

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: June 21, 2012

511980

---

In the Matter of WILLIAM J.  
HAUGHEY,  
Appellant,  
v

MEMORANDUM AND ORDER

DALE ARTUS, as Superintendent  
of Clinton Correctional  
Facility,  
Respondent.

---

Calendar Date: May 9, 2012

Before: Peters, P.J., Rose, Spain, Kavanagh and Garry, JJ.

---

William J. Haughey, Coxsackie, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Peter H. Schiff of counsel), for respondent.

---

Appeal from a judgment of the Supreme Court (Richards, J.), entered July 26, 2010 in Clinton County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

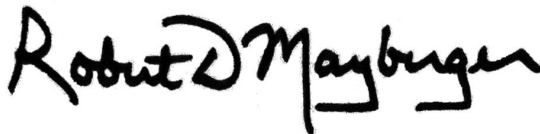
Petitioner commenced this CPLR article 78 proceeding seeking to challenge a determination of respondent finding him guilty, after a tier II disciplinary hearing, of violating the rule prohibiting unauthorized legal assistance. In lieu of answering, respondent sought to dismiss the proceeding on the basis of lack of timely service upon respondent and the Attorney General. Supreme Court granted the motion on that basis and dismissed the petition, prompting this appeal.

Significantly, respondent has now written to this Court withdrawing the objection to the timeliness of service based upon the discovery of a notarized affidavit of service demonstrating that service of the applicable papers had been properly accomplished in accordance with the order to show cause. As respondent has not been given an opportunity to submit an answer, we deem it appropriate to remit the matter to Supreme Court for further proceedings (see Matter of Sital v Fischer, 76 AD3d 723 [2010]).

Peters, P.J., Rose, Spain, Kavanagh and Garry, JJ., concur.

ORDERED that the judgment is reversed, on the law, without costs, motion denied, and matter remitted to the Supreme Court to permit respondent to serve an answer within 20 days of the date of this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court