(5)

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 6, 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:	*Lewandowski, David v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	David Lewandowski 495 Highland Avenue Tonawanda, New York 14223
Claimant's attorney:	E. Joseph Giroux, Jr. Creighton, Johnsen & Giroux 560 Ellicott Square Building 295 Main Street Buffalo, New York 14203

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Claim of

David Lewandowski

-against-

The County of Erie, New York

NOTICE OF CLAIM TO THE COUNTY OF ERIE

TO:

Christopher L. Jacobs	Mark Poloncarz	John W. Greenan
Erie County Clerk	Erie County Executive	Commissioner of Personnel
92 Franklin Street	95 Franklin St – 16th Floor	95 Franklin St – 6th Floor
Buffalo NY 14202	Buffalo NY 14202	Buffalo NY 14202

PLEASE TAKE NOTICE THAT David Lewandowski, the Claimant herein makes this claim against the County of Erie located in New York State.

The Claimant, David Lewandowski, resides at 495 Highland Avenue, Tonawanda New York 14223.

The Attorney for the claimant is Creighton, Johnsen & Giroux (E. Joseph Giroux, Jr., of Counsel) with offices at 295 Main Street – Suite 560, Buffalo NY 14203. The nature of Mr. Lewandowski's claim is as follows:

Time When, Place Where and the Manner in Which the Claims Arose are as Follows:

Mr. Lewandowski is a police officer in the Village of Kenmore, County of Erie, New York. Mr. Lewandowski is on the Eligible List #77-838 Police Lieutenant - First Line Supervisor Promotional List. The Eligible List #77-838 was established on December 10, 2010 and is a list to fill all Police Lieutenant vacancies in Erie County

Towns and Villages (except the Town of Cheektowaga). This included vacancies for the position of Police Lieutenant First Line Supervisor in the Village of Kenmore.

The original duration of the Eligible List was until December 12, 2012. The Eligibility List, which is a County wide list for promotions to the position of Lieutenant is for all towns and villages in Erie County (except the Town of Cheektowaga). The Erie County Commissioner of Personnel extended the duration of the Eligible List #77-838 for an additional year to December 10, 2013 unless superseded by the establishment of a new promotional list prior to December 10, 2013. The Erie County Commissioner of Personnel extended the Eligible List #77-838 on September 4, 2012 and December 7, 2012.

On or about January 17, 2013, Mr. Lewandowski was notified by the Village of Kenmore that he would be promoted from his current Kenmore Police Department position of Detective to a vacancy in the Lieutenant position as a permanent appointment. On February 6, 2013, the date of his appointment to Lieutenant, Mr. Lewandowski was notified by the Village of Kenmore that he was only being promoted on a provisional basis as the Erie County Commissioner of Personnel would not certify an eligible list for the Village of Kenmore on the grounds that Eligible List #77-838 had expired. Eligible List #77-838 has not been superseded and an examination for a new list for Lieutenant will not take place until June 1, 2013. A new Eligible List from this exam will not be established until months after the June 1, 2013 examination. The examination for Eligible List #77-838 was on June 10, 2010 and Eligible List #77-838 was not established until December 10, 2010.

The Items of Damages or Injuries Claimed to Have been Sustained:

As a result of the County's action in refusing to certify for the Village of Kenmore County wide Eligible List #77-838 that has already been extended to December 10, 2013, Mr. Lewandowski's appointment is provisional rather than permanent. Unless remedied, Mr. Lewandowski will have to take the examination for the new eligible list and establish a position on the list from which he can be promoted permanently.

Mr. Lewandowski seeks a remedy that the Erie County Commissioner of Personnel certify the Eligible List #77-838 to the Village of Kenmore so that the Village of Kenmore can permanently appoint him to the position as it intended to do.

Dated: Buffalo, New York
April 24, 2013

CREIGHTON, JOHNSEN & GIROUX

E. Joseph Giroux, Jr., Esq., of Counsel
Attorney for David Lewandowski
Office & P. O. Address
560 Ellicott Square Building
295 Main Street - Suite 560
Buffalo, New York 14203
Telephone: (716) 854-0007
Fax: (716) 854-0004

VERIFICATION

State of New York)
County of Erie) ss.:

David Lewandowski, being duly sworn, deposes and says that he is the claimant in the above entitled Notice of Claim and knows the contents thereof; that the same are true to

his own knowledge, except as to the matters therein stated to be alleged on information and believe, and as to those matters, he believes it to be true.

David Lewandowski

Sworn to before me this 25 day of April, 2013

Notary Public

E. JOSEPH GIROUX, JR.
Notary Public-State of New York
Qualified in Erie County
My Commission Expires 12/3/13