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

September 11, 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:	*Coles, Geraldine v. Erie County, Mark Wipperman, Robert Koch, Michael Reardon, John Anthony*
Document Received:	Summons and Complaint
Name of Claimant:	Geraldine Coles 147 Clarence Avenue Buffalo, New York 14215
Claimant's attorney:	Lindy Korn, Esq. Electric Tower 535 Washington Street, 9th Floor 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
Enc.

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

GERALDINE COLES *Plaintiff*	)	
v.	)	Civil Action No. 13-CV-00845
ERIE COUNTY, MARK WHIPPERMAN, ROBERT KOCH, MICHAEL REARDON, JOHN ANTHONY, *Defendant*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Michael Siragusa
Erie County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lindy Korn, Esq.
Law Office of Lindy Korn
Electric Tower
535 Washington St., Ninth Fl.
Buffalo, NY 14203

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 08/27/2013

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

Signature of Clerk or Deputy Clerk

Civil Action No. 13-CV-00845

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As Reset

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

GERALDINE COLES,

PLAINTIFF,

v.

ERIE COUNTY, MARK WHIPPERMAN, ROBERT KOCH, MICHAEL REARDON, JOHN ANTHONY,

DEFENDANTS.

AMENDED COMPLAINT

13-CV-00845

Plaintiff Geraldine Coles ("Plaintiff" or "Ms. Coles") alleges as follows:

PARTIES

1. The Plaintiff, Geraldine Coles, is a natural person with a place of residence at 147 Clarence Avenue, Buffalo, NY 14215.

2. Upon information and belief, Defendant Erie County ("Defendant" or "County"), is a municipal entity with offices located at 95 Franklin Street, 16th Floor, Buffalo, New York 14202

3. Upon information and belief, Defendant Undersherriff Mark Whipperman is an officer of the county with offices located at 95 Franklin Street, 16th Floor, Buffalo, New York 14202. Here, he is sued in both his official and individual capacity.

4. Upon information and belief, Defendant Chief John Anthony is an officer of the county with offices located at 95 Franklin Street, 16th Floor, Buffalo, New York 14202. Here, he is sued in both his official and individual capacity.

5. Upon information and belief, Defendant Deputy Superintendent Michael Reardon is an officer of the county with offices located at 95 Franklin Street, 16th Floor, Buffalo, New York 14202. Here, he is sued in both his official and individual capacity.

6. Upon information and belief, Defendant Deputy Robert Koch was at all relevant times Superintendent of the Holding Center, and as such is an officer of the county with offices located at 95 Franklin Street, 16th Floor, Buffalo, New York 14202. Here, he is sued in both his official and individual capacity.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and as conferred by 42 U.S.C. §1983.

8. Defendant is subject to the jurisdiction of this Court and venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) as the acts and omissions giving rise to the claims in this complaint occurred within the Western District of New York.

FACTUAL BACKGROUND

9. Ms. Coles is a Deputy Sheriff for Erie County.

10. Erie County is a municipal entity, a subdivision of the State of New York.

11. Ms. Coles works at the Erie County Holding Center.

12. Ms. Coles' position as a Deputy Sheriff is a civil service appointment.

13. Ms. Coles has a property interest in her continued employment.

14. First Deputy Superintendent Michael Reardon ("Deputy Superintendent Reardon") is an officer of the County.

15. Superintendent Robert Koch ("Superintendent Koch") is an officer of the County.

16. On October 21, 2011 Deputy Superintendent Reardon invoked § 72 (5) of the New York State Civil Service Law informing Ms. Coles that she was suspended from duty because of her disability in a letter dated October 21, 2011. (Exhibit 1).

17. Deputy Superintendent Reardon copied Undersheriff Mark Whipperman, Superintendent Koch, Chief John Anthony and Tim Benten, County Risk Manager, on the October 21, 2011 letter to Ms. Coles. (Exhibit 1).
18. § 72 of the New York State Civil Service Law contains several specifically enumerated process requirements that the government is required to follow in order to suspend or terminate an employee.
19. Defendants did not follow those specifically enumerated process requirements.
20. Ms. Coles was sent to an independent medical examiner on November 15, 2011.
21. Ms. Coles was not informed of the results of that examination until March 2012.
22. Deputy Superintendent Reardon has testified that he was under no obligation to provide Ms. Coles with any sort of hearing. (Ex 2, Tr. 628-629).
23. Defendants never notified Ms. Coles of her right to a hearing.
24. Former Superintendent Koch has testified that he was not aware of any efforts made by anyone in his chain of command to offer Ms. Coles a pre-deprivation hearing. (Ex. 3, 614-615).
25. Chief John Anthony testified that Ms. Coles was entitled to a hearing. (Ex. 4, 525-26).
26. In a letter signed by Chief John Anthony, dated November 7, 2012, Chief Anthony informed Ms. Coles that she would be terminated on December 7, 2012. (Ex. 5).
27. On December 7, 2012 Defendant terminated Ms. Coles. (Ex. 6, T-527:7-17).
28. Defendants never convened a pre-deprivation hearing.

FIRST CAUSE OF ACTION

§ 1983 Violation of Due Process

29. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.

30. In order to establish a violation of §1983 "two -- and only two -- allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law." *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S. Ct. 1920, 1923, 64 L. Ed. 2d 572 (1980).

31. Upon information and belief, Defendant Erie County is a public employer.

32. Ms. Coles is a Sheriff's Deputy with civil service protections.

33. Ms. Coles has a property interest in her continued employment.

34. Superintendent Koch is an officer of the County.

35. Deputy Superintendant Reardon is an officer of the County.

36. Chief Anthony is an officer of the County.

37. Undersheriff Whipperman is an officer of the County.

38. Upon information and belief, during the relevant period Deputy Superintendant Reardon and Chief Anthony were both subordinate to Superintendent Koch.

39. Upon information and belief, during the relevant period Superintendent Koch, Deputy Superintendant Reardon and Chief Anthony were all subordinate to Undersheriff Whipperman.

40. On October 21, 2011 Reardon invoked § 72 (5) of the New York State Civil Service Law informing Ms. Coles that she was suspended from duty because of her disability in a letter dated October 21, 2011. (Exhibit 1).

41. Deputy Superintendent Reardon copied Undersheriff Mark Whipperman, Superintendent Koch, and Chief John Anthony as well as Tim Benten, County Risk Manager, on the October 21, 2011 letter to Ms. Coles. (Exhibit 1).

42. In a letter signed by Chief John Anthony, dated November 7, 2012, Chief Anthony informed Ms. Coles that she would be terminated on December 7, 2012. (Ex. 5).

43. Civil Service employees are entitled to due process protections under § 75 of the New York State Civil Service Law. "Petitioner's due process right to the protections created by this section are well documented. *See, Laurido v. Simon,* 489 F.Supp. 1169 (S.D.N.Y.1980); *Snead v. Department of Social Services,* 351 F.Supp. 1360 (S.D.N.Y.1972)." *Barrett v Miller*, 179 Misc 2d 24, 30-31 [Sup Ct 1998].

44. "The Constitution prohibits deprivations of [property] *without due process.* The denial of a constitutionally-sound predeprivation hearing is a separate and distinct injury from the loss of [property]." *Patterson v Coughlin*, 761 F2d 886, 892 [2d Cir 1985] *emphasis in original.*

45. Suspension without pay, which does not conform to the due process requirements under §72(5), "constitutes a denial of due process actionable under 42 U.S.C. § 1983." *See Lewis v. New York City Transit Authority,* No. 79–C–139 (E.D.N.Y.1979); *Keyer v. Civil Service Commission of the City of New York,* 397 F.Supp. 1362 (E.D.N.Y.1975); *Vega v. Civil Service Commission, City of New York,* 385 F.Supp. 1376 (S.D.N.Y.1974). *Hilf v New York Hous. Auth.*, 550 F Supp 1000, 1005 [SDNY 1982].

46. Defendants denied Ms. Coles her federally protected due process rights to her continued employment when the County, through the actions of Reardon and Anthony, and the acquiescence of Superintendant Koch and Undersheriff Whipperman, terminated her employment without any pre-deprivation hearing, or any hearing whatsoever.

SECOND CAUSE OF ACTION

§ 1985 Conspiracy to Deprive an Individual of Rights

47. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.
48. In order to establish a violation of §1985 a plaintiff must show that two or more individuals conspired to deprive her of a legal right.
49. Ms. Coles has a property interest in her civil service appointment as Deputy Sheriff.
50. Because of this property interest, defendants cannot lawfully deprive Ms. Coles of her employment, except for cause.
51. Ms. Coles has a Constitutional Right to Due Process prior to any deprivation of her civil service employment.
52. Ms. Coles alleges that Defendants deprived her of her property, her appointment as Deputy Sheriff, without Due Process.
53. On October 21, 2011 Reardon invoked § 72 (5) of the New York State Civil Service Law informing Ms. Coles that she was suspended from duty because of her disability in a letter dated October 21, 2011. (Exhibit 1).

54. Deputy Superintendent Reardon copied Undersheriff Mark Whipperman, Superintendent Koch, and Chief John Anthony as well as Tim Benten, County Risk Manager, on the October 21, 2011 letter to Ms. Coles. (Exhibit 1).

55. In a letter signed by Chief John Anthony, dated November 7, 2012, Chief Anthony informed Ms. Coles that she would be terminated on December 7, 2012. (Ex. 5).

56. Chief Anthony copied Superintendant Koch and the Erie County Attorney's Office on the November 7, 2012 letter.

57. The letters from Reardon and Anthony show a concerted goal of depriving Ms. Coles of her property interest in her employment.

58. Both Reardon and Anthony took affirmative steps in depriving Ms. Coles of her employment by suspending and terminating her, respectively.

59. Reardon has testified that he consulted someone from the Erie County Attorney's office to determine a way to suspend Ms. Coles without any due process hearing. (Ex 2, Tr. 628-629).

60. Both Reardon and Anthony failed to offer Ms. Coles any pre-deprivation hearing, as they were required to do by the provisions of §72(5) and the due process clauses of the state and federal Constitutions.

THIRD CAUSE OF ACTION

§ 1986 Failure to Prevent the Deprivation an Individual's of Rights

61. Plaintiff repeats each and every allegation set forth herein in preceding paragraphs as though fully set forth herein.

62. In order to establish a violation of §1986 a plaintiff must show that an individual who was aware of a conspiracy under §1985 to deprive an individual of a right and who had authority to prevent such a deprivation failed to act to prevent the deprivation.

63. Ms. Coles has a property interest in her civil service appointment as Deputy Sheriff.

64. Because of this property interest, defendants cannot lawfully deprive Ms. Coles of her employment, except for cause.

65. Ms. Coles has a Constitutional Right to Due Process prior to any deprivation of her civil service employment.

66. Ms. Coles alleges that Defendants deprived her of her property, her appointment as Deputy Sheriff, without Due Process.

67. On October 21, 2011 Reardon invoked § 72 (5) of the New York State Civil Service Law informing Ms. Coles that she was suspended from duty because of her disability in a letter dated October 21, 2011. (Exhibit 1).

68. Deputy Superintendent Reardon copied Undersheriff Mark Whipperman, Superintendent Koch, and Chief John Anthony as well as Tim Benten, County Risk Manager, on the October 21, 2011 letter to Ms. Coles. (Exhibit 1).

69. In a letter signed by Chief John Anthony, dated November 7, 2012, Chief Anthony informed Ms. Coles that she would be terminated on December 7, 2012. (Ex. 5).

70. Chief Anthony copied Superintendant Koch and the Erie County Attorney's Office on the November 7, 2012 letter.

71. The letters from Reardon and Anthony show a concerted goal of depriving Ms. Coles of her property interest in her employment.

72. Both Reardon and Anthony took affirmative steps in depriving Ms. Coles of her employment by suspending and terminating her, respectively.

73. Reardon has testified that he consulted someone from the Erie County Attorney's office to determine a way to suspend Ms. Coles without any due process hearing. (Ex 2, Tr. 628-629).

74. Both Reardon and Anthony failed to offer Ms. Coles any pre-deprivation hearing, as they were required to do by the provisions of §72(5) and the due process clauses of the state and federal Constitutions.

75. Under-Sheriff Whipperman and Superintendant Koch were both aware of the October 21st letter, which facially indicates a lack of any deprivation hearing, pre or post.

76. Under-Sheriff Whipperman and Superintendant Koch both knew or should have known about the lack of due process supporting Deputy Superintendant Reardon's suspension of Ms. Coles.

77. Under-Sheriff Whipperman and Superintendant Koch both were of superior rank to Reardon.

78. Under-Sheriff Whipperman and Superintendant Koch both failed to act to prevent the deprivation stated in the October 21st letter.

79. Superintendant Koch was copied on Chief Anthony's November 7 letter terminating Ms. Coles.

80. Superintendant Koch was of superior rank to Anthony.

81. Superintendant Koch failed to act to prevent the deprivation stated in the November 7th letter.

WHEREFORE, Ms. Coles respectfully requests this Court to enter an Order:

A. Awarding Ms. Coles past lost wages and benefits in an amount to be determined at trial;

B. Awarding Ms. Coles damages for her pain, suffering, loss of enjoyment of life, humiliation and other injuries in an amount to be determined at trial;

C. Directing Defendants to pay all unreimbursed medical costs incurred by Ms. Coles as a result of the stress and anxiety resulting from the discrimination she suffered and the hostile working conditions she endured, including diagnostic analysis, treatment and therapy, and follow up therapy;

D. Directing Defendants to pay Ms. Coles the costs of this action, together with reasonable attorneys' fees and disbursements;

E. Directing Defendants to reinstate Ms. Coles to the payroll in her former title;

F. Ms. Coles to have such other and further relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) Fed. R. Civ. P., Plaintiff hereby demands a trial by jury for all issues triable of right by a jury in this case.

Dated: August 26, 2013

Respectfully submitted,
Plaintiff Geraldine Coles
By her Attorneys

s/Lindy Korn, Esq.
Lindy Korn, Esq.
Richard J. Perry, Esq.
Attorneys for Plaintiff
The Law Offices of Lindy Korn
Electric Tower
535 Washington Street, Ninth Floor
Buffalo, New York 14203
Telephone: (716) 856-5676
Facsimile: (716) 507-8475
lkk75atty@aol.com
khovaros@yahoo.com