments as enumerated in the Petition, the Court determines that they have not met their burden of proof. Any further analysis is truly academic at this point, based on the Court’s decision.

CONCLUSION

Based on the foregoing, the Court concludes that the Town Justice position for which Koplen seeks nomination has been abolished by the Town. The Koplen nomination is therefore invalid, null and void..

Now, it is therefore,

ORDERED, that Koplen’s motion to dismiss the initial Petition in this matter is denied; and it is further

ORDERED, that the initial Petition and the Town’s Petition are granted to the extent that the Koplen nomination is hereby determined to be invalid, null and void for the reasons set forth, *supra*; and it is further

ORDERED, that the RCBOE is prohibited from placing Koplen's name on the ballot for the position of Town Justice at the November 7, 2023 general election.

The foregoing shall constitute the Decision and Order of this Court.

Dated: New City, New York
September 14, 2023



Hon. Thomas P. Zugibe, J.S.C.

To: *All counsel of record with NYSCEF*