



ECLEG MAY02'11 AM 9:57

JEREMY A. COLBY
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

April 28, 2011

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

Dear Mr. Graber:

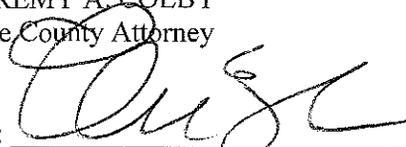
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Traina, Kathleen vs Erie County and Susan Fabian</i>
Document Received:	Verified Petition
Name of Claimant:	Kathleen Traina
Claimant's attorney:	Jonathan G. Johnsen, Esq. Creighton, Johnsen & Giroux 560 Ellicott Square Building 295 Main Street Buffalo, New York 14203

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By: 

THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney

TFK/mow
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

PAID
CHECK _____ CASH _____

In the Matter of the Application of

APR 18 2011

KATHLEEN TRAINA,

ERIE COUNTY
CLERK'S OFFICE

Petitioner,

For an Order and Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules

Index No.: 2011-001735

-against-

ERIE COUNTY and
SUSAN FABIAN

This paper received at the
Erie County Attorney's Office
from John Bangemi on
the 27 day of April, 2011
at 9:45 a.m./p.m.

Respondents.


Assistant County Attorney

NOTICE OF PETITION

PLEASE TAKE NOTICE that upon the annexed Verified Petition of MICHELLE
OLSWOWY, an application will be made to this Court at a Special Term in Part 32
thereof before the Hon. Diane Y. Devlin, JSC., at the Courthouse,
Buffalo, New York on the 2nd day of June, 2011 at 9:30 a.m. or as
soon thereafter as counsel may be heard, for an Order and Judgment pursuant to CPLR Article
78 reinstating the Petitioner to employment with full back pay and benefits, together with such
other and further relief as may be just and proper.

This Notice of Petition and Verified Petition are being served at least twenty (20) days
prior to the return date stated herein and, therefore, an Answer and supporting affidavits, if any,
must be served at least five (5) days before the return date.

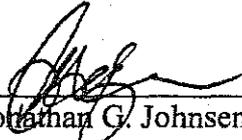
Erie County is designated as the venue of this proceeding on the basis of that being the County where the parties reside.

Dated: April 14, 2011
Buffalo, New York

Yours, etc.

CREIGHTON, JOHNSEN & GIROUX
Attorneys for Petitioner

By:


Jonathan G. Johnsen, Esq.
560 Ellicott Square Building
295 Main Street
Buffalo, NY 14203
(716) 854-0007

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

In the Matter of the Application of

KATHLEEN TRAINA,

Petitioner,

For an Order and Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules

Index No.: 2011-001735

-against-

ERIE COUNTY and
SUSAN FABIAN

Respondents.

FILED
ACTIONS & PROCEEDINGS
APR 18 2011
ERIE COUNTY
CLERK'S OFFICE

PETITION

The Petitioner, by and through her attorneys, Creighton, Johnsen & Giroux, for her
Petition against the Respondents states as follows:

1. Petitioner is a resident of Erie County, New York and is employed by the County
of Erie.
2. Respondent County of Erie is a political subdivision of the state of New York
3. Respondent SUSAN FABIAN is an employee of Erie County and a necessary
party pursuant to law.
4. Petitioner has been employed by the Erie County Department of Social Services
since July of 1994.
5. Petitioner was hired as a Paralegal, Grade 5.

6. In approximately 1997, Petitioner became a Senior Paralegal, Grade 7.
7. On or about November 13, 1999, Petitioner took the promotional exam for Supervising Paralegal.
8. In order to qualify to take the exam, the Petitioner had to have 12 months of service in the Senior Paralegal position. See Qualifications for Supervisory Paralegal Exhibit A.
9. Petitioner passed the exam and became a Supervising Paralegal.
10. On or about November 13, 2010, the promotional exam for Principal Paralegal (Contracts) was given. See Notice for Principal Paralegal (contracts) Exam attached hereto as Exhibit B.
11. In order to qualify for the Principal Paralegal – Contracts exam, an employee must have had 36 months in the Senior Paralegal position.
12. RESPONDENT SUSAN FABIAN took the exam and was promoted from Senior Paralegal to Principal Paralegal (Contracts).
13. On or about December 31, 2010, Petitioner was displaced from her job as a Supervising Paralegal.
14. The employee who displaced her was RESPONDENT SUSAN FABIAN, who held the job title Principal Paralegal (Contracts).
15. Pursuant to Civil Service Law, an employee who is displaced is returned to the next lower occupied title in the direct line of promotion immediately below the title of the employee.

16. Therefore, an employee can only bump back into the position from which he or she was directly promoted.

17. The New York Civil Service Department "Guidelines for the Administration of Reduction in Force" further illustrate the lack of direct line between the position of Supervising Paralegal and Principal Paralegal (Contracts). A copy of the relevant portions of the Guidelines is attached hereto as Exhibit C.

18. RESPONDENT SUSAN FABIAN should have displaced an employee occupying a Senior Paralegal position, the position from which she was promoted.

19. Both Supervising Paralegal and Principal Paralegal (Contracts) are promoted from the same position.

20. Principal Paralegal (Contracts) is a grade 10 position, and employees are promoted to such a position from the Senior Paralegal, Grade 8 position.

21. Supervising Paralegal is a Grade 9 position, and employees are promoted to such a position from Senior Paralegal.

22. An employee is not promoted from Supervising Paralegal to Principal Paralegal.

23. In fact, an employee holding the position of Supervising Paralegal might not even have the qualifications to be promoted to a Principal Paralegal (Contracts) position, which requires a minimum of one-year experience involving monitoring or negotiations with outside agencies. See Job Description for Principal Paralegal (Contracts) attached hereto as Exhibit D.

24. To my knowledge, Supervising Paralegals only exist in the Legal Advocacy for the Disabled Office in the Office of Counsel of the Social Services Department.

25. The County improperly determined that the direct line of promotion to the position of Principal Paralegal (Contracts) was from the position of Supervising Paralegal.

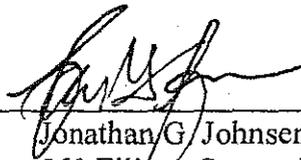
26. Based upon this erroneous determination, the County improperly displaced the Petitioner.

27. The Petitioner should be returned to her position to Supervising Paralegal and warded all back-pay and benefits lost as a result of her improper displacement.

Dated: April 14, 2011
Buffalo, New York

CREIGHTON, JOHNSEN & GIROUX
Attorneys for Petitioner

By: _____



Jonathan G. Johnsen, of Counsel
560 Ellicott Square Building
295 Main Street
Buffalo NY 14302
716-854-0007

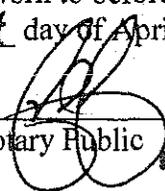
VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO) ss.:

KATHLEEN TRAINA, being duly sworn, deposes and says that she is the named Petitioner in the above-entitled proceeding; that she has read the foregoing Petition and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.


KATHLEEN TRAINA

Sworn to before me this
14 day of April, 2011


Notary Public

JONATHAN G. JOHNSEN
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02JO5015373
QUALIFIED IN ERIE COUNTY
COMMISSION EXPIRES JULY 19, 2011

