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## COUNTY OF ERIE

MARTIN A. POLOWY  
ACTING COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

THOMAS F. KIRKPATRICK, JR.  
ACTING FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

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### MEMORANDUM

**TO:** Robert Graber, Clerk, Erie County Legislature

**FROM:** Thomas F. Kirkpatrick, Jr., Acting First Assistant County Attorney

**DATE:** June 22, 2011

**RE:** Transmittal of New Claims Against Erie County

Mr. Graber:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find two (2) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Patricia J. Curto vs Erie County Clerk's Office, et al.  
David Burr vs Timothy B. Howard, Sheriff of Erie County

TFK/crj  
Attachments

14D-5



## COUNTY OF ERIE

JEREMY A. COLBY  
ERIE COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MARTIN A. POLOWY  
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.  
SECOND ASSISTANT COUNTY ATTORNEY

June 22, 2011

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

Dear Mr. Graber:

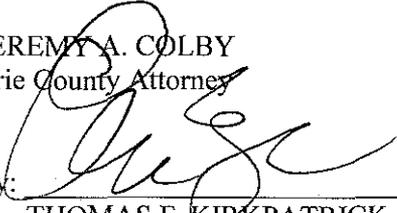
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Curto, Patricia J. vs Erie County Clerk's Office, Kathy Hochul and Patricia L. Fulwiler</i>
Document Received:	Notice of Petition
Name of Claimant:	Patricia J. Curto 20 Hazel Court Orchard Park, New York
Claimant's attorney:	Pro Se

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  
thomas.kirkpatrick@erie.gov

TFK/mow  
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

This paper received at the  
Erie County Attorney's Office  
from Deputy J. J. Haddock  
the 21<sup>st</sup> day of June, 2011  
at 10:30 a.m./p.m.

PAID  
CHECK CASH

JUN 20 2011

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ERIE  
Assistant County Attorney

Patricia J Curto,  
Petitioner,  
-against-

NOTICE OF PETITION  
Judge Curran  
Index No. 1545/2011

ERIE COUNTY  
CLERK'S OFFICE

Erie County Clerk's Office, *et al.*  
*Walter Haddock*, Respondent.  
*Patricia L. Fubus*

TO THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE that, upon the annexed Amended CPLR Article 78  
Verified Petition of the petitioner, the undersigned petitioner will make an application  
before the Hon. John Curran, on July 14, 2011 at 9:30 a.m.; at 92 Franklin Street 3<sup>rd</sup> floor,  
Buffalo New York at State Supreme Court Part 4, or as soon thereafter as petitioner can  
be heard, for an Order granting petitioner's annexed Amended Verified Article 78  
Petition, and for such other, further or different relief as the Court may deem just and  
proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 7804(c) an answer  
and any supporting papers must be served on the undersigned petitioner no later than  
five(5) days before the return date set forth above.

Dated: June 20, 2011  
To: The Erie County Attorney  
95 Franklin St. Rm 1634  
Buffalo, New York 14202  
Attorney for the Respondents

*Patricia J Curto*  
Patricia J Curto, pro se petitioner  
20 Hazel Ct  
West Seneca, NY 14224  
Email: nikkidog1125@yahoo.com

2011 JUN 20 PM 3:10

ERIE COUNTY  
CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK: COUNTY OF ERIE

Patricia J Curto,

-against-

Petitioner,

AMENDED  
VERIFIED PETITION  
And Complaint  
Under Article 78  
Index No.1545/2011

Erie County Clerk's Office, *Patricia L. Fulwiler*  
*Kathy Hochul* Respondents.

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1. Petitioner Patricia J Curto, pro se, alleges as her Article 78 Petition against the Erie County Clerk's Office the following:
2. This is a straight forward Article 78 Petition - graveman is, without a change in the law/CPLR by the NY State legislator, the respondents can not start requiring litigants including petitioner Patricia Curto, who have been granted poor person, to pay court filing fees to the court which granted poor person for that Index Number.
3. The respondents do not have the authority to vacate a State Supreme Court Order, including an Order granting poor person---an appeal to a higher court may vacate or the same Supreme Court on a motion to rehear by a party to the action; executive branch of government does not have jurisdiction/authority over judicial branch's decisions.
4. The respondents do not have the jurisdiction/authority to amend the CPLR, including CPLR 1102(d)---pursuant to CPLR§102 legislator amends the CPLR.
5. CPLR§1102(d) does not enumerate any specific fee, including filing fees, which a poor person is liable to pay (for the case/Index number the litigant has been granted poor person by the court), except if there is a recovery by judgment or settlement. See below

fee schedule for each New York State court from Unified Court System website.

### **Unified Court System Fees**

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#### **Filing Fees - Supreme Court, County Court**

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[Filing fees are set forth in the Civil Practice Law and Rules (CPLR)]

Item Fee

Obtaining Index Number

\$210

[CPLR §8018(a)(1),(3)]

Request for Judicial Intervention \$95

[CPLR §8020(a)]

Note of Issue\* \$30

[CPLR §8020(a)]

Motion or Cross-motion \$45

[CPLR §8020(a)]

Demand for Jury Trial \$65

[CPLR §8020(c)]

Stipulation of Settlement or Voluntary Discontinuance \$35

[CPLR §8020(d)]

Notice of Appeal \$65

[CPLR §8022(a)]

\*The Note of Issue filing fee is \$125 where a Request for Judicial Intervention is not required to be filed.

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#### **Filing Fees - Appellate Division of the Supreme Court**

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Item Fee

Filing of the Record on Appeal \$315

[CPLR §8022(b)]

Motion or Cross-motion \$45

[CPLR §8022(b)]

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#### **Filing Fees - Court of Claims**

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Item Fee

Filing of claim \$50

[Court of Claims Act §11-a]

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#### **Filing Fees - Surrogate's Court**

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Filing fees for Surrogate's Court vary according to the nature of the proceeding and size of the estate and are set forth at section 2402 of the Surrogate's Court Procedure Act.

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**Filing Fees - NYC Civil; District Court, City Court**

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[Filing fees are set forth in section 1911 of the New York City Civil Court Act, the Uniform District Court Act and the Uniform City Court Act]

Item Fee

Filing of first paper \$45

Notice of Trial \$40

Demand for Jury Trial \$70

Notice of Appeal \$30

Small Claims [section 1803(a) of the above Acts] - Claims of \$1000 or less \$15

Small Claims [section 1803(a) of the above Acts] - Claims of more than \$1000 \$20

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**Filing Fees - Town Courts, Village Courts**

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[Filing fees are set forth in section 1911 of the Uniform Justice Court Act]

Item Fee

Filing of first paper \$20

Demand for Jury Trial \$10

Notice of Appeal \$5

Small claims [section 1803(a) of the Uniform Justice Court Act] - Claims of \$1000 or less \$10

Small claims [section 1803(a) of the Uniform Justice Court Act] - Claims of more than \$1000 \$15

The respondents had prior to March 25, 2011 **not required** litigants granted poor person (including petitioner) by Supreme Court to pay filing fees listed above under Supreme Court/County Court in that Supreme Court action.

6. Therefore the respondents have no defense to the decision(s), made sometime between March 21 and 25, 2011, to start requiring litigants who had been granted poor person (for that case/Index Number), including petitioner Curto. To pay filing fees. This decision was arbitrary, capricious and not supported by the law or any substantial evidence and in excess of the Erie County Clerk's Office's jurisdiction.

7. Notably other county clerk offices, the Court of Claim Clerk's Office, town courts, the Appellant Court Clerk's Office and etc. do not require payment of filing fees from litigants granted poor person by that court for that action.

8. Up to this point in time there has been no controversy that a poor person does not pay filing fees, even though not the issue in the case cited below it was mentioned and it is the most recent/2009 case I could find, quoting:

“Surrogate's Court, Bronx County, New York.  
In the Matter of the ESTATE OF Michael George McINERNEY, Deceased.  
No. 2008-166/A.  
Feb. 18, 2009.

Michael J. McInerney, pro se, movant.

Veronica H. Mandel, Esq., for Joan McInerney, preliminary executrix.

LEE L. HOLZMAN, J.

“\*1 The objectant in this probate proceeding, one of the decedent's five children who is incarcerated in Nevada, moves for the assignment of counsel in connection with his appeal of an order of this court, dated November 24, 2008, which granted preliminary letters testamentary to the decedent's spouse, the nominated executrix and sole beneficiary under the propounded will. All of the decedent's children are disinherited under the will. The application for preliminary letters was granted on the consent of the decedent's four other children and over the objections of the movant. **In the underlying proceeding, the movant was granted poor person relief pursuant to CPLR 1101 which resulted in the waiver of filing fees for, inter alia, the filing of his objections and notice of appeal.**”

9. At some time between March 21, 2011 and March 25, 2011 Erie County Clerk Office employee Patricia L. Fulwiler decided litigants, including petitioner Curto, who had been granted motions for poor person in an action, in court's which the Erie County Clerk collected fees (including but not limited to court filing fees), where now required to pay some fee(s) in the action. This decision was arbitrary, capricious and not supported by the law or any substantial evidence and in excess of the Erie County Clerk's Office's jurisdiction.

granted poor person to reapply for poor person for the same case/Index number and in the same court. These decisions are arbitrary, capricious and not supported by the law or any substantial evidence and in excess of the Erie County Clerk's Office's jurisdiction.

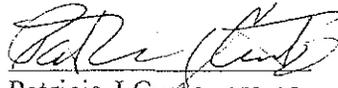
#### CONCLUSION

14. The Erie County Clerk's office decisions cited above are made in violation of lawful procedure, and/or was affected by an error of law, and/or was arbitrary and capricious and/or an abuse of authority and/or lack of jurisdiction/authority, and there was no factual basis for such determination and petitioner is entitled to relief pursuant to Article 78. The continuing violation of poor litigants' rights secured by CPLR§1102(d) warrants relief pursuant to Article 78.

THEREFORE, the Petitioner respectfully request that the Court grant: a declaration and order reversing and annulling the determinations cited herein, of the Erie Count Clerk's Office; an order and declaration declaring the actions and decisions cited herein, by the Erie County Clerk's Office to be null and void, having been taken in violation of the CPLR and New York State constitution and laws; an Order granting all related expenses, fees, costs and disbursements to the petitioner; and for such other, further or different relief as the Court may deem just and proper.

Dated: June 20, 2011

Respectfully submitted,

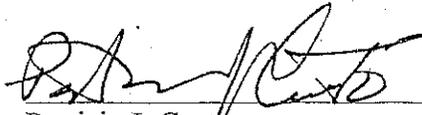
  
Patricia J Curto, pro se  
20 Hazel Ct.  
W. Seneca, NY 14224

VERIFICATION

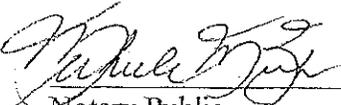
STATE OF NEW YORK)  
COUNTY OF ERIE ) ss:

PATRICIA J. CURTO, being duly sworn, deposes and says:

I am the petitioner herein and as such am familiar with the facts and circumstances set forth in the foregoing Amended Article 78 Petition. I have read the foregoing Article 78 Petition and know the contents thereof, the same is true to my own knowledge, except as to those matters stated upon information and belief, which are believed to be true.

  
Patricia J. Curto  
20 Hazel Ct.  
W. Seneca, NY 14224

Sworn to before me this  
20<sup>th</sup> day of June, 2011

  
Notary Public

MICHELLE M. ZUREK  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
LIC. #01ZU5062830  
My Commission Expires July 8, 2014