

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

-----X  
In the Matter of the Application of MARIO M.  
CASTRACAN and VINCENT F. BONELLI, acting  
Pro Bono Publico,

Index No. 6056/90

Petitioners,

VERIFIED ANSWER

-against-

for an Order pursuant to Sections 16-  
100, 16-102, 16-104, 16-106 and 16-116  
of the Election Law,

Assigned to:  
Justice Kahn

-vs-

ANTHONY J. COLAVITA, Esq., Chairman,  
WESTCHESTER REPUBLICAN COUNTY COMMITTEE, GUY  
T. PARISI, Esq., DENNIS MEHIEL, Esq., Chairman,  
WESTCHESTER DEMOCRATIC COUNTY COMMITTEE,  
RICHARD K. WEINGARTEN, Esq., LOUIS A. BREVETTI,  
Esq., Hon. FRANCIS A. NICOLAI, HOWARD MILLER,  
Esq., ALBERT J. EMANUELLI, Esq., R. WELLS  
STOUT, HELENA DONAHUE, EVELYN AQUILLA,  
Commissioners constituting the NEW YORK STATE  
BOARD OF ELECTIONS, ANTONIA R. D'APICE,  
MARION B. OLDI, Commissioners constituting  
the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an Order declaring invalid the  
Certificates purporting to designate  
Respondents Hon. FRANCIS A. NICOLAI and  
HOWARD MILLER, Esq. as candidates for the  
office of Justice of the Supreme Court of the  
State of New York, Ninth Judicial District,  
and the Petitions purporting to designate  
ALBERT J. EMANUELLI, Esq. a candidate for the  
office of Surrogate of Westchester County to  
be held in the general election of November  
6, 1990.

-----X  
The Respondents, DENNIS MEHIEL, Chairman, WESTCHESTER  
DEMOCRATIC COMMITTEE and RICHARD L. WEINGARTEN, by their  
attorneys, HASHMALL, SHEER, BANK & GEIST, as and for their Answer

to the Petition respectfully allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered 1, 2, 3, 8, 10, 11, 14, 15, 16, 17, 24, 25, 27, 28, 29, 30, 35 and 36 of the Petition except admit that a Resolution similar to that annexed as Exhibit G to the Petition was adopted by the Executive Committee of the Westchester County Democratic Committee in 1989.

2. Denies each and every allegations contained in paragraphs numbered 9, 18, 19, 20, 21, 22, 23, 29, 31, 32, 33, and 34.

3. As to the allegations contained in paragraphs numbered 16 and 17, we refer the Court to those portions of the New York State Constitution and State Election Law as to the interpretation and meaning thereof.

AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE

4. Respondents, DENNIS MEHIEL and the WESTCHESTER DEMOCRATIC COMMITTEE, were not personally served with a copy of the Order to Show Cause and Petition and consequently this Court lacks personal jurisdiction over said Respondents.

AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE

5. Petitioners have failed to join indispensable and necessary parties as Respondents to this Petition in accordance with the Election Law of the State of New York. Petitioners failed to join the Chairman and Secretary of the 9th Judicial District Conventions of the Democratic Party, the Republican

Party and the Conservative Party, the Chairman and County Committees in the Counties of Rockland, Dutchess, Orange and Putnam of the Democratic, Republican and Conservative Parties, the other candidates nominated for the third Supreme Court vacancy in the Ninth Judicial District namely, JOAN LEFKOWITZ and GEORGE ROBERTS, as well as other Judges elected pursuant to the allegations in the Complaint namely Supreme Court Justices SAMUEL FREDMAN and JOSEPH JIUDICE and Family Court Judge ADRIENNE HOFFMAN SCANCARELLI as well as the Committee to Fill Vacancies on the Certificates of Nomination. Without these necessary parties to this proceeding, complete relief as requested by the Petitioners cannot be granted and persons and entities not parties to this proceeding will be adversely effected.

AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE

6. This proceeding is barred by the applicable statute of limitations contained in Article 16 of the Election Law of the State of New York in that Justice ALBERT J. EMANUELLI's designation and nomination for the position of Surrogate of Westchester County and Family Court Judge Adrienne Hoffman Scancarelli's designating petition can no longer be challenged by reason of the fact that fourteen (14) days have elapsed since filing of said designating petition and more than ten (10) days have elapsed since Primary Day. Further, the statute of limitations has expired precluding the joining of any of the necessary parties specified in paragraph 5 above in that ten (10)

days have elapsed since the filing of the challenged Certificates of Nomination. The failure of Petitioners to name and serve these necessary parties prior to October 5, 1990 is a fatal defect to this proceeding.

AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE

7. The Petitioners lack standing to challenge the conduct of the 9th Judicial District Democratic Party Convention and the Certificate of Nomination by reason of the fact that (a) Petitioners were not duly elected or appointed Delegates or Alternate Delegates to the Democratic Party 9th Judicial Convention nor were they aggrieved candidates for said party office, (b) Petitioners failed to serve and file timely general and specific objections to the Democratic Party Certificates of Nomination in accordance with Section 6-154 of the Election Law and failed to exhaust their administrative remedies, and (c) since Petitioners are not suing in their individual capacities but as some type of representative for the public good ("pro bono publico"); there is no such standing allowed pursuant to the Election Law. Section 16-102 allows standing only by an aggrieved candidate, a party chairman or by a person who has properly filed objections.

8. Pursuant to Election Law Section 6-154, the Petitioners were required to file general objections to the Certificate of Nominations of the Democratic candidates within three (3) days of filing thereof, and specific objections within six (6) days thereafter. The Democratic Certificate was filed on

September 25, 1990 and Petitioners did not file either general or specific objections prior to the last day to file same, on or before October 4, 1990.

AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE

9. This proceeding is barred by the doctrine of laches in that the Petitioners' commencement of this proceeding was unreasonably delayed for over fifteen months without cause following adoption of the Resolution providing for cross-endorsements and the nomination and election of Justices Samuel Fredman and Joseph Giudice as Supreme Court Justices in 1989. Further, that the designation and nomination of Respondent EMANUELLI and Family Court Judge SCANCARELLI, a non-party hereto, can also no longer be challenged due to the statute of limitations having expired. By reason of the statute of limitations contained in Article 16 of the Election Law in the State of New York, the election of Justices FREDMAN JIUDICE and EMANUELLI can no longer be challenged. Consequently, all parties would now be prejudiced due to this change in circumstance in that Petitioners at best can only challenge a small portion of this cross-endorsement RESOLUTION since most of its provisions have already performed.

AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE

10. The Petitioners fail to set forth any specific details in factual form concerning objections to the Certificates

of Nomination and fail to timely advise Respondents of any specific objections to said Certificate and is therefore fatally defective on its face. The Petition only contains conclusory, general allegations as to what is objected to in the Certificate of Nomination.

AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE

11. The Petition fails to state a cause of action upon which relief can be granted.

AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE

12. Petitioners and their attorney have failed to exhaust their rights under the Election Law. Both Petitioners and their attorney could have followed the procedures set forth in the Election Law to file designating petitions to run either in a political party primary or as independent candidates for the judicial office of Surrogate or for Family Court Judge. The fact that three out of five political parties cross-endorsed Justice EMANUELLI for the Surrogate Court and Justice SCANCARELLI for re-election to Family Court did not in anyway preclude the Petitioners, their attorney or any other qualified person from seeking election to those offices. Petitioners have not alleged any reason as to their inability to run for any of said judicial office.

WHEREFORE, Respondents pray for an Order and Judgment denying the Petition in its entirety together with awarding

000100

Respondents all costs, disbursements and reasonable attorneys fees and sanctions in the sum of FIVE THOUSAND (\$5,000.00) DOLLARS in this proceeding and such other and further relief as to this Court may deem just, fair and equitable.

Dated: White Plains, New York  
October 11, 1990

Yours, etc.

HASHMALL, SHEER, BANK & GEIST  
Attorneys for Respondents -  
Mehiel, Weingarten and  
Westchester Democratic Comm.  
235 Mamaroneck Avenue  
White Plains, New York 10605  
(914) 761-9111

TO: Doris L. Sassower, P.C.  
Attorneys for Petitioner  
283 Soundview Avenue  
White Plains, New York 10606

000101

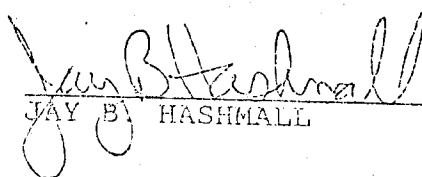
ATTORNEY'S VERIFICATION

STATE OF NEW YORK            )  
  :   SS.:  
COUNTY OF WESTCHESTER    )

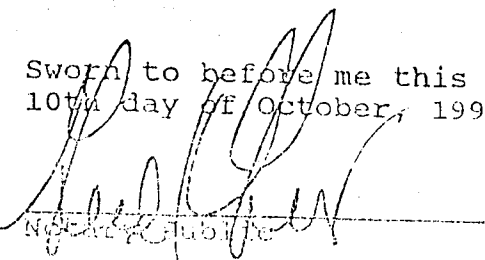
I, JAY B. HASHMALL, an attorney duly admitted to practice before the Courts of the State of New York, do, under the penalties of perjury hereby affirm to be true as follows:

1. I am a member of the firm of HASHMALL, SHEER, BANK & GEIST, attorneys of record for the respondent, DENNIS MEHIEL, WESTCHESTER DEMOCRATIC COMMITTEE and RICHARD K. WEINGARTEN, herein. I have read the foregoing ANSWER, know the contents thereof and the same are true and correct to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters, I verily believe them to be true.

2. This Verification is made by your affirmant rather than the plaintiff in accordance with Section 3020 (d) of the CPLR.

  
\_\_\_\_\_  
JAY B. HASHMALL

Sworn to before me this  
10th day of October, 1990

  
\_\_\_\_\_  
NOTARY PUBLIC

GERALD X. GEIST  
Notary Public, State of New York  
No. 60-4732672  
Qualified in Westchester County  
Commission Expires May 31, 1992

000102