(8)

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 14, 2013

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:	*Bodell, Michael v. Robert Koch, Superintendent, Erie County Correctional Facility*
Document Received:	Order to Show Cause
Name of Claimant:	Michael Bodell #132979 Erie County Correctional Facility 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Claimant is proceeding *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle M. Parker (dld)
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

RECEIVED
MAY - 9 2013
ERIE COUNTY
DEPARTMENT OF LAW

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION OF
MICHAEL BODELL, #132979

Petitioner.

-vs-

ROBERT KOCH, SUPERINTENDENT,
ERIE COUNTY CORRECTIONAL FACILITY,

Respondent.

ORDER TO
SHOW CAUSE

Index No
I-2013-1312

SUPREME COURT, ERIE COUNTY

HON. PAULA L. FEROLETO, JUSTICE PRESIDING

APPEARANCES:

Petitioner, Pro Se
MICHAEL BODELL, #132979

This *ex parte* matter was referred to my attention at a Term of the Supreme Court, Erie County.

Upon the reading of the petition for relief pursuant to Article 78 of the Civil Practice Law and Rules, sworn to on March 26, 2013, with accompanying exhibits,

LET RESPONDENT SHOW CAUSE at a Special Term of the Supreme Court to be held in and for the County of Erie on **JUNE 25, 2013** before the **HON. M. WILLIAM BOLLER,** Acting Justice of the Supreme Court, in Part 13 at 25 Delaware Avenue, Buffalo, New York, **WHY** the relief requested in the Petition should not be granted.

IT IS ORDERED that Robert Koch, Superintendent of the Erie County Correctional Facility in Alden, New York where petitioner is now confined will produce the body of **MICHAEL BODELL** only if the court submits a letter to the superintendent ordering the production of the petitioner; and it is further

ORDERED that the petitioner is granted poor person status pursuant to Article 11 of the Civil Practice Law and Rules waiving the fee for the Index Number and the fee for the Request for Judicial Intervention and that in the event the petitioner should receive an unfavorable decision, said petitioner shall be permitted to file a Notice of Appeal in the Erie County Clerk's Office without having to pay the fee required by CPLR 8022(a); and it is further

ORDERED that a waiver of fees for service by publication, for stenographic transcripts, or for any other cost or fee related to this proceeding in this Court shall only be granted upon a separate application to the Court, on notice to the County Attorney of Erie County, pursuant to CPLR 1101, showing the need therefor; and it is further

ORDERED that service of a signed and executed copy of this Order to Show Cause, the petition and any supporting papers by ordinary First Class mail, upon the named respondent, Robert Koch, on or before **May 28, 2013** be deemed adequate. In addition, the petitioner, on or before said date, shall similarly serve the Erie County Attorney, 95 Franklin Street, Room 1634, Buffalo, New York 14202; and it is further:

ORDERED that it shall be the responsibility of the party seeking an extension of time to serve papers or seeking an adjournment of this matter to make such request for an

extension of time or an adjournment to Acting Justice Boller, and any party receiving an adjournment shall notify the other party or parties of said adjourned date; and it is further

ORDERED that it is the petitioner's responsibility to:

(a) Serve a signed and executed copy of this Order to Show Cause, the petition and any supporting papers as authorized above or by personal service.

(b) Submit the original proof of service to the chambers of the **Hon. M. William Boller,** 25 Delaware Avenue-Second Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date; and it is further

ORDERED that a copy of any answer or response shall be served upon the petitioner not less than five (5) days before the return date. The original of any such answer or response is to be delivered to the chambers of Acting Justice Boller not less than three (3) days prior to said return date.

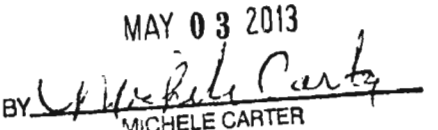
DATED: Buffalo, New York
May 3, 2013

HON. PAULA L. FEROLETO
Justice of the Supreme Court

GRANTED:

GRANTED

MAY 03 2013

BY 
MICHELE CARTER
COURT CLERK

State of New York
County of Erie

In the matter of the application of

Michael Bodell
Petitioner

-v-

Timothy B Howard Sheriff
Respondent

for a judgment pursuant to Article 78 of the NYS Civil Practice Laws and Rules

Affidavit in support of order to show cause

Index # 2013-1312

State of New York)
County of Erie) **SS:**
)

I, Michael Bodell, being duly sworn, depose and say that:

I am the Petitioner I the above-entitled proceeding.

I make this affidavit in support of my annexed application for an Order to show cause to prosecute the attached petition pursuant to Article 78 of the New York Civil Practice Laws and Rules which challenges: Respondent's calculation of my jail time pursuant to 70.30 of the Criminal Procedure Law.

The facts surrounding this Petition are as follows: I have been incarcerated from 7/25/12 to 9/4/12 when I plead guilty and was sentenced on 10/9/12. I was then arrested on 11/30/12 and have remained incarcerated to present. Respondent has denied me jail time for the periods 7/25/12 to 9/4/12 and 11/30/12 to 2/7/13. I have attached my NYS Criminal History Information which shows on p. 3 that Docket #: 12079212 was covered by Docket No 0234I-2012, which the parties agree I am entitled to credit on. Also, I am entitled to 11 days on Docket 0234I and before the sentence on 2/15/13 See p4

Petitioner seeks to proceed by Order to Show Cause rather that by Notice of Petition because: I am scheduled to be released on July 22, 2013. Thus, upon being awarded the additional days, I would be entitled to release on May 16. Consequently, my motion is time sensitive to avoid my being wrongfully incarcerated.

Petitioner, being incarcerated at the Erie County Correctional Facility, 11581 Walden Avenue, Town of Alden, County of Erie, also cannot effect personal service of the within papers and respectfully requests that timely service by U. S. mail be deemed sufficient.

Petitioner designates Erie County as the place of venue.

No previous application for the relief sought herein has been made.

I have moved by the annexed affidavit for a waiver of filing fees.

WHEREFORE, Petitioner respectfully prays that this Court enter an order directing Respondent to show cause why a judgment should not be made and entered pursuant to Article 78 of the Civil Practice Law and Rules, and granting such other relief as this Court may deem just and proper.

Date: March 22, 2013

Michael T Rodell
Signature, Petitioner Pro Se
11581 Walden Avenue
Alden, New York 14004

Sworn to before me on
this 26th day of
March, 2013
Carol L. Caine
Notary Public CAROL L. CAINE

Notary Public State of NY
Qualified in Erie Co
My Commission Expires
3/30/14

Supreme Court
State of New York
County Of Erie

Michael Bodell,

Petitioner

-v-

People of the State of New York, Respondent

Affidavit in support of motion to secure stenographic transcript without fee
CPLR 1102

Ind. # 12-1254

State of New York)
County of Erie) **SS:**
)

I, Michael Bodell, being duly sworn, depose and say:

That I am the Petitioner Pro Se in this action, and make this affidavit in support of my motion pursuant to Section 1102(b) of the Civil Practice Law and Rules, securing a copy of the stenographic transcript of my Integrated Domestic Violence Violation of Probation.

Being that the Petitioner is incarcerated and has no funds to secure same nor does Petitioner have any relatives that are willing to pay for said copies.

Petitioner intends to proceed Pro Se with motions before the Court and in order to adequately represent and defend himself, Petitioner requires the following transcripts:

February 5, 2013

WHEREFORE Petitioner respectfully prays that an Order be granted by this Court, ordering and directing the Clerk to supply said Petitioner with a free copy of said requested transcripts, and together with such other and further relief as the Court may deem just and proper.

Michael T Bodell
Signature, Petitioner, Pro Se

Sworn to before me this 26th day
of March, 20 13

Carol L. Caline
Signature, Notary Public CAROL L. CALINE

Notary Public State Of NY
Qualified in Erie County
Commission Expires 3/30/14

State of New York
Erie County
Supreme Court
----------x

Michael Bodell
Petitioner/Plaintiff

v

Timothy B Howard Sheriff
Respondent/Defendant
----------x

Affidavit in Support of Application Pursuant to CPLR 1101 (f) (Reduced Filing Fee)

Index/File # 2013-1312*
DIN # 132-779
NYSID # 11895654J

State of New York)
) SS:
County of Erie)

I, Michael Bodell, being duly sworn, hereby declare as follows:

1) I am the Petitioner/Plaintiff in the above-entitled proceeding, I am a sentenced inmate in a federal, state or local correctional facility (state place of incarceration: Alden Correctional Facility, and I submit this affidavit in support of my application for a reduction of the filing fee pursuant to CPLR 1101 (f).

2) I currently receive income from the following sources, exclusive of correctional facility wages:
None

3) I own the following valuable property (other than miscellaneous personal property):

☒ NONE
1) List Property: Value:

4) I have no savings, property, assets or income other than as set forth herein.

*Will be assigned by the Court/County Clerk

5) I am unable to pay the total fee necessary to prosecute this procedure.
6) No other person who is able to pay the total filing fee has a beneficial interest in the result of this proceeding.
7) The facts of my case are described in my claim and other papers filed in the court.
8) I have made no prior request for this relief in this case.
9) My date of birth is 10/31/72.
10) NYSID # 11895654S.
11) Aliases (*if any*)_____.

Michael T Bodell
(signature)

Sworn to before me this 24 day of March, 2013.

Carl R. Calise
Notary Public Carl R. Calise
Cattaraugus County
3/30/14

AUTHORIZATION

I, Michael Bodell, inmate number 133979, request and authorize the agency holding me in custody to send to the Clerk of the Court certified copies of the correctional facility trust fund account statement (or the institutional equivalent) for the past six months.

I further request and authorize the agency holding me in custody to calculate the amounts specified by CPLR 1101 (f)(2), to deduct those amounts from my correctional facility trust fund account (or the institutional equivalent) and to disburse those amounts as instructed by the Court.

This authorization is furnished in connection with the above entitled case and shall apply to any agency into whose custody I may be transferred.

I UNDERSTAND THAT THE ENTIRE FILING FEE AS DETERMINED BY THE COURT WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY CORRECTIONAL FACILITY TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.

Michael T Bodell
(signature)

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Resident Account Summary

Friday, April 19, 2013 @13:17

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For ICN: 132979 BODELL, MICHAEL T

Date	Transaction	Description	Amount	Balance	Owed	Held	Reference
04/19/2013	DEPOSIT MO	AMBER ASHRAF	30.00	31.77	0.00	0.00	04/19/2013
04/17/2013	ERF	OID:100010622-ComisaryRef	1.60	1.77	0.00	0.00	04/17/2013
04/17/2013	EPR	OID:100011726-ComisaryPur	-4.55	0.17	0.00	0.00	04/17/2013
04/15/2013	EPR	OID:100010622-ComisaryPur	-27.96	4.72	0.00	0.00	04/15/2013
04/12/2013	DEPOSIT MO	AMBER ASHRAF	30.00	32.68	0.00	0.00	04/12/2013
04/08/2013	EPR	OID:100009427-ComisaryPur	-29.79	2.68	0.00	0.00	04/08/2013
04/05/2013	DEPOSIT MO	AMBER ASHRAF	30.00	32.47	0.00	0.00	04/05/2013
04/04/2013	<POSTAGE CH	POSTAGE	-1.32	2.47	0.00	0.00	04/04/2013
04/04/2013	POSTAGE CHG	POSTAGE	1.32	3.79	1.32	0.00	04/04/2013
04/03/2013	EPR	OID:100008695-ComisaryPur	-14.61	3.79	0.00	0.00	04/03/2013
04/01/2013	EPR	OID:100008143-ComisaryPur	-27.29	18.40	0.00	0.00	04/01/2013
03/29/2013	ERF	OID:100006787-ComisaryRef	2.40	45.69	0.00	0.00	03/29/2013
03/27/2013	EPR	OID:100006787-ComisaryPur	-29.49	43.29	0.00	0.00	03/27/2013
03/27/2013	DEPOSIT MO	AMBER ASHRAF	40.00	72.78	0.00	0.00	03/27/2013
03/27/2013	<COPIES CHG	COPIES	-0.80	32.78	0.00	0.00	03/27/2013
03/27/2013	COPIES CHG	COPIES	0.80	33.58	0.80	0.00	03/27/2013
03/22/2013	<POSTAGE CH	POSTAGE	-0.92	33.58	0.00	0.00	03/22/2013
03/22/2013	POSTAGE CHG	POSTAGE	0.92	34.50	0.92	0.00	03/22/2013
03/21/2013	DEPOSIT MO	AMBER ASHRAF	30.00	34.50	0.00	0.00	03/21/2013
03/20/2013	ERF	OID:100005496-ComisaryRef	0.90	4.50	0.00	0.00	03/20/2013
03/20/2013	<POSTAGE CH	POSTAGE	-0.92	3.60	0.00	0.00	03/20/2013
03/20/2013	POSTAGE CHG	POSTAGE	0.92	4.52	0.92	0.00	03/20/2013
03/18/2013	EPR	OID:100005496-ComisaryPur	-26.86	4.52	0.00	0.00	03/18/2013
03/15/2013	ERF	OID:100004774-ComisaryRef	1.20	31.38	0.00	0.00	03/15/2013
03/14/2013	DEPOSIT MO	AMBER ASHRAF	30.00	30.18	0.00	0.00	03/14/2013
03/13/2013	EPR	OID:100004774-ComisaryPur	-14.09	0.18	0.00	0.00	03/13/2013
03/11/2013	EPR	OID:100004174-ComisaryPur	-29.41	14.27	0.00	0.00	03/11/2013
03/07/2013	DEPOSIT MO	AMBER ASHRAF	30.00	43.68	0.00	0.00	03/07/2013
03/06/2013	EPR	OID:100003076-ComisaryPur	-29.68	13.68	0.00	0.00	03/06/2013
03/04/2013	EPR	OID:100002502-ComisaryPur	-29.91	43.36	0.00	0.00	03/04/2013
02/27/2013	EPR	OID:100001914-ComisaryPur	-1.05	73.27	0.00	0.00	02/27/2013
02/27/2013	DEPOSIT MO	AMBER ASHRAF	30.00	74.32	0.00	0.00	02/27/2013
02/25/2013	EPR	OID:100001067-ComisaryPur	-29.87	44.32	0.00	0.00	02/25/2013
02/21/2013	DEPOSIT MO	AMBER ASHRAFF	30.00	74.19	0.00	0.00	02/21/2013
02/21/2013	EPR	OID:100000762-ComisaryPur	-4.97	44.19	0.00	0.00	02/21/2013
02/20/2013	BAL FWD	BAL FWD AT KCN CONVERSION	49.16	49.16	0.00	0.00	02/20/2013