

IN THE SUPREME COURT OF THE STATE
OF NEW YORK—COUNTY OF KINGS

STATEN ISLAND BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,

PETITIONER (COMPLAINANT-
GRIEVANT BEFORE THE
RESPONDENT)

INDEX NO. 3537-15
VERIFIED PETITION
(ARTICLE 78 PROCEEDING
PURSUANT TO NEW YORK
CIVIL PRACTICE LAW
SECTIONS 7801, *et seq*)

RE: CONDUCT OF RICHMOND COUNTY
DISTRICT ATTORNEY DANIEL DONOVAN
IN THE MATTER OF THE DEATH OF
ERIC GARNER

-against-

THE STATE OF NEW YORK GRIEVANCE
COMMITTEE FOR THE SECOND, ELEVENTH
& THIRTEENTH JUDICIAL DISTRICTS

RESPONDENT

Now comes the *Petitioner Staten Island Branch of the National Association for the Advancement of Colored People* (Complainant-Grievant before the Respondent State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts) and, pursuant to New York Civil Practice Law, Sections 7801, *et seq.* (Article 78), herein asserts the following.

I. INTRODUCTION

1. *The Petitioner seeks review of the January 23, 2015 letter- ruling/ decision of the Respondent State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts, which ruling/decision was memorialized in a January 23, 2015 letter-ruling from the Respondent to the attorney for the Petitioner.*

2. The Petitioner was informed in that January 23, 2015 letter-ruling/decision that the Respondent Grievance Committee for the Second, Eleventh & Thirteenth Judicial

Districts *was not* the “*appropriate forum*” in which the Complaint-Grievance, which was brought by the Petitioner herein as the Complainant-Grievant therein with respect to the conduct of Richmond County District Attorney Daniel Donovan for breach of the Rules of Professional Conduct,, could be addressed.

3. *The sole issue raised in this Article 78 proceeding is a legal issue, to wit: whether the Respondent State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts is an “appropriate forum” in which the Petitioner can bring a Complainant-Grievance against Richmond County District Attorney Daniel Donovan for breach of his obligations and responsibilities as an attorney under the Rules of Professional Conduct pursuant to which he, as an attorney, is required to adhere.*

II. JURISDICTION

4. Jurisdiction of this Court is invoked pursuant to New York Civil Practice Law, Sections 7801 *et seq.*

5. This is a matter otherwise known in shorthand as an *Article 78 proceeding*.

6. This is an Article 78 proceeding. Pursuant to New York Civil Practice Law, Section 7803, against the Respondent, as a “*body*” respecting whether a determination made by the Respondent body “was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed...”

III. PARTIES

7. The *Petitioner* is the Staten Island Branch of the National Association for the Advancement of Colored People (hereinafter referred to as the NAACP) is a Branch of the is the nation’s oldest, largest, and most respected civil rights organization.

8. The NAACP is a membership organization with local community “branches” and broader “State” conferences located in communities throughout all of the States of the nation, including New York State, and in other locations throughout the world. The NAACP is a grassroots based civil rights organization. It operates from the bottom up.

9. The NAACP’s more than half million members and supporters throughout the United States and the world are the premier advocates for the civil and constitutional rights of people of color in their respective communities including, among those rights, the right to equal justice under the law.

10. Such right to equal justice under the law includes the right to racially non discriminatory, equal justice under the law in all of the aspects of the operation and administration of the criminal justice system of our nation and in all of the aspects of the operation and administration of criminal justice systems of the various States throughout the nation including, of course, the State of New York.

11. The NAACP was formed and founded on February 12, 1909 partly in response to the continuing horrific practice of the lynching of Black Americans which were taking place throughout the nation; and in response to the 1908 race riot in Springfield, Illinois, the capital of Illinois and the resting place of President Abraham Lincoln, associated with the lynching practice.

12. The Springfield riot arose out of the continuing failure of the nation’s law enforcement authorities to address the lynching of Black Americans through the criminal justice system processes available to do so but which were being applied, or actually not applied at all, in a racist and racially discriminatory unequal manner and fashion because Black lives did not matter.

13. In other words, the NAACP was founded to provide organized efforts through democratic processes in order to obtain accountability for, among other things, the violence that was being committed against Black Americans and the failure of the nation and its States to provide some form of accountability for such.

14. Appalled at the violence that was being committed against Black individuals, seven African Americans, among them W.E.B. Du Bois, Ida B. Wells-Barnett, and Mary Church Terrell, joined with a group of white individuals, among them Mary White Ovington and Oswald Garrison Villard (both of whom were descendants of abolitionists), and signed a “call” which echoed the focus of Du Bois’ Niagara Movement that began in 1905.

15. The Niagara Movement and the founding of the NAACP had as their stated goal to secure for Black Americans and for other people of color the nation’s post Civil War promises of full rights guaranteed for *all* people. The promises, in all of its aspects, were encompassed by the nation at the conclusion of the Civil War in the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution.

16. The “call” and the founding of the NAACP were for the stated purpose of achieving, in the realities of the everyday lives of *all* Black Americans, the abstract promises encompassed within the afore-mentioned post Civil War Amendments that guaranteed equal protection of law to each and every Black American citizen but which abstract promises were being disregarded, ignored, breached, and denied to Black Americans every day and in every way throughout this nation simply because the lives of Black Americans did not matter.

17. The promises, as contained in those Amendments and as propelled by the young American nation's bloody Civil War, were that race would no longer matter in our nation and would no longer define us as we grew and evolved as a nation. Unfortunately, race very much still matters in our nation and race very much still defines the very fabric of our nation these many decades and centuries since the adoption of those post Civil War Amendments and the promises encompassed therein,.

18. The NAACP seeks to remove all aspects of racial discrimination and unequal treatment because of race through the democratic processes. The goal has yet to be fully realized and this undertaking is just another effort on the part of the NAACP to achieve that elusive goal --to hold the nation accountable for its still unfulfilled, long ago made promises

19. The Staten Island NAACP Branch is one of several NAACP Branches in the City of New York dedicated to the goals of the NAACP (as described above) through grassroots efforts. The Staten Island NAACP Branch and all of the other New York City NAACP Branches act under the auspices of both the national NAACP and the New York State Conference of NAACP Branches.

20. Among other of the goals of the NAACP's grassroots Branch in Staten Island is the goal to remove all aspects of unequal treatment due to race in, among others, the administration of the State's over-arching criminal justice system of which the Richmond County criminal justice system is a part. The New York State Conference of NAACP Branches likewise has the same goal respecting the criminal justice systems that exist in all counties throughout the State of New York as part of the over-arching criminal justice system of the State of New York.

21. The Staten Island NAACP Branch and the New York State Conference of NAACP Branches advocate and act for their many members, significant numbers of whom are African American males and other males of color. Neither the Staten Island NAACP Branch nor the New York State Conference of NAACP Branches works and advocates, however, solely for their members.

22. Whether a member or not, the Staten Island NAACP Branch and the New York State Conference of NAACP Branches have a direct and vested interest in advocating for and on behalf of *all* African American citizens and residents of Richmond County, New York and of the State of New York and of *all* people of color who are residents and/or citizens of Richmond County and of the State of New York including the many tens of thousands of Black and Brown males and other males of color who reside in Richmond County and who reside throughout the State of New York.

23. The unfortunate reality is that many of the African American male members of the Staten Island NAACP Branch and many of the thousands of Black and Brown males and other males of color who are citizens and residents of Staten Island and of the State of New York are, disproportionate to their numbers in the overall populations of Richmond County and of the State of New York, more likely than their white counterparts to be engaged by New York City Police Officers and/or other local law enforcement officers throughout the State of New York.

24. They are, disproportionate to their numbers in the overall population, more likely than their white counterparts to become entangled in the Richmond County criminal justice system and/or the local criminal justice systems throughout the State of New York.

25. They are, disproportionate to their numbers in the overall population, more likely than their white counterparts to be victims of police abuse and, potentially, of the application of excessive force –sometimes even deadly excessive force, at and by the hands of New York City Police Officers (Richmond County/Staten Island being one of the multiple counties that comprise the City of New York), more often than not white New York City Police Officers; and/or at the hands of local and State law enforcement officers throughout the State of New York, more often than not white law enforcement officers.

26. Eric Garner was one such African American male who was the subject of deadly excessive force literally at the hands of white New York City Police Officers and the abusive application of their power in the inter-actions that they had with him on that fateful July 17, 2014 day.

27. In *National Association for the Advancement of Colored People, et al. vs Edward Levi, et al.*, 418 F. Supp. 1109 (D.D.C. 1976), the NAACP sought the “Court’s aid compelling the defendants to undertake a thorough and meaningful investigation into [Carnell Russ’s] fatal shooting. The shooting took place at the Lincoln County Courthouse, Star City, Arkansas while Russ was in the custody of Arkansas law enforcement officers [respecting a speeding violation].”

28. Judge Parker wrote:

“For more than the last 50 years, the NAACP has participated as party plaintiff, as intervener and as amicus curiae in a variety and ever increasing amount of civil rights litigation. On behalf of its membership and black minorities it has achieved a reputation in both state and Federal court as an organization with a special interest in the preservation and protection of their civil and constitutional rights.” In 1963, Justice William J. Brennan recognized the standing of the NAACP to assert the rights of its members and remarked that the organization engages in litigation

...[as] a means to achieving the lawful objectives of equality of treatment by all government, federal, state and local for the members of the Negro community in this country.

the litigation it assists, while serving to vindicate the legal rights of members of the American Negro community, at the same time and perhaps more importantly, makes possible the distinctive contribution of a minority group to the ideas and beliefs of our society”.

See: *NAACP v Levi*, *supra*, citing to *NAACP v. Button*, 371 U.S. 415, at 429 and at 337, 83 S. Ct. 1361, 31 L. Ed. 2nd 636 (1972).

29. Continuing and reflecting further on what Justice Brennan wrote, Judge Parker concluded:

“That same observation is true today and as the plaintiffs have pointed out, the standing of this organization to sue and represent its member and nonmembers in the context of its objectives has never been denied in any reported judicial opinion [the Court citing to the plaintiffs’ memorandum in opposition for defendants’ motion for change of venue and to dismiss the litigation for lack of standing and for failure to state a claim].

The NAACP’s interest in the issues presented in this litigation is not abstract or general but rather it is real and direct. In their pleadings and affidavits, the plaintiffs point to the past and continuing efforts of the organization to secure the civil rights of its memberships and others under Federal law against the arbitrary and discriminatory acts of government officials.

The plaintiffs have an interest in free access to and even handed application of the legal and criminal justice procedures of the... government. They allege that they were injured because of the of the defendants’ failure to undertake a sincere and meaningful investigation of Carnell Russ’ death.

The historic role of the NAACP in its efforts to secure for its

members and others through litigation, the guaranteed civil which have been denied, cannot be ignored...”

See: *NAACP v. Levi, supra*.

30. The *Respondent* is The State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts.

31. According to a Web site under the title of the “Appellate Division, Second Judicial Department, which relates to grievances against attorneys and the relationship of government created grievance committees to address such, “the practice of law is a profession that is licensed and regulated by the State of New York”.

32. Further, attorneys “are admitted to practice by the Appellate Division of the New York State Supreme Court and are subject to oversight by that court during the course of their career.”

33. It further states that “to guide and regulate the practice of law, New York has adopted the Rules of Professional Conduct (22 NYCRR, part 1200). These rules state the standard of conduct below which *no lawyer* can fall without being subject to disciplinary action.” (Emphasis added).

34. Continuing, it states:

“Lawyers who violate the Rules of Professional Conduct (22 NYCRR part 1200) are subject to professional discipline for their actions. The Appellate Division of the Supreme Court is legally responsible for maintaining the integrity of the profession by enforcing those Rules. In the 10 downstate counties of Richmond (Staten Island)...the Appellate Division for the Second Judicial Department has created three grievance committees to receive, investigate, and, if necessary, prosecute complaints of professional misconduct against lawyers. The purpose of the disciplinary system is to protect the public generally by enforcing the Rules of Professional Conduct, thereby helping to insure the honesty, integrity, and competence of the profession.”

35. Per the procedures in place, “a complaint should be filed with the grievance

committee having jurisdiction over the county in the state of New York in which the attorney maintains his or her office for the practice of law.”

36. According to the Web site, “in the Second Judicial Department, if the Attorney’s office is located in Richmond... [County], the complaint should be filed with the State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts...”

IV. ALLEGATIONS

37. The Petitioner herein was the Complainant-Grievant in a December 17, 2014 fifty page Complaint-Grievance filed with the Respondent State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts against Richmond County District Attorney Daniel Donovan for his conduct associated with the grand jury proceedings about and related to the July 17, 2014 death of Eric Garner which was the result of the conduct of several New York City Police Officers including but not limited to New York City Police Officer Daniel Pantaleo.

38. The Petitioner herein asserted in its December 17, 2014 Complaint-Grievance, which was filed with the Respondent State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts, that, by his actions and inaction (conduct), Richmond County District Attorney Daniel Donovan breached specifically identified provisions of the Rules of Professional Conduct that he, as an attorney, is obligated to follow in the performance of his duties and functions as an attorney and whether he performs them in his public capacity as “the people’s” District Attorney or in a private, non public capacity.

39. The Petitioners requested, among other relief, that the Respondent Grievance Committee undertake to investigate and address the substance of the Complaint-Grievance; and that the Respondent Grievance Committee then issue findings and impose, if deemed appropriate, discipline against Richmond County District Attorney Daniel Donovan in his capacity as an attorney, albeit “the people’s attorney (as a prosecutor), including, if deemed appropriate, a recommendation that he be removed from office.

40. Furthermore and given the nature of the allegations and requests made to the Governor of the State of New York in an independent standing December 17, 2014 letter respecting aspects of the grand jury process and the involvement of local prosecutors in that process where and when local police officer’s conduct is the focus of the grand jury process and specifically implicating and focusing on the conduct of Richmond County District Attorney Daniel Donovan with respect to the grand jury addressing the July 17, 2014 death of Eric Garner, the Petitioner requested that, independent of the investigation of the specifics against Richmond County District Attorney and findings and relief if any related thereto under the Rules of Professional Conduct, the Respondent Grievance Committee issue recommendations and a report relating to the serious issues about the role of a local prosecutor raised by the Garner matter (among others) and the requests made by the Petitioner to the Governor in its December 17, 2014 letter to the Governor .

41. The Respondent State of New York Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts wrote to James I. Meyerson, attorney for the Complainant-Grievant Staten Island Branch of the National Association for the Advancement of Colored People, in its January 23, 2015 letter-ruling:

“This will acknowledge receipt of your complaint dated December 17, 2014.

After careful consideration, it has been determined that the Grievance Committee is not the appropriate forum to address your concerns. Moreover, it is not within the Committee’s authority to issue reports or make recommendations on any issues, as you have requested.”

42. Among other relief requested and sought by the Complainant-Grievant before the Respondent was, in substance, an investigation by the Grievance Committee of the conduct of Richmond County District Attorney Daniel Donovan with respect to the grand jury related to the July 17, 2014 death of Eric Garner as a result of the conduct of New York City Police Officers including but not limited to New York City Police Officer Daniel Pantaleo; and a determination whether said Richmond County District Attorney Daniel Donovan breached specific provisions of the Code of Professional Conduct with respect to his conduct; and, if found to have done so, to impose whatever discipline is needed and required to redress the actions and conduct including, if appropriate, any recommendation of removal from his Office.

43. In a February 12, 2015 letter to the Respondent, James I. Meyerson, attorney for the Petitioner herein (Complainant-Grievant in the matter before the Respondent), wrote a five page double spaced letter to Diana Maxfield Kearse, Chief Counsel of the Respondent and the author of the afore-described letter-ruling in which he expressed the following:

“Please be advised that I am in receipt of your January 23, 2015 letter relating to the above matter [File No. R-1885-14]. A copy of the letter is attached hereto. That matter arises out of a December 17, 2014 Complainant-Grievance filed with the Grievance Committee not by me personally but by me on behalf of my client (the Staten Island Branch of the National Association for the Advancement of Colored People) and specifically in the name of my client.

I am not asking for advice or counsel in this letter. On the other hand, there is no

substantive discussion in your letter or an attached brief summary memorandum which explains the basis for the position of the Grievance Committee that it is not the ‘*appropriate forum*’ for addressing what my client believes to be a breach of the Code of Professional Responsibility by Richmond County District Attorney Daniel Donovan with respect to his obligations, duties, and responsibilities as an Attorney for all of the people of Richmond County; and for which you and yours, As the appropriate Grievance Committee for the area in which Mr. Donovan practices as an attorney, has jurisdiction to investigate.

Accordingly and without requesting advice and counsel, I am asking that you provide me some rationale why you have concluded that the Grievance Committee is not the ‘*appropriate forum*’ for you to investigate the grievance filed by my client for those individuals on whose behalf my client advocates and works- the grievance being whether or not Richmond County District *Attorney* Daniel Donovan breached the Code of Professional Responsibility to *all* of the people of Richmond County (his clients), some of whom believe that he violated his obligations under the Code of Professional Responsibility.

As you are very much aware, prosecutors have absolute immunity from being sued except in extraordinarily limited circumstances (non prosecutorial functions which non prosecutorial functions have been interpreted to exist in very, very narrow contexts).

Thus, if a Grievance Committee cannot address the impropriety of conduct by a District Attorney (whatever the context-prosecutorial or otherwise) under the Code of Professional Responsibility, one is left with the disturbing proposition that an attorney-which after all is what a District *Attorney* is-the ‘people’s attorney’s prosecutor- is free to do almost anything-maybe everything-with impunity and without review or oversight of that attorney’s conduct except the prosecutor-attorney’s self oversight.

Of course that cannot be. Or can it?”

44. The Petitioner’s attorney has not received a response from the Grievance Committee to his February 12, 2015 letter.

45. In addition to the review of the foregoing January 23, 2015 letter- ruling/decision of the Respondent, the Petitioner seeks such other and further relief as is appropriate to a Petitioner favorable decision herein.

46. *The substance of the merits of the Grievance-Complainant is not, now, at issue before this Court because the Respondent did not address the merits but, rather, ruled*

that it was not the “appropriate forum” in which to have the merits of the allegations brought by the Petitioner herein (Complainant-Grievant) addressed and resolved.

47. The Article 78 Petition and the proceedings herein are brought upon the Notice of Petition, the attorney verified Petition, and the attorney’s Affirmation associated therewith.

48. The Article 78 Petition and the proceedings herein are brought upon the December 17, 2014 Complaint-Grievance by the Petitioner herein (the Complainant-Grievant before the Respondent State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts below), a copy of which is attached hereto and the substance of which is incorporated by reference herein and in the attached Petition; and the cover letter to the Grievance Committee associated therewith, a copy of which is attached hereto and incorporated by reference herein.

49. The Article 78 Petition and the proceedings herein are also brought upon the Petitioner’s seventeen page December 17, 2014 letter to the Honorable Andrew Cuomo, Governor of the State of New York. A copy of which letter was provided to the Respondent by the Petitioner at the time the Petitioner filed its Complaint-Grievance with the Respondent and the substance of the letter was incorporated by reference into the Petitioner’s Complaint-Grievance to the Respondent. A copy of the Petitioner’s December 17, 2014 letter to New York State Governor Cuomo is attached hereto and incorporated by reference herein.

50. The attached Article 78 Petition and the proceedings herein are also brought upon the Respondent’s January 23, 2015 three sentence letter ruling in which the Respondent, without addressing the merits of the Petitioner’s Complaint-Grievance and without

providing any explanation or rationale, simply informed the attorney for the Petitioner herein that the Respondent was not the appropriate forum to address the specific grievance which the Petitioner set forth in its Complaint-Grievance to the Respondent with respect to the conduct of Richmond County District Attorney Daniel Donovan under specific provisions of the Code of Professional Responsibility. A copy of the letter ruling is attached hereto and is incorporated by reference herein.

51. Finally, the attached Article 78 Petition and the proceedings herein are brought upon the February 12, 2015 letter from the Petitioner's attorney to the Respondent's attorney, a copy of which is attached hereto and incorporated by reference herein.

52. The Petitioner seeks a ruling from this Court that the Respondent *is* an "*appropriate forum*" to address the Petitioner's Complaint-Grievance; and a direction that the matter be remanded back for the Respondent to consider the substance of the Petitioner's Complaint-Grievance and to take whatever action, if any, it deems to be appropriate.

WHEREFORE, it is respectfully requested that this Court assume jurisdiction over the within Article 78 proceeding and that, thereafter, it consider the merits of the Petitioner's position and, having done so, that it find that, as a matter of law, the Respondent is an "appropriate forum" to address the Petitioner's Complaint-Grievance against Richmond County District *Attorney* Daniel Sullivan in his role as an attorney ("the people's attorney") under the Code of Professional Responsibility to the extent and given that the Petitioner has asserted that, by his conduct respecting the grand jury related to the July 17, 2014 death of Eric Garner, Richmond County District *Attorney* violated specific provisions of the Code of Professional Responsibility pursuant to which *all* are

obligated; and further that this Court direct that, upon return of the matter to the Respondent, the merits of the substance of the Petitioner's Complaint-Grievance be considered on its merits.

DATED: New York, New York
March 19, 2015

Respectfully submitted,
/s/James I. Meyerson
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VERIFICATION

James I. Meyerson, being duly admitted to practice law in and before the Courts of the State of New York among others and being duly aware of the penalties for perjury, affirms and declares under penalty of law as follows:

1. I am the attorney for the Petitioner Staten Island Branch of the National Association for the Advancement of Colored People.

2. I have prepared the foregoing Notice of Petition and Petition with respect to this Article 78 proceeding pursuant to New York Civil Practice Law Sections 7801, *et seq.*

3. I have also prepared all of the documents attached hereto and incorporated by reference all of which are relevant to the within Article 78 Petition and the associated proceedings herein.

4. I execute this Verification for and on behalf of the Petitioner herein.

5. The facts and assertions set forth in the Notice and the Petition and in the various related documents are true of my own knowledge and/or upon information and belief.

DATED: New York, New York
March 19, 2015

Respectfully submitted,

/s/James I. Meyerson

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