MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

August 7, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Anderson, Derrick v. Deputy John Lalley, Deputy Frankowiak, Timothy B. Howard and County Executive Chris Collins*
Document Received:	Summons & Complaint
Name of Claimant:	Derrick Anderson
Claimant's attorney:	*Pro Se*

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle Parker
First Assistant County Attorney

MMP:dld
Enclosure

12CV6355FC

1. UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF STATE

UNITED STATES DISTRICT COURT
FILED
JUN 29 2012
MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

DERRICK ANDERSON,
PLAINTIFF,

[redacted]

JURY TRIAL DEMANDED

DEPUTY JOHN LALLEY
DEPUTY FRANKOWICK
SHERIFF TIMOTHY B. HOWARD
COUNTY EXECUTIVE CHRIS COLLINS

[redacted]

UNITED STATES DISTRICT COURT
FILED
APR 2 2012
MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

DEFENDANTS.

[redacted]

PLAINTIFF DERRICK ANDERSON, PRO SE, FOR HIS FIRST [redacted] COMPLAINT AGAINST DEFENDANTS DEPUTY JOHN LALLEY, DEPUTY FRANKOWICK, SHERIFF TIMOTHY B. HOWARD, AND COUNTY EXECUTIVE CHRIS COLLINS, ALLEGES AS FOLLOWS:

JURISDICTION AND VENUE

1. THIS COURT HAS JURISDICTION OVER THIS ACTION UNDER 28 U.S.C. SECTIONS 1331 AND 1343 (3) AND (4). THE MATTERS IN CONTROVERSY ARISE UNDER 42
2201 U.S.C. SECTION 1983.

2.

Venue properly lies in this district pursuant to 28 U.S.C. section 139(b)(2), because the events giving rise to this cause of action occurred at the Erie County Holding Center, in the City of Buffalo, State of New York, which is located within the Western District of State.

Parties

3. Plaintiff Derrick Anderson is and was, at all times relevant hereto, a prisoner in the custody of the Erie County Sheriffs Department. At the time of the events relevant hereto, Anderson was incarcerated at the Erie County Holding Center. Anderson is currently incarcerated at the Erie County Holding Center.

4. Defendant Deputy John Lillet is a sheriff deputy, who at all times relevant hereto, was assigned to the Erie County Holding Center.

5. Defendant Deputy Frankowick is a sheriff deputy, who at all times relevant hereto, was assigned to the Erie County Holding Center.

3.

6. Defendant Sheriff Timothy B. Howard is the head sheriff who at all times relevant hereto, was assigned to the Erie County Holding Center.

7. Defendant Chris Collins was the County Executive, who at all times relevant hereto, was assigned to the Erie County Holding Center.

FACTS

8. On 12/29/10, Deputy John Lalley, and Deputy Pankowski, conducted a unauthorized search on Charlie Seg shower room, in which they took the shower curtain down, took the "rods" out of the shower curtain, "jammed" the shower curtain "rods" down the shower drain, and left. I was forced to take a shower with no shower curtain, which caused the water to spray everywhere, causing me to slip, and fall, and sustain injuries. I was on administrative segregation status, so that was the only time I was allowed to take a shower. X-rays, and medical records will show that I sustained "bulging herniated disc in my lower back, which developed into degenerative disc disease, resulting in lower back pain with neuropathy. I also sustained a concussion, swelling in the back

4.

of my head, nausea, vomiting, dizzy spells, mental, and emotional distress. Deputy John Lilleys post was Charlie long block. He was not authorized to leave his post unmanned, without another deputy watching it. He was also not authorized to leave his post unmanned while he entered Charlie Seg, and added through Charlie Seg's gallery post with his post keys on him without a supervisors authorization. He is not authorized to search another gallery by himself while his post is unmanned, without reasonable suspicion, while another deputy, (Filkowski) is supposed to be conducting (linen exchange), on Charlie Seg. Deputy Lilley's unprofessionalism, goofing off, reckless misconduct caused my injuries. The defendants were deliberately indifferent to my health and safety, in violation of the Eighth and Fourteenth Amendments by repeatedly disregarding known or serious risks of harm. Defendants subjected me to "grievous harm", caused by "egregious or flagrant conditions which deprived me of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States," and that the deprivation is pursuant to "a pattern or practice of resistance to the full enjoyment

5.

of such rights, privileges or "immunities".

9. On 12/29/10, Sheriff Timothy B. Howard, and County Executive Chris Collins, were operating the Erie County Holding Center in an "improper, negligent, reckless, and careless manner. They are both personally involved due to the fact that Chris Collins, and Timothy B. Howard (a) failed to remedy a continuing or egregious wrong after learning of violations, (b) created a policy or custom under which the unconstitutional practices occurred or allowed such policy or custom to continue, or (c) was grossly negligent in managing subordinates who actually caused the constitutional deprivations, set forth herein. The defendants were deliberately indifferent to my health, and safety, in violation of the Eighth and Fourteenth Amendments by repeatedly disregarding known or serious risk of harm. Defendants subjected me to "grievous harm", caused by "egregious or flagrant conditions which deprived me of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States", and that the deprivation is pursuant to "a pattern or practice of resistance to the full enjoyment of

6.

Such rights, privileges or immunities.

10 Plaintiff should have a chance to present his case against the defendants to a jury. Plaintiff has been living with "degerative disc disease and herniated bulging disc since his fall out of the shower resulting in severe lower back pain with neuropathy. The defendants were negligent in not preventing plaintiff from falling by destroying the shower curtain rods by jamming them down the drain, and by leaving the damaged shower curtain on the shower room floor. Plaintiff is trying to recover as much as possible by being maintained on pain medications, "neurontin, and tramadol", and light exercise, but he will never fully recover from the painful injuries, "degenerative disc disease, and herniated bulging disc from the fall. After defendants, Sheriff John Lallet, and deputy Frankowiak recklessly destroyed the shower curtain rods, by jamming them down the drain and destroying the shower curtain, and throwing it on the floor, they left without posting, "keep out danger signs", "shower out of order signs", or any warning that the shower

9. room had the potential for hazardous or dangerous conditions. Plaintiff is obviously upset with what happened. The defendants are 95 percent responsible for my injury. Even though plaintiff attempted to take a shower under the hazardous conditions, the defendants left the shower, and shower room in, taking a shower is common, and foreseeable.

10. Wherefore, Derrick Anderson prays for judgement in his favor, and damages in his favor against all defendants in an amount sufficient to compensate him for the pain and mental anguish suffered by him due to the deliberate indifference and intentional misconduct of defendants, but in no event less than $300,000, together with attorney's fees and cost, and such additional relief as the court may deem just and proper.

Respectfully Submitted
Derrick Anderson 149
Derrick Anderson 149
Pro SE
2/14/12

Case 6:12-cv-06039-JWF Document 6 Filed 04/02/12 Page 8 of 28

AMENDED COMPLAINT

Revised 03/06 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)
"AMENDED COMPLAINT"

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. DERRICK ANDERSON 10N749

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. DEPUTY JOHN LAMEY
2. DEPUTY FRANKOWIAK
3. SHERIFF TIMOTHY B HOWARD
4. COUNTY EXECUTIVE CHRIS COLLINS
5. _____
6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: *To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

8

DEFENDANT'S INFORMATION NOTE: *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ✓ No ____

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:
   Plaintiff(s): DEBRA K ANDERSON ICN 149
   Defendant(s): DEPUTY JOHN LANE, DEPUTY FRANKOWIAK, SHERIFF TIMOTHY B. HOWARD, COUNTY EXECUTIVE CHRIS COLLINS.
2. Court (if federal court, name the district; if state court, name the county): SUPREME COURT ERIE COUNTY
3. Docket or Index Number: 2011-3230
4. Name of Judge to whom case was assigned: HON. CHRISTOPHER J. BURNS

9

5. The approximate date the action was filed: February 11, 2011

6. What was the disposition of the case?

Is it still pending? Yes____ No____

If not, give the approximate date it was resolved._____

Disposition (check the statements which apply):

____ Dismissed (check the box which indicates why it was dismissed):

____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

____ By court for failure to exhaust administrative remedies;

X By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

____ By court due to your voluntary withdrawal of claim;

____ Judgment upon motion or after trial entered for

____ plaintiff

X defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes____ No✓

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s):_____

_____

Defendant(s):_____

_____

2. District Court:_____

3. Docket Number:_____

4. Name of District or Magistrate Judge to whom case was assigned:_____

_____

5. The approximate date the action was filed:_____

6. What was the disposition of the case?

Is it still pending? Yes____ No____

If not, give the approximate date it was resolved._____

/0

Disposition (check the statements which apply):

____ Dismissed (check the box which indicates why it was dismissed):

____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

____ By court for failure to exhaust administrative remedies:

X By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

____ By court due to your voluntary withdrawal of claim:

____ Judgment upon motion or after trial entered for

____ plaintiff

X defendant.

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5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- Religion
- Free Speech
- Due Process
- Equal Protection
- Access to the Courts
- False Arrest
- Excessive Force
- Failure to Protect
- Search & Seizure
- Malicious Prosecution
- Denial of Medical Treatment
- Right to Counsel

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F 3d 83, 86 (2d Cir. 1995). Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far a practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) ON 12/04/10, DEPUTY JOHN LALLEY AND DEPUTY FRANKOWIAK, defendant (give the name and position held of each defendant involved in this incident) CONDUCTED A UNAUTHORIZED SEARCH ON CHARLIE SEY SHOWER ROOM BY WHICH THEY TOOK THE SHOWER CURTAIN DOWN, TOOK THE "RODS" did the following to me (briefly state what each defendant named above did): OUT OF THE SHOWER CURTAIN "JAMMED" THE SHOWER CURTAIN "RODS" DOWN THE SHOWER DRAIN AND LEFT. I WAS FORCED TO TAKE A SHOWER WITH NO SHOWER CURTAIN, WHICH CAUSED THE WATER TO SPRAY EVERY WHERE CAUSING ME TO SLIP, AND FALL, AND SUSTAIN INJURIES. I WAS ON ADMINISTRATIVE SEGREGATION STATUS SO THAT WAS THE ONLY TIME I WAS ALLOWED TO TAKE A SHOWER. X-RAYS AND MEDICAL RECORDS WILL SHOW THAT I SUSTAINED "BULGING, HERNIATED DISCS IN MY LOWER BACK, WHICH HAS DEVELOPED INTO "DEGENERATIVE DISC DISEASE, RESULTING

The constitutional basis for this claim under 42 U.S.C. § 1983 is: FAILURE TO PROTECT. NEGLIGENCE, CREATING AN UNSAFE ENVIRONMENT. RECKLESS MISCONDUCT.

The relief I am seeking for this claim is (briefly state the relief sought): IN NO EVENT LESS THAN $300,000, TOGETHER WITH ATTORNEY'S FEES, AND COST, AND SUCH ADDITIONAL RELIEF AS THE COURT MAY DEEM JUST AND PROPER.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ✓ Yes _____ No If yes, what was the result? DEFENDANTS DESTROYED MY GRIEVANCES.

Did you appeal that decision? ✓ Yes _____ No If yes, what was the result? DEFENDANTS DENIED MY APPEAL.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) _____

defendant (give the name and position held of each defendant involved in this incident) ON 12/9/10, SHERIFF TIMOTHY B. HOWARD, AND COUNTY EXECUTIVE CHRIS COLLINS, WERE OPERATING THE ERIE COUNTY HOLDING CENTER IN AN "IMPROPER, NEGLIGENT, RECKLESS, AND CAREESS MANNER.

FIRST CLAIM:

in lower back pain with neuropathy. I also sustained a concussion, swelling in the back of my head, nausea, vomiting, dizzy spells, mental, and emotional distress. Deputy John Lollet's post was Charlie long block. He was not authorized to leave his post unmanned, without another deputy watching it. He was also not authorized to leave his post unmanned while he entered Charlie seg, and passed through Charlie Segs sally port with his post keys on him without a supervisor's authorization. He is not authorized to search another gallery by himself while his post is unmanned, without reasonable suspicion, while another deputy, (Frankowski) is suppose to be conduct (linen exchange), on Charlie Seg. Deputy Lollet's unprofessional, goofing off, reckless misconduct caused my injuries. The defendants were deliberate indifferent to my health and safety, in violation of the Eight and Fourteenth Amendments by repeatedly disregarding known or serious risks of harm. Defendants subjected me to "grievous harm", caused by "egregious or flagrant conditions which deprived me of any rights, privileges, or immunities secured or protected by the constitution or laws of the United States" and that the deprivation is pursuant to "a pattern or practice of resistance to the full enjoyment of such rights, privileges or immunities."

SECOND CLAIM: THEY DAN ARE ALSO PERSONALLY INVOLVED DUE TO THE FACT THAT (A) CHRIS COLLINS, AND TIMOTHY B. HOWARD (A) FAILED TO REMEDY A CONTINUING OR EGREGIOUS WRONG AFTER LEARNING OF VIOLATIONS, (B) CREATED A POLICY OR CUSTOM UNDER WHICH THE UNCONSTITUTIONAL PRACTICES OCCURRED OR ALLOWED SUCH POLICY OR CUSTOM TO CONTINUE, OR (C) WAS "GROSSLY NEGLIGENT IN MANAGING SUBORDINATES WHO MAY HAVE CAUSED THE CONSTITUTIONAL DEPRIVATIONS, SET FORTH HEREIN. THE DEFENDANTS WERE DELIBERATELY INDIFFERENT TO MY HEALTH, AND SAFETY, IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS BY REPEATEDLY DISREGARDING KNOWN OR SERIOUS RISK OF HARM. DEFENDANTS SUBJECTED ME TO "GRIEVOUS HARM", CAUSED BY "EGREGIOUS OR FLAGRANT CONDITIONS WHICH DEPRIVED ME OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE CONSTITUTION OR LAWS OF THE UNITED STATES", AND THAT THE DEPRIVATION IS PURSUANT TO "A PATTERN OR PRACTICE OF RESISTANCE TO THE FULL ENJOYMENT OF SUCH RIGHTS, PRIVILEGES OR IMMUNITIES!

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): $300,000 to deter defendants from this type of misconduct in the future.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ✓ Yes ____ No If yes, what was the result? Defendants destroyed my grievances.

Did you appeal that decision? ✓ Yes ____ No If yes, what was the result? Defendants denied my appeal.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

In no event less than $300,000, together with attorney fees and cost, and such additional relief as the Court may deem just and proper.

Do you want a jury trial? Yes ✓ No ____

15

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 3/22/12
(date)

NOTE: ***Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.***

Derrick Anderson Icu # 149
Signature(s) of Plaintiff(s)

PATIENT COPY

County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF HEALTH

ANTHONY J. BILLITTIER IV, M.D., FACEP
COMMISSIONER OF HEALTH

EDWIN HEIDELBERGER, M.D., Ph.D.
CHIEF MEDICAL OFFICER

May 13th 2011

Bruce R Mazzarella, Administrative Lawe Judge
Office of Disability Adjudication and Review
Key Center, Suite 200
50 Fountain Plaza
Buffalo, NY, 14202-2295

Re: **Derrick Anderson DOB: 6/29/66**

Addendum to letter of 5/2/11:

In addition to the previous diagnosis, Derrick also has a history of degenerative disc disease resulting in lower back pain with neuropathy. He is on neurontin for this with modest improvement.

Sincerely,

Edwin Heidelberger, M.D, Ph.D.
Chief Medical Officer
Division of Public and Correctional Health.
NYS License 190805

ERIE COUNTY SHERIFF'S OFFICE

MEMORANDUM

TO: Mr. Derrick Anderson #149 Charlie Long 1

FROM: Chief John Rodriguez

DATE: April 14, 2011

RE: Inmate Grievance Dated: 4/7/11

Please be advised that I am in receipt of your Inmate Grievance.

Please be advised that pursuant to 9NYCRR7032.4(d) Program Requirements: *An inmate must file a grievance within five days of the date of the act or occurrence giving rise to the grievance.*

Therefore, this shall serve to inform you that your grievance cannot be processed and is being returned to you. No further action will be taken regarding this matter.

GIVEN 4/7/11 By DEPUTY CHOSNICKI

Inmate Grievance Form

Grievance # ___ ___ G - ___ ___ ___

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: DERICK ANDERSON **ICN #** 149 **H/U #** CYLGOOL

Brief Description of the Grievance (Completed by the grievant): Number of Additional Sheets Attached ( )

DEPUTY LALLEY AND DEPUTY FRANKOWIAK WERE ACTING OUTSIDE THEIR CAPACITY WHEN THEY RECKLESSLY AND CARELESSLY TOOK THE SHOWER CURTAIN DOWN, TOOK THE SHOWER CURTAIN "RODS" OUT OF THE SHOWER CURTAIN, AND JAMMING THE "RODS" DOWN THE DRAIN AND LEAVING THE SHOWER CURTAIN ON THE FLOOR, WHICH CAUSED UNSAFE, AND HAZARDOUS CONDITIONS

CONTINUE ON PAGE 2#

Action requested by the grievant (Completed by the grievant): Number of Additional Sheets Attached ( )

I REQUEST FOR AN EXTENSIVE INVESTIGATION INTO THIS MATTER, AND FOR DEPUTY LALLEY AND DEPUTY FRANKOWIAK TO BE DISCIPLINED AND FOR THESE 2 DEPUTIES TO ACCEPT RESPONSIBILITY FOR THEIR NEGLIGENCE, CARELESS, AND RECKLESS MISCONDUCT.

Grievant Signature: Derick Anderson **Date /Time Submitted:** 4/7/11 8:30PM

Receiving Staff Signature: C. Chosnicki **Date/Time Received:** 4/7/11 2030hrs

Summary of facility staff attempts to resolve Number of Additional Sheets Attached ( )
(Attach relevant documentation)

UNABLE TO RESOLVE, GRIEVANCE TO BE SUBMITTED, REASON ISSUE IS UNRESOLVED IS THE TIMELINESS OF THE ISSUE

Officer/ Supervisor Signature C. Chosnicki 1320

_____ **I accept this resolution** X **I do not accept this resolution and wish to file a formal grievance**

Signature of INMATE: Derick Anderson **Date:** 4/7/11 **Time:** 2030hrs

Forwarded to Grievance Coordinator

Officer/Supervisor Signature: _____ **Date:** _____ **Time:** _____

Received by Grievant Coordinator

Signature of Grievance Coordinator: _____ **Date:** _____ **Time:** _____

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

Which caused me to slip, and fall out of the shower, causing my lower back injury of painful "herniated," bulging discs on 12/29/10. Taking a shower without a shower curtain, also violates my right to privacy. Superintendant Koch, Timothy B. Howard, and Chris Collins have operated the Holding Center in an improper, negligent, reckless, and careless manner. These officials have a disregard for inmates, and officials here at the Holding Center, "destroyed my grievances concerning the 12/29/10, reckless misconduct by deputies Lillet, and Frankowiak to thwart U.S. Justice Department intervention into deputy Lillet, and deputy Frankowiak's reckless misconduct, and their violation of my civil rights. There was no internal investigation on this matter, therefore deputy Lillet, and deputy Frankowiak were not disciplined, suspended or fired. Nor have they apologized to me. Nor have they accepted responsibility for their reckless, and careless misconduct. Deputy Lillet, and Deputy Frankowiak intentionally created a unsafe, and hazardous condition in Charlie Segs shower room on 12/29/10, by recklessly tearing down the shower curtain, taking the shower curtain "rods" out of the shower curtain, and recklessly "jamming" the rods down the drain.

Sheriff Howard must not defend and indemnify any of its employees for intentionally creating a unsafe, and hazardous condition or environment in any section or part of the Holding Center. Deputy Lilley, and deputy Frankowiak's negligence, and carelessness, and recklessness, clearly explains my lower back, herniated discs, injury from falling out of a unsafe shower that Deputy Lilley, and Deputy Frankowiak made unsafe. The reason why grievances did "not" get to the Sergeant, then to the chief of operations; (Diina) who was also the grievance coordinator before he took a job out at the Erie County Correctional Facility in Alden N.Y., is because deputies who are friends of Lilley, and Frankowiak, took measures to help conceal their reckless misconduct, lied about it, and did not report it or allow it to go through the proper channels.

Dennis Anderson
149
GLG-00

ERIE COUNTY SHERIFF'S OFFICE

MEMORANDUM

TO: Mr. Derrick Anderson #149 Charlie Long 1

FROM: Chief John Rodriguez

DATE: April 14, 2011

RE: Inmate Grievance Dated: 4/12/11

Please be advised that I am in receipt of your Inmate Grievance.

Please be advised that pursuant to 9NYCRR7032.4(d) Program Requirements: *An inmate must file a grievance within five days of the date of the act or occurrence giving rise to the grievance.*

Therefore, this shall serve to inform you that your grievance cannot be processed and is being returned to you. No further action will be taken regarding this matter.

9/20/11 – MOD TO 1
JIM ANDERSON, DERRICK
ISSUE: DIMINISHED FLEXIBILITY
SGT. J. MBIGNAU #54

Inmate Grievance Form

Grievance #
__ __ G - __ __ __

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: DERRICK ANDERSON **ICN #** 149 **H/U #** C-4g-001

Brief Description of the Grievance *(Completed by the grievant)*: **Number of Additional Sheets Attached** ( ) ON 12/29/19

I SLIPPED, AND FELL OUT OF THE SHOWER AND INJURED MY HEAD, UPPER BACK, NECK AREA, AND LOWER BACK. I SLIPPED, AND FELL DECAUSE THE BOTTOM AND EDGE OF THE SHOWER WAS WET, AND SLIPPERY, AND THERE WAS NO SHOWER CURTAIN TO KEEP THE WATER INSIDE THE SHOWER. THE WHOLE FLOOR WAS WET. PRIOR TO MY INJURIES, DEPUTY "WALLE", AND DEPUTY "FRANKOWIAK" CONTINUE ON PAGE 2

Action requested by the grievant *(Completed by the grievant)*: **Number of Additional Sheets Attached** ( )

FOR IMPRISONMENT TIME TO BE CREDITED, FOR CONCEALING DEPUTY WALLE AND DEPUTY FRANKOWIAK'S VIOLATIONS, MISCONDUCT AND INTERFERENCE, NOT FILING MY GRIEVANCE IN A TIMELY MANNER TO BE NOTIFIED OF THE RESULTS OF THE INVESTIGATION. I REQUESTED KNOWING WHETHER THE APPROPRIATE DISCIPLINE WAS IMPOSED AND ENFORCED AGAINST THE OFFICERS.

Grievant Signature: DERRICK ANDERSON **Date /Time Submitted:** 4:55 PM 9/4/12/11

Receiving Staff Signature: [illegible] 1201 **Date/Time Received:** [illegible] 9/12/11

Summary of facility staff attempts to resolve *(Attach relevant documentation)* **Number of Additional Sheets Attached** ( )

GRIEVANCES MUST BE FILED WITHIN 5 DAYS OF INCIDENT

Officer/ Supervisor Signature _____

_____ I accept this resolution _____ I do not accept this resolution and wish to file a formal grievance

Signature of INMATE: [signature] **Date:** 9/12/11 **Time:** 2140

Forwarded to Grievance Coordinator

Officer/Supervisor Signature: _____ **Date:** _____ **Time:** _____

Received by Grievant Coordinator

Signature of Grievance Coordinator: _____ **Date:** _____ **Time:** _____

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

conducted a unauthorized search of the shower room on "Charlie Seg", where I was housed at that time. During the unauthorized search, these two deputies took the shower curtain down, took the "shower rods" out of the shower curtain, and jammed them down the shower drains, threw the shower curtain on the floor, and left.

Deputy Allen, and deputy Frankowiak's unauthorized search, and reckless misconduct caused my injuries.

Medical records show I suffered nausea and vomiting because the slip, and fall caused me a concussion. I take three different pain medications for the pain I suffer from the "herniated, bulging discs" suffered from the slip, and fall. These two deputies negligence, and reckless misconduct caused my injuries on 12/29/10, in the Charlie Seg shower room.

Mr. Thomas Diina is now the superintendent at the Erie County Correctional Facility out in Alden. However, when he was the chief here at the holding center, on 12/29/10, the dat slipped, and fell out of the shower, due to

deputy Lillet, and deputy Frankowiak's negligence and reckless misconduct that caused my lower back, herniated, bulging discs injuries, he displayed a disregard for my injuries, and grievances concerning this matter by his efforts to thwart U.S. Justice Department intervention into deputy Lillet, and deputy Frankowiak's careless, reckless misconduct. Superintendent Dunn typed out a memorandum dated 1/3/2011, eight days after the incident, which contains lies, and helps conceal the truth about Deputy Lillet, and Frankowiak's reckless misconduct in Charlie Seg shower room on 12/29/10. Superintendent Dunn, intentionally did not report Deputy Lillet, and deputy Frankowiak, careless, reckless, misconduct to his supervisors at that time, so that Lillet, and Frankowiak could have been disciplined. Dunn failed to discipline them himself. In Dunn's memorandum dated 1/3/11, he lied, and stated that I failed to file a grievance within five days of the date of the act or occurrence giving rise to the grievance. Dunn, intentionally [redacted] to process my grievance in a timely manner because he was concealing Deputy Lillet, and deputy Frankowiak's negligent, careless, reckless misconduct on 12/29/10. Also in his 1/3/11 memorandum, he lied about forwarding my issues to appropriate personnel for investigation

and resolution, and that I would be notified of the results of that investigation. As of today, 4/13/11 No investigation has been conducted in this matter, and no resolution has been made, nor have I been notified of the results of that investigation. This clearly proves that Diina, created a false document that concealed Deputy Lillet, and deputy Frankowiak's reckless misconduct on 12/29/10. I filed a third grievance on this matter on 1/16/11. Diina made another false memorandum, which states that my grievance was too "vague" to understand or failed to set forth supporting evidence or information. It also stated that, failure to supply sufficient information or evidence within two days shall be cause to deny the grievance. However, all three of my grievances were "crystal clear to understand, and set forth evidence, and an abundance of information, as I'm setting forth here. Also, it was impossible to receive medical evidence because the medical staff here at the holding center delayed treatment, and it took me a long time to finally get to the Erie County Medical Center for x-rays of my lower back which is in severe pain from the slip and fall, due to Deputy Lillet, and deputy Frankowiak's reckless misconduct and I'm still in pain. The x-rays showed that I sustained "herniated, bulging discs in my lowe back

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And I am now on three different pain medications, and medical staff here tells me I can't get a copy of my medical records, that a lawyer has to get them for me. At the end of Dunn's 1/2/11, fabricated memorandum, he stated "that this shall serve to inform you that your grievance cannot be processed, and is being returned to you". No further action will be taken regarding this matter. This is clear proof that Dunn concealed Deputy Lillet, and Deputy Frankowiak's reckless misconduct in this matter. This is a clear contradiction to his 1/3/11, fabricated memorandum when he stated, "Your issue has been forwarded to appropriate personnel for investigation, and resolution, and I will be notified of the results of that investigation. The readers of Dunn's two memorandums, which I have in my possesion, and the Supreme Court has to wonder, who is the appropriate personnel? (For investigation, and resolution?) and who went I notified of the results of that investigation? Then, in his 1/31/11 fabricated memorandum, he stated, "that your grievance cannot be processed, and is being returned to you, and no further action will be taken in this matter. Here, Dunn "decided" the matter to conceal Deputy Lillet, and deputy Frankowiak's reckless misconduct, without stating wether or not

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the appropriate personnel, whoever they are conducted their investigation, and came to a resolution in this matter, nor did Diina State that I was notified of the results of that of that investigation, which I want, which is policy + procedure. Diina is not in compliance with the law in this matter, and I request that he be disciplined by Timothy B. Howard, and that I be notified of the results of his disciplinary action. I request that Diina, accept responsibility for counseling Deputy Lillen, and Deputy Frankowski's negligent + reckless misconduct, by not processing my first grievance dated 12/9/10, which was the day of the incident, and my back injury, in a timely manner. Diina, denied my rights to file a grievance, rights protected by the constitution, and denied me access to the courts.

Demetrius
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6-29-00