

Kane v Lander

2026 NY Slip Op 31847(U)

April 28, 2026

Supreme Court, New York County

Docket Number: Index No. 451585/2026

Judge: Matthew V. Grieco

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

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INDEX NO. 451585/2026

NICKIE KANE,

MOTION DATE N/A, N/A

Petitioner-Candidate-Agrieved,

MOTION SEQ. NO. 001 001

- v -

BRAD LANDER,

Respondent-Candidate

DECISION + ORDER ON MOTION

-and-

BOARD OF ELECTIONS IN CITY OF NEW YORK,

Respondent-Board.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 12, 13, 14, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for ELECTION LAW - INVALIDATE PETITION

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Upon the foregoing documents and oral arguments on the record on April 24, 2026, the petition is denied and dismissed.

In this special proceeding pursuant to Election Law §§ 16-100, 16-102, and 160-16, petitioner aggrieved candidate Nickie Kane seeks to invalidate the designating petition filed by respondent candidate Brad Lander with respondent Board of Elections in the City of New York ("BOE") to appear as a candidate for the Democratic Party in the June 23, 2026 primary election for the office of Representative in Congress from the 10th Congressional District, New York State.

Election Law § 16-116 provides that a special proceeding commenced pursuant to Article 16 must be heard “upon such notice to such officers, persons or committees as the court or justice shall direct” (*see e.g. Angletti v Morreale*, 25 NY3d 794, 797 [2015]; *Matter of Stark v Williams*, 216 AD3d 859, 861 [2d Dept 2023]). Longstanding appellate precedent consequently holds that, in any proceeding pursuant to Election Law § 16-102, “[t]he method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with” (*Matter of Stark v Williams*, 216 AD3d at 861, quoting *Matter of Hennessey v DiCarlo*, 21 AD3d 505, 505 [2d Dept 2005], *lv denied* 5 NY3d 706 [2005]; *see Sorli v Coveney*, 51 NY2d 713 [1980]; *Matter of O’Daniel v Hayduk*, 59 AD2d 706, 707 [2d Dept 1977], *affd* 42 NY2d 1062 [1977]; *Matter of Bruno v Ackerson*, 51 AD2d 1051 [2d Dept 1976], *affd* 39 NY2d 718 [1976]; *Matter of Felder v Tischler*, 208 AD3d 1288, 1289 [2d Dept 2022]; *see also Bacon v Nygard*, 232 AD3d 407 [1st Dept 2024] [same legal principle in non-Election Law setting]).

Petitioner bears the burden of establishing, by a preponderance of the evidence, that proper service was effected and that personal jurisdiction was thereby obtained over the respondent (*see Stewart v Volkswagen of America, Inc.*, 81 NY2d 203, 207 [1993]; *Siri Med. Assocs., PLLC v Paradise Court Mgt. Corp.*, 158 AD3d 516 [1st Dept 2018]; *Ragusa v Board of Elections*, 42 Misc3d 1231[A] [Sup Ct, Queens County 2014]).

Here, the order to show cause that the Court signed on April 20, 2026 provided, in relevant part, that:

service of a copy of this Order to Show Cause and Verified Petition, *together with the papers upon which it is granted*, shall be made by Petitioner upon: respondent Board of Elections ... by personal delivery upon the person designated by the Board to receive such service at 32 Broadway, New York, New York, on or before April 21, 2026, and ... upon Respondent-Candidate Brad Lander by ...

- (a) enclosing the same in a securely sealed and duly postpaid wrapper addressed to such Respondent-Candidate at the address set forth in the designating petition and by mailing/sending the same by overnight USPS delivery, UPS, FedEx or any other recognized overnight, next business day courier with no receiving signature required on or before Tuesday, April 21, 2026; or
- (b) by affixing the same to the inside or outside of the door of the address set forth in said designating petition and by enclosing the same in a securely sealed and duly postpaid wrapper addressed to such Respondent-Candidate at the address set forth in said designating petition and by mailing/sending the same by overnight USPS delivery, UPS, FedEx or any other recognized overnight, next business day courier on or before Tuesday, April 21, 2026, with no receiving signature required;
- (c) by personal delivery of same to such Respondent-Candidate on or before Tuesday, April 21, 2026 [NYSCEF Doc. No. 10 (emphasis added)].

The fourth affirmative defense raised in Lander's verified answer asserts lack of personal jurisdiction due to improper service, in that "[t]he purported service in this matter did not comply with this Court's Order to Show Cause because it did not include all the 'papers upon which it was granted'" (NYSCEF Doc. No. 20, ¶¶ 11-12). Specifically, the answer stated that: "[t]he documents purportedly served via 'Nail and Mail' on Respondent-Candidate BRAD LANDER contained *only* the Order to Show Cause, Petition, and Notice of Electronic filing. The purported service *did not contain* the Exhibits to the Petition, RJI, Emergency Affirmation, Proposed OSC, Application for Waiver of Court Costs/Fees/Expenses, or any other of the 'papers upon which [the OSC] was granted' as required by this Court's Order to Show Cause at Page 4" (*id.* ¶ 15 [emphasis in original]). The answer continued: "Given that Petitioner's sole purported claim here is that she emailed Respondent-Candidate-BRAD LANDER about purported issues with his petitioning team, Exhibit A 'E-Mail to Brad Lander' (NYSCEF Doc. No. 4)

is indisputably among the ‘papers upon which [the OSC] was granted’” (NYSCEF Doc. No. 20, ¶ 17).

At the return date hearing of the order to show cause, counsel for Lander produced the documents that purportedly had been served on the co-respondents and noted that copies of the supporting exhibits were not included with copies of the petition and order to show cause that the Court had signed on April 20, 2026. Kane admitted that she had not, in fact, included copies of the exhibits with copies of the petition and order that she had prepared for service. That omission contradicts the Court’s instruction that Kane serve the co-respondents with copies of the order to show cause “together with the papers upon which it is granted” (NYSCEF Doc. No. 10). As previously noted, a petitioner’s failure to strictly comply with the method of service specified in an order to show cause constitutes a jurisdictional defect that mandates the dismissal of a petition to invalidate (*see Stark*, 216 AD3d at 861; *Ruine v Hines*, 57 AD3d 369, 370 [1st Dept 2008] [the petitioner’s service did not comply with the order to show cause where incomplete papers were served]).

Accordingly, it is


ORDERED and ADJUDGED that the petition is denied and dismissed; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office, who is hereby directed to reflect the foregoing by appropriately marking the court’s records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and*

County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision, order, and judgment of the Court.

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|-----------------------|-----------------------------------------------------|-------------------------------------------------------------------------------------|
| 4/28/2026 | |  |
| DATE | | MATTHEW V. GRIECO, J.S.C. |
| CHECK ONE: | <input checked="" type="checkbox"/> CASE DISPOSED | <input type="checkbox"/> NON-FINAL DISPOSITION |
| | <input type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART |
| APPLICATION: | <input checked="" type="checkbox"/> DENIED | <input type="checkbox"/> OTHER |
| | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
| | | <input type="checkbox"/> REFERENCE |