

No. 20-6278

IN THE
SUPREME COURT OF THE UNITED STATES

Bodhisattva Skandha — PETITIONER
(Your Name)

vs.

ORIGINAL

Massachusetts Appeals Court — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
OCT 07 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Massachusetts Appeals Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bodhisattva Skandha
(Your Name)

W28163 — Box 43,

(Address)

Norfolk, MA 02056

(City, State, Zip Code)

(Phone Number)

RECEIVED

OCT 16 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Issue #1: WHETHER THE LOWER COURT ABUSED ITS DISCRETION BY NOT ALLOWING THE TORT CLAIM TO GO FORWARD?

pp. 7-16

Issue #2: WHETHER MAKING FALSE STATEMENTS IN AN OFFICIAL DOCUMENT CONSTITUTES FRAUD?

pp. 16-20

Issue #3: WHETHER THE DEFENDANT IS ALLOWED TO REPRESENT THE PAROLE BOARD WHERE SHE IS NOT AN ASSISTANT ATTORNEY GENERAL?

pp. 20-27

Issue #4: WHETHER THE RESPONDENT WAS REQUIRED TO APPLY THE LAW TO THE FACTS, AS DELINEATED BY THE UNITED STATES SUPREME COURT?

pp. 27-28

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Massachusetts Appeals Court
Middlesex Superior Court
Marian T. Ryan District Attorney

RELATED CASES

Skandha v. Gloriann Moroney, 97 Mass. App. Ct. 1113 (2020)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-6
REASONS FOR GRANTING THE WRIT	7-28
CONCLUSION.....	28

INDEX TO APPENDICES

APPENDIX A Skandha v. Gloriann Maroney, No. 2019-P-0847

APPENDIX B Skandha v. Gloriann Moroney, No. FAR-27466

APPENDIX C Record Appendix pp. 1-42

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

<u>Citation:</u>		<u>Page No:</u>
<u>U.S. Supreme Court</u>		
Armstrong v. Manzo, 380 U.S. 545 (1965)		12
Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993)		27
Conley v. Gibson, 355 U.S. 41 (1957)		7
Cooter & Gell v. Hartmarx, 496 U.S. 384 (1990)		17
Cutter v. Wilkinson, 544 U.S. 709 (2005)		27
Erickson v. Pardus, 531 U.S. 89 (2007)		7
Freytag v. Commissioner, 501 U.S. 868 (1991)		23
Musick, peeler & Gannet v. Employers Ins. of Wausau, 508 U.S. 286 (1993)		25
Oneale v. Thornton, 10 U.S. 53 (1810)		24
Radziner v. Touche Ross & Co., 426 U.S. 148 (1976)		24
U.S. v. Ron Pair Enterprises, Inc. 489 U.S. 235 (1989)		24
U.S. v. Throckmorton, 98 U.S. 61 (1878)		16
Wolff v. McDonnell, 418 U.S. 539 (1974)		26
<u>Federal Court</u>		
United States v. Andrews, 462 F.2d 914 (1972)		27
<u>Massachusetts</u>		
Attorney General v. Brissenden, 271 Mass. 172 (1930)		23
Brown v. Gerstein, 17 Mass.App.Ct. 558 (1984)		12
Cohen v. Santoianni, 330 Mass. 187 (1953)		9
Com., v. Kozlowsky, 238 Mass. 379 (1921)		20

TABLE OF AUTHORITIES CITED CONT'

<u>Citation:</u>	<u>Page No:</u>
Com., v. Masskow, 362 Mass. 662 (1972)	28
Com., v. Seaver, No. 6081CR58384 (1960)	15
Correas v. Schoeck, 479 Mass. 686 (2018)	18
Coughlin v. Dept. of Corr., 43 Mass.App.Ct. 809 (1997)	11
Cumis Ins. Soc'y v. B.J.'s Wholesale Club Inc., 455 Mass. 458 (2009)	19
Feeney v. Commonwealth, 373 Mass. 359 (1997)	21
Friedman v. Jablonski, 371 Mass. 482 (1976)	25
Galiastro v. Mortgage Electronic Registration System, 467 Mass. 160 (2014)	9
Hashimi v. Kalil, 388 Mass. 607 (1983)	22
Hathaway v. Crocker, 48 Mass. 262 (1843)	26
Hayes v. Ellrich, 471 Mass. 592 (2015)	16
Iannacchino v. Ford Motor Co., 451 Mass. 623 (2008)	9
IN the Matter of Greene, 470 Mass. 1006 (2016)	19
Lazzaro v. Holladay, 15 Mass.App.Ct. 108 (1983)	14
Matter of Angela, 445 Mass. 55 (2005)	12
Matter of Komack, 429 Mass. 1029 (1999)	19
Merriam v. DeMoulas Super Mkts., 464 Mass. 721 (2013)	8
Nader v. Cintron, 372 Mass. 96 (1977)	9
Nelson v. Comm'r of Corr. 390 Mass. 379 (1983)	15
Nichols v. Rogers, 139 Mass. 146 (1885)	9
Opinion of the Justices, 365 Mass. 639 (1974)	23
Passatempo v. McMenimen, 461 Mass. 279 (2011)	

TABLE OF AUTHORITIES CITED CONT'

<u>Citation:</u>	<u>Page No:</u>
Robinson v. Old Colony Street Railway, 189 Mass. 594 (1905)	26
Russell v. Nichols, 434 Mass. 1015 (2001)	27
Sec'y of Admin & Fin. v. Attorney General, 367 Mass. 154 (1975)	23
Skandha & Another v. Bonner & Others, NO. 1681cv02966	4
Skandha v. Gloriann Moroney, 97 Mass.App.Ct. 1113 (2020)	1
Skandha v. Moroney, No. 1681cv00246	5
Wilmington v. Dept. of Pub. Utilities, 340 Mass. 432 (1960)	21
<u>Other</u>	
14th Amend. U.S. Const.	27
Art II, §2, cl. 2	23
Art. VI, cl. 2, U.S. Const.	28
26 U.S.C.S. §7443A(b)(4)	25
42 U.S.C. §1983	21
Art. XII, Mass. Const.	27
Art. XXX, Mass. Const.	23
G.L. c. 12 §{	20
G.L. c. 12 §3	6
G.L. c. 12 §27	21
G.L. c. 27 §5	9
G.L. c. 31 §23	22
G.L. c. 127 §130	10

TABLE OF AUTHORITIES CITED CONT'

<u>Citation:</u>	<u>Page No:</u>
Mass.R.Civ.P. 8(a)	5
Mass.R.Civ.P. 9(b)	7
Mass.R.Civ.P. 11	17
Mass.R.Civ.P. 12(b)(6)	5

Note: Prisoners are not allowed copies of Regulations, Statutes, or Caselaw to create an Addendum, per the Law Librarian at MCI-Norfolk.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at 97 Mass. App. Ct. 1113 (2020); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Massachusetts Appeals Court court appears at Appendix A to the petition and is

reported at 97 Mass. App. Ct. 1113 (2020); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was April 29, 2020. A copy of that decision appears at Appendix A .

A timely petition for rehearing was thereafter denied on the following date: July 27, 2020, and a copy of the order denying rehearing appears at Appendix B .

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

The petitioner was involved in a civil suit against members of the Massachusetts Parole Board, Skandha & Another v. Bonner & Others, No. 1681cv02966. The members of the Parole Board were represented by Amanda N. Early, whose usual and normal practice was to place Gloriann Moroney's name on her pleadings. [Appendix C, p. 1]

After Ms. Early filed her Notice of Withdrawal of Appearance, Jennifer Romeo Porcaro appeared using the same Special Assistant Attorney General (SAAG designation used by Early, only this time naming Shara Benedetti. [App. 2]

On August 8, 2018, Gloriann Moroney issued the petitioner a "DECISION" by the Parole Board, based on the October 3, 2017 hearing. The petitioner served a Notice of Tort Claim to Ms. Moroney on December 19, 2018. Ms. Moroney did not respond to the petitioner's claim of fraud. [App. 3-6]

On January 23, 2019, the petitioner filed a Tort Claim in the venue of the defendant, Gloriann Moroney.

She was sued in personal capacity for fraud because she acted outside her official capacity as general counsel to the Massachusetts Parole Board. [App. C, 7-9]

On March 4, 2019, the petitioner mailed a Notice Of Claim to the Clerk of Middlesex County, Michael A. Sullivan, for the breach of his fiduciary duty to issue the summons for Skandha v. Moroney, No. 1981cv-00246. ON April 4, 2019 the Court, Barry-Smith, J., issued an Order pursuant to Standing Order 92-1 that the "complaint is to be entered without the requirement of a filing fee." [App. C, p. 12]

The next day, April 5, 2019, the same Court, Barry-Smith, J., issued an Order the petitioner had failed to state for facts that show an entitlement to relief, "...consistent with Mass.R.Civ.P. 8(a)," i.e., that he failed to state a claim pursuant to Mass.R.Civ.P. 12(b)(6) [App. C, 13-14]

The petitioner filed a Notice of Appeal, which was acknowledged by the Court, Yarashus, J., and the petitioner presented the facts to the Respondent, Massachusetts Appeals Court.

The petitioner was denied parole for a period of 4 years and will be reviewed again in 2021.

The DECISION from that hearing, issued August 8, 2018, is the written opinion of the defendant Gloriann Moroney, General Counsel, not an SAAG, not a member of the Parole Board. [App. C, p. 5]

The DECISION contained fraudulent statements, in the defendant's "opinion" in her personal capacity where she fraudulently disclaimed authorship.

The petitioner's Tort Claim contained factual claims that the defendant committed fraud, called herself a Special Assisaant Attorney General, in violation of G.L. c. 12 §3, and misrepresented the Parole Board's decision-making process. Apparently, the petitioner's request to be paroled was denied by Moroney, not any member of the Parole Board. Members of the Parole Board did not state any reason for denial nor did they acknowledge Gloriann Moroney's decision to deny parole. [App. C, p. 5]

The defendant signed the DECISION of August 8, 2018 as "Gloriann Moroney, General Counsel," and Maloney had no defense she was not an SAAG.

REASONS FOR GRANTING THE PETITION

Issue #1:

WHETHER THE LOWER COURT ABUSED ITS
DISCRETION BY NOT ALLOWING THE TORT
CLAIM TO GO FORWARD?

The Court, Barry-Smith, J., cited Mass.R.Civ.P. 8(a) and Mass.R.Civ.P. 12(b)(6), without prejudice, allowing for an amended complaint by June 5, 2019. [Appendix C ("App."), p. 13]

Discarding an amended complaint, the petitioner filed a Notice Of Appeal on April 15, 2019 because he believed he set forth in his Complaint proper 8(a), 12(b)(6), and Rule 9(b) factual claims.

Rule 8(a):

The petitioner set forth in his Tort Complaint a short and plain statement of the claim, showing he is entitled to relief, and a demand for judgment. Conley v. Gibson, 355 U.S. 41, 45 (1957); Erickson v. Pardus, 531 U.S. 89, 94 (2007)

All non-conclusory factual allegations must be treated as true at the pleading stage. Erickson, 531 U.S. at 94.

"...the defendant has committed fraud... using fraudulent statements and misrepresentations..." And, "...only an attorney general may represent a state agent, i.e., parole board members." [App. C, p. 7]

The defendant "...is in violation of G.L. c. 12 §3..." [Id.,] "...The defendant acted outside the purview of her official capacity as General Counsel by fraudulently stating facts in her own opinion which were patently false..." [App. C, p. 8]

The above statements are very "short and plain," which all the petitioner is required to do at the pleading stage is to give the defendant notice of the claim(s). Conley, 355 U.S. at 45.

Rule 12(b)(6):

The Respondent must review the allowance of motions to dismiss "de novo." Merriam v. Demoulas Super Mkts., 464 Mass. 721, 726 (2013)

"...We accept as true the facts alleged in the plaintiff's complaint as well as any favorable inferences that can reasonably be drawn from them"

See, Galiastro v. Mortgage Electronic Registration System, 467 Mass. 160, 164 (2014)

In order to survive the Court's "motion to dismiss," the petitioner's Tort Complaint must include factual allegations sufficient to raise a right to relief above the speculative level. See, Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008)

Here the Tort Complaint [App. C, pp. 7-9] only fails if it appears beyond doubt the petitioner can prove no set of facts which would entitle him to relief. Nader v. Cintron, 372 Mass. 96, 98 (1977)

Rule 9(b):

This rule is consonant with Massachusetts Practice that averments of fraud must be stated with particularity, which the petitioner has done. See, Nichols v. Rogers, 139 Mass. 146 (1885); Cohen v. Santoiani, 330 Mass. 187 (1953), and that the defendant has caused harm to the petitioner.

General Laws, c. 27 §5 provides in pertinent part:

"The parole board shall (a) within its jurisdiction...determine [which] prisoners in the correctional institutions of the commonwealth or in the jails or houses of correction may be released on parole and when and under what conditions...."

General Laws c. 127 §130 provides:

"No prisoner shall be granted a parole permit merely as a reward for good conduct. permits shall be granted only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society. In making this determination, the parole board shall consider whether, during the period of incarceration, the prisoners have participated in available work opportunities and education or treatment programs and demonstrated good behavior. The board shall also consider whether risk reduction programs, made available through collaboration with criminal justice agencies would minimize the possibility of the prisoner re-offending once released. The record of the board's decision shall contain a summary statement of the case indicating the reasons for the decision, including written certification that each board member voting ...has reviewed...."

[Emphasis added]

The fraud, pursuant to Rule 9(b), is that despite the disclaimer of the defendant, "This signature does not indicate authorship of the decision," [App. C, p. 5], it is the only signature on the 3rd page of the DECISION which certifies it as an official document. Contrary to the defendant's opinion that "...the Board is of the unanimous opinion that Bodhisattva Skandha is not yet rehabilitated and, therefore does not merit parole at this time. [App. C, p. 5 ¶5]

The transcript of the October 3, 2017 review hearing contradicts the defendant's statement. The petitioner is entitled to "produce all proofs," according to Article XII of the Massachusetts Constitution, so the transcript is evidence of the defendant's fraudulent statements. Coughlin v. Department of Correction, 43 Mass. App. Ct. 809, 815-817 (1997)

The statements of the defendant are false representations of material facts, with the defendant's knowledge of their falsity, to deter review of a higher authority, which the petitioner is forced to rely upon, to his detriment.

See, for example, Brown v. Gerstein, 17 Mass. App. Ct. 558, 567 [n.14] (1984)(Fraud & Deceit are interchangeable)

The August 8, 2018 DECISION and claims by the defendant is that five (5) Board members voted to deny parole with a four (4) year review. One (1) Board member voted to deny parole with a two-year review. [App. C, p. 3 [n.1]]

This case is not about "making parole," but is about Due Process and the concomitant legal procedures to which the petitioner is entitled. Matter of Angela, 445 Mass. 55, 62 (2005)[citing] Armstrong v. Manzo, 380 U.S. 545, 552 (1965)

The transcript of the October 3, 2017 review/revocation hearing would reveal the petitioner telling the Board members he would not be back. This is deception by omission in the August 8, 2018 DECISION.

The fraudulent statements by the defendant include, but are not limited to:

1. "leaving the State of California..."

2. "...and for alcohol consumption..."
3. "...Montana and Hawaii..."
4. "Mr. Skandha told the Board that he has been without drugs or alcohol for 25 years."
[App. C, p. 4]
5. "...has not demonstrated a level of rehabilitative progress..."
6. "...yet to address his causative factors through engagement in relative treatment/programming."
7. "...during the period of his incarceration."
8. "A risk needs assessment and whether risk reduction programs could effectively minimize Mr. Skandha's risk of recidivism."

The previous eight (8) statements made by the defendant are false, and deliberately so. The transcript of the October 3, 2017 review/revocation hearing would have none of these statements by the defendant.

In Judge Barry-Smith's Order of April 5, 2019, the Court dismissed the complaint under Rule 12(b)(6) and dunned the petitioner for an amended complaint.

[App. C, p. 13-14]

Because the petitioner knew he had stated a claim he chose to go forward. [App. C, p. 15-16]

The Court, Barry-Smith, J., cited Mass.R.Civ.P. 8(a) in its Order. However, Rule 9(b) must be read with Rule 8(a), and does not require the petitioner to set out in detail all the facts upon which he based his claims, nor did it require the plaintiff/petitioner to plead detailed evidentiary matters. Lazzaro v. Holladay, 15 Mass. App. Ct. 108, 110 (1983)

In Lazzaro, a trustee for a real estate investment trust (REIT) filed suit against REIT's former trustees, claiming that they committed fraud. On review of the record, the Court concluded the complaint complied with the specificity required by Rule 9(b) for allegations of fraud. The Court noted that the trustee specifically alleged that the former trustees knew of the falsity of their statements, intended to induce reliance on their statements and caused harm through their fraud.

So it is here. The public document created by the defendant is meant to show wrongdoing by the petitioner in the performance of his parole agreement with the Massachusetts Parole Board, or the Board's failure to delineate a clear path to serious consideration for the serving of the sentence outside prison.

Skandha & Another v. Bonner, & Others, No. 1681cv02966.

Pertinent and true statements, that he would wear a Global Positioning System (GPS) device because he is Bipolar, is memorialized in the decision. When he is in the manic state he does not have the power to control impulses. He requested Lithium.

Prior to the October 3, 2017 hearing, the plaintiff submitted requests to be seen by the institutional psychiatrist, who refused to see him. The defendant's statement, "has not seen a psychiatrist," is misleading, implying it is the petitioner's fault he was not allowed an interview. [App. C, p. 4]

The petitioner was interviewed by 5 psychiatric social workers, some interns, who, because he was not suicidal or violent, would not "open a case" for him.

In 2019, the Middlesex Superior Court, Fahey, J., in Commonwealth v. Seaver, No. 6081CR58384, appointed Michael Nam-Krane to represent him at the 2021 review parole hearing. However, without the medication for his Bipolar disease, parole would be an exercise in futility. Nelson v. Comm'r of Corr., 390 Mass. 379, 397 (1983)

According to the "principle of least effort," it was easier for the defendant to write up the DECISION in the form of a legal brief than to state the truth, except at least 8 of the statements were fraudulent, which vitiated the DECISION. United States v. Throckmorton, 98 U.S. 61, 64 (1878); Hayes v. Ellrich, 471 Mass. 592 (2015)

Issue #2:

WHETHER MAKING FALSE STATEMENTS
IN AN OFFICIAL DOCUMENT CONSTITUTES FRAUD?

In the Lazzaro case: The complaint sets forth a claim that the individual defendants, Holladay and the Wallaces, owned or controlled five corporations which, in turn, were the partners of defendant Continental Advisors (Advisors), a partnership. The principal business of Advisors was to act as Continental Mortgage Investors (CMI) investment advisor. Advisers' income would pass to the individual defendants, and any increase in income would be to the benefit of the individual defendants.

The plaintiff alleged that by misrepresentations and the failure to disclose material information the

individual defendants undertook to increase dramatically the extent of CMI's loan portfolio, and to maintain an inflated value of the portfolio so as to increase the fees paid to Advisers which were based on a percentage of the amount of loans. More specifically, the complaint alleges that the individual defendants recommended to their fellow severally liable trustees of CMI that the portfolio be increased by making loan commitments and disbursements to certain borrowers, knowing that the loans, for reasons stated in the complaint, created an unreasonable and substantial investment risk to CMI. Advisors profited by their fraudulent behavior.

At bar, the disturbing focal point of this fraud was only enhanced with the defendant's signature on the DECISION, which means that the signature constitutes certification the defendant read it and believes it to be well-grounded in fact, and legally tenable. Mass.R.Civ.P. 11; Cooter & Gell v. Hartmarx, 496 U.S. 384 (1990)

Apparently the defendant had no incentive to investigate the facts more carefully before issuing

the August 8, 2018 DECISION, or worse, simply did not, in a deliberate manner, care to be accurate.

The defendant had, or should have had, the reasonable foreseeability of harm she caused to the petitioner. Correa v. Schoeck, 479 Mass. 686, 698 (2018)

Evidence that the defendant's fraudulent conduct is real may be found in the documents of the Archer v. Wall case, No. 1384cv04149. [App. C, pp. 17-29]

The defendant was listed as "By its attorney designated by SAAG, Gloriann Moroney." [App. C, p. 20] The document was signed by Shara Benedetti. [Id.,]

In the Notice Of Withdrawal of Appearance, signed by Amanda N. Early, "Attorney designated by SAAG, Gloriann Moroney," it is implied the defendant is a Special Assistant Attorney General. [App. C, p. 1[]]

Then in Defendants' Opposition to Plaintiffs' Motion To Expand The Record With Appendices, Jennifer Romeo-Porcaro signed the document showing her to be the ("Attorney designated by SAAG Shara Benedetti,"

dated May 16, 2019. [App. C, p. 2] This must be some sort of "cloaking device," kept in the office. Previously, on September 21, 2018, Shara Benedetti was just "Counsel" and Gloriann Moroney was an "SAAG." [App. C, p. 22]

The preprinted form [App. C, p. 25] shows the defendant, Gloriann Moroney, with no title, either as an attorney or an SAAG.

In Cumis Ins. Soc'y Inc. v. B.J.'s Wholesale Club Inc., 455 Mass. 458, 471 (2009) the Supreme Judicial Court held the plaintiff must establishe that the defendant made a false representation of material fact, with knowledge of the falsity, for the purpose of inducing the petitioner to act on the defendant's representations.

The defendant is an attorney who made false statements in an official document, made to memorialize the truth of the matters involved. In the Matter of Greene, 476 Mass. 1006 (2016) (Attorneys who make false statements sometimes are disciplined with term suspensions ranging from six months. Matter of Komack, 429 Mass. 1029 (1999) (Fraud); Passatempo v. McMenimen, 461 Mass. 279 (2011) (Same))

If the petitioner was allowed to develop the factual record with a transcript of the October 3, 2017 parole review/revocation hearing it would prove by clear and convincing evidence the defendant's statements in the DECISION were false.

Issue #3:

WHETHER THE DEFENDANT IS ALLOWED TO REPRESENT THE PAROLE BOARD WHERE SHE IS NOT AN ASSISTANT ATTORNEY GENERAL?

The Complaint delineates fraud in the defendant pretending to be an Assistant Attorney General. (SAAG) [App. C, p. 7]

G.L. c. 12 §3 requirements are found, e.g.,
Commonwealth v. Kozlowsky, 238 Mass. 379 (1921)

Relevant to thei Petition, the Supreme Judicial Court pointed to G.L. c. 12 §2, where the Attorney General, Maura Healy, may "appoint such assistants as the duties of the office require," and to employ additional legal assistance with the approval of the Governor and the Governor's Council. Kozlowsky, 238 Mass. at 384.

The defendant here would have had to appear in the Council Chamber and be duly sworn as an SAAG.

G.L. c. 12 §27 speaks to the relationship between the attorney General and the District attorneys of the Commonwealth. Kozlowsky, 238 Mass. at 389.

The Kozlowsky case lays the foundation of the enabling statute, G.L. c. 12 §1-27, et. seq., which was enacted by the Massachusetts Legislature.

In the Kozlowsky case, Henry F. Hurlburt, Esq., made a statement of fact, and presented the record of his appointment, where the defendant here, Gloriann Moroney, who now is the Chairperson of the Parole Board, did no such thing.

In Wilmington v. Dept. of Public Utilities, 340 Mass. 432 (1960), the Supreme Judicial Court held:

"...moreover, under G.L. c. 12 §3, the attorney general 'shall appear...for state departments, officers and commissions in all suits and other civil proceedings...in which the official acts and doings of said departments, officers and commissions are called into question...'" 340 Mass. at 438.

In Feeney v. Commonwealth, 373 Mass. 359 (1997), Helen B. Feeney complained under the Federal statute, 42 U.S.C. §1983 because she was refused two civil

service positions, claiming Veteran's preference under G.L. c. 31 §23.2. Id., at 360.

"[U]nder the circumstances herein presented, does Massachusetts law authorize the Attorney General of the Commonwealth to prosecute an appeal to this Court from the judgment of the District Court without the consent and over the expressed objections of the state officers against whom the judgment of the District Court was entered?"

The Court held the powers and duties of the Attorney General are in part derived from G.L. c. 12 §3, as amended through St. 1943, c. 83, §1:

"...all such suits and proceedings shall be prosecuted or defended by him or under his direction. Writs, summonses or other processes served upon such officers shall be forthwith transmitted by them to him. All legal services required by such departments, officers, commissions and commissioners...in matters relating to their official duties shall, except as otherwise provided, be rendered by the attorney general or under his direction."

[Emphasis added, because the language of the statute is mandatory, indicating an obligatory duty.

Hashimi v. Kalil, 388 Mass. 607, 609 (1983)

The Massachusetts Legislature, by enacting G.L. c. 12 §3, consolidated the responsibility for all legal matters involving the Commonwealth's agents and

officers, etc., in the Office of the Attorney General.

Secretary of Administration & Finance v. Attorney General, 367 Mass. 154, 163 (1975)

The defendant's interpretation of G.L. c. 12 §3 to include herself as an SAAG, violated the Separation of Powers Clause under Article XXX of the Massachusetts Constitution, and Art ~~II, §2, cl. 2~~ of the United States Constitution. Attorney General v. Brissenden, 271 Mass. 172, 183 (1930); Opinion of the Justices, 365 Mass. 639 (1974) Freytag v. Commissioner, 501 U.S. 868, 870 (1991)

In Feeney, the Judicial Branch of the Government, the Supreme Judicial Court, interpreted the statute for Ms. Feeney, who claimed the Attorney General has a more limited role when he appears for State Officers in Tribunals other than the Courts of the Commonwealth, when the Court held the statutory language, however, does not bear such a construction:

The language of the statute properly read, does not indicate that the Legislature intended to vary the power and duty of the Attorney General to control the conduct of litigation involving the interests of the Commonwealth depending on the forum in which he appears...."

Feeney, 373 Mass. at 367.

There is no antipathy between the sections of Chapter 12 and this Certiorari Court must presume the Massachusetts Legislature says in the statute what it means in the statute and means in the statute what it says there. United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241-242 (1989); Oneale v. Thornton, 10 U.S. 53, 6 Cranch 53, 68 (1810)(when the words in the statute are unambiguous, "judicial inquiry is complete.") Ron Pair, 489 U.S. at 241.

The defendant is unable to declare that G.L. c. 12 §3 has been repealed in any way, shape, ~~manner~~ or form. Radzanower v. Touche Ross & Co. 426 U.S. 148, 154 (1976)

Should the Attorney General, Maura Healy, weigh in and claim that Gloriann Moroney is "under her direction," there still would have to be an official appointment proceeding with the Governor and Council. The Judiciary has already decided this in Kozlowsky, ante, which there cannot be an impromptu general appointment (in the back room, somewhere)

In Freytag v. Commissioner, 501 U.S. 868 (1991) it was held the Chief Judge of the Tax Court can assign four categories of cases to Special Trial Judges, pursuant to 26 U.S.C. §7443A(b)(4).

The taxpayers disputed Congress' authority under 26 U.S.C. §7443A(b)(4), claiming the statute violated the Appointments Clause, Article II, §2, cl. 2. The United States Supreme Court ruled that §7443A(b)(4) is constitutional and, in any case, the taxpayers had consented to the appointment of the Special Trial Judges.

Without the complete proceedings of the appointment by the Attorney General of Massachusetts, certified by the Governor and the Governor's Council, the defendant, just labeling herself an SAAG without an official and approved appointment for a specific proceeding, is fraud. Friedman v. Jablonski, 371 Mass. 482, 488-489 (1976)

In this case, the Respondent failed to take notice of the petitioner's strong measure of freedom to shape a sensible remedy which comports with the statute. Musick, Peeler & Gannet v. Employers Ins. of Wausau, 508 U.S. 286, 292-293 (1993) (the remedy

cannot be at odds with the Legislative intent of the statute)

The Respondent knows that G.L. c. 12 §3 requires the Attorney General of Massachusetts to represent any state agent who is impleaded in Court for any true constitutional violations anent the petitioner's conditions of confinement. Wolff v. McDonnell, 418 U.S. 539, 555-556 (1974) Gloriann Moroney knew it as well. The proof lies in the fact she wrote it on documents with no evidence of the official appointment.

In the final analysis, the petitioner was stymied by the Respondent, denied the constitutional right to confront the defendant, whose statements appear to be outside the "business record" context, more toward being of "testimonial" ilk, with an eye toward creating the evidence to thwart a valid appeal, request for reconsideration, petition in the nature of certiorari, to challenge the fraud imbued in the DECISION. Gloriann cannot be immune from confrontation. Hathaway v. Crocker, 48 Mass. 262, 266 (1843); Robinson v. Old Colony Street Railway, 189 Mass. 594, 596 (1905)

(the transcript of the October 3, 2017 parole review/revocation hearing will contradict the defendant)

Issue #4:

WHETHER THE RESPONDENT WAS REQUIRED
TO APPLY THE LAW TO THE FACTS, AS
DELINEATED BY THE UNITED STATES SUPREME COURT?

The petitioner has an absolute right to appeal to the Respondent. Russell v. Nichols, 434 Mass. 1015, 1016 (2001) The petitioner's "Day in Court" should have to begin in the Appeals Court. United States v. Andrews, 462 F.2d 914, 918 (1st Cir. 1972)

The lower Court, Barry-Smith, J., dismissed the case prior to service of the defendant. Respondent is a Court of review, not "first view." Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 279 [n.10] (1993); Cutter v. Wilkinson, 544 U.S. 709, 718 [n.7] (2005)

Certainly, Article XII and the 14th Amendment gives the petitioner the constitutional right to prove the defendant deliberately made false statements, and, that she is not a Special Assistant Attorney General.

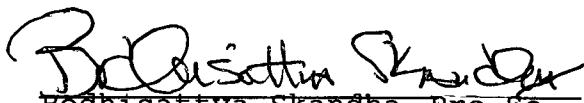
The Respondent, and similarly situated Courts of Massachusetts are tethered: "...We are of course bound by decisions of the Supreme Court on questions of Federal Law...." Commonwealth v. Masskow, 362 Mass. 662, 667 (1972)

Again, the Courts of Massachusetts must be reminded that according to the United States Constitution, decisions of the United States Supreme Court are the "Supreme Law of the Land." Article VI, cl. 2

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Bodhisattva Skandha, Pro Se
Box 43, Norfolk, MA 02056

Date: October 14, 2020