



# COUNTY OF ERIE

**MARK C. POLONCARZ**  
COUNTY EXECUTIVE

MICHAEL A. SIRAGUSA  
COUNTY ATTORNEY

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH.  
SECOND ASSISTANT COUNTY ATTORNEY

## MEMORANDUM

TO: Karen McCarthy, Clerk, Erie County Legislature  
FROM: Michelle M. Parker, First Assistant County Attorney  
DATE: September 16, 2015  
RE: Transmittal of New Claims Against Erie County

Ms. McCarthy:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find 12 new claims brought against the County of Erie. The claims are as follows:

**Claim Name**

- Jacqueline Hobson v. Erie County Department of Parks, etc.
- PBA v. Erie County Sheriff's Office (Relay for Life)
- PBA v. Erie County Sheriff's Office (Eternal Flame)
- Bohdan s. Chomyn v. Christopher Jacobs, et al.
- Samuel Garcia v. County of Erie, et al.
- Erick Sanchez v. Erie County Sheriff's Office, et al.
- Carl McClelland a/k/a Willie White v. Frank Sedita
- Ronald Sheehan v. County of Erie, et al.
- Estate of Maksym Sugorovskiy, et al. v. County of Erie
- Rafiq Salim v. County of Erie, et al.
- Darien Paige v. Timothy Howard, et al.
- Joleen Palmowski v. County of Erie, et al.

MMP:dld  
Attachments

Comm. 18D-6

Page 1 of 134



# COUNTY OF ERIE

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DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

August 5, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:


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>Hobson, Jacqueline v. Erie County<br/>Department of Parks, Recreation and<br/>Forestry</i>         |
| Document Received:   | Notice of Claim   |
| Name of Claimant:    | Jacqueline Hobson<br>8 Knight Street<br>Silver Creek, New York 14136                                  |
| Claimant's attorney: | Trevor Barr, Esq.<br>The Dietrich Law Firm<br>1323 North Forest Road<br>Williamsville, New York 14221 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP/dld  
Enc.

Comm. 18D-6  
Page 2 of 134

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE  
\*\*\*\*\*

JACQUELINE HOBSON,

Claimant,

**NOTICE OF CLAIM**

vs.

ERIE COUNTY DEPARTMENT OF PARKS,  
RECREATION AND FORESTRY,

Respondents.

\*\*\*\*\*

**PLEASE TAKE NOTICE** that the above-named claimant claims and demands from the Erie County Department of Parks, Recreation and Forestry, State of New York recompense for personal injuries sustained by claimant by reason of the wrongful, unlawful, negligent and careless acts and omissions of respondents, their agents, servants and/or employees, and in support thereof claimant states:

1. The address of the claimant is 8 Knight Street, Silver Creek, New York 14136.
2. The claimant is represented by The Dietrich Law Firm P.C., 1323 North Forest Road, Williamsville, New York 14221 (716) 839-3939.
3. The incident in which personal injuries were sustained by the claimant occurred on or about May 23, 2015 at approximately 5:30 p.m. when Ms. Hobson was occupying pavilion number 13 located at Chestnut Ridge Park

in Orchard Park during a picnic and tripped and fell on the uneven floor in the middle of the pavilion causing permanent and severe injuries to Ms. Hobson.

4. By virtue of the recklessness and/or negligence of the employees, agents and/or servants of the Erie County Department of Parks, Recreation and Forestry, the claimant has incurred medical and hospital expenses, which are to date undetermined, and will incur impairment of health and permanent injuries.

5. Upon information and belief, claimant will be obligated further medical expenses including drugs, medicines and prosthetic devices, the amount of which cannot be reasonably calculated at this time.

**TAKE NOTICE** that claimant demands payment of her claim as set forth above.

Dated: July 31, 2015

**THE DIETRICH LAW FIRM P.C.**

By:



---

**Trevor Barr, Esq.**  
Attorneys for Claimant  
1323 North Forest Road  
Williamsville, New York 14221  
(716) 839-3939

STATE OF NEW YORK : SUPREME COURT  
COUNTY OF ERIE

JACQUELINE HOBSON,

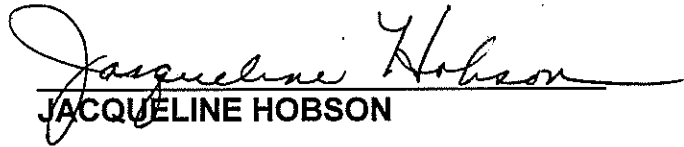
**Plaintiff,**  
**Vs.**

**VERIFICATION**

**ERIE COUNTY DEPARTMENT OF PARKS,  
RECREATION AND FORESTRY,**

**Defendant.**

I, Jacqueline Hobson, being duly sworn, depose and say, that the deponent is the plaintiff in the within action; that the deponent has read the foregoing Notice of Claim and know the contents hereof; that the same is true to the deponent's knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters deponent believes them to be true.

  
JACQUELINE HOBSON

Sworn to before me this 31 day of July 2015.

  
NOTARY PUBLIC

Peggy E. Wagner  
Notary Public-State of New York  
Qualified in Erie County  
My Comm. Expires Feb. 21, 2018  
No. 01WA6141246



The Dietrich Law Firm P.C.  
1323 North Forest Road  
Williamsville, New York 14221

Comm. 18D-6  
Page 5 of 134



# COUNTY OF ERIE

MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

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COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

August 6, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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>PBA v. Erie County Sheriff's Office re<br/>2015-07 - Scientific Reserves - Relay<br/>for Life</i>    |
| Document Received:   | Demand for Arbitration  |
| Name of Claimant:    | Erie County Sheriff's Police Benevolent<br>Association, Inc.  |
| Claimant's attorney: | Paul D. Weiss, Esq.<br>Bartlo, Hettler & Weiss<br>22 Victoria Boulevard<br>Kenmore, New York 14217-2314 |

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.

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
P.O. Box 2074, Empire State Plaza, Agency Building 2, 20th Floor  
Albany, New York 12220-0074  
VOLUNTARY GRIEVANCE ARBITRATION RULES OF PROCEDURE

DEMAND FOR ARBITRATION

**INSTRUCTIONS:** Complete in full, retain one copy and distribute in the following manner: A) **SERVE** one copy upon respondent in the same manner as a summons or by registered or certified mail; return receipt requested. B) File an original and one (1) copy with the Director of Conciliation, NYS PERB, 80 Wolf Road, Albany, New York 12205-2670, along with the \$50.00 filing fee in the form of a check or money order made payable to the **STATE OF NEW YORK**.

DATE: July 31, 2015

PUBLIC EMPLOYER

Name of Public Employer . . . . . The County of Erie and The Sheriff of Erie County  
Name, Title, Address, Telephone  
and Fax Number of the  
Representative to whom PERB  
should direct correspondence. David Palmer, Commissioner, Div. of Labor Relations  
95 Franklin Street, Buffalo, New York 14202  
(716) 858-8476 Fax (716) 858-8061

EMPLOYEE ORGANIZATION

Name of Employee Organization . . . . . Erie County Sheriff's Police Benevolent Association  
Name, Title, Address, Telephone  
and Fax Number of the  
Representative to whom PERB  
should direct correspondence. Paul D. Weiss, Esq.  
22 Victoria Boulevard  
Kenmore, New York 14217

IDENTIFY PETITIONER:

PUBLIC EMPLOYER

EMPLOYEE ORGANIZATION

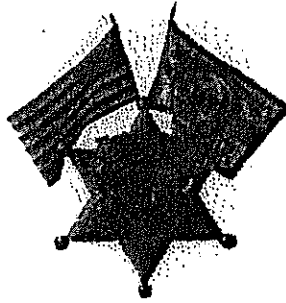
(ATTACH ADDITIONAL SHEETS WHERE NECESSARY)

1. Effective date and expiration date of the agreement:  
2002-2016
2. Identify the provision(s) in the agreement providing for arbitration and attach a copy thereof:  
Article XXI, Grievances and Judicial Review
3. Identify the provision(s) in the agreement claimed to be violated and attach a copy thereof:  
Article XXIV, Section 15 (b) Reserves ;  
and all other applicable articles of the contract
4. Write a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name(s) of the grievant(s)):  
See attached Grievance #2015-07

THE UNDERSIGNED, A PARTY TO THE WRITTEN AGREEMENT WHICH PROVIDES FOR ARBITRATION AS IDENTIFIED ABOVE, HEREBY DEMANDS ARBITRATION. YOU ARE HEREBY NOTIFIED THAT COPIES OF THIS DEMAND FOR ARBITRATION ARE BEING FILED WITH THE DIRECTOR OF CONCILIATION, NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 80 WOLF ROAD, ALBANY, NEW YORK 12205-2670 WITH THE REQUEST THAT HE COMMENCE THE ADMINISTRATION OF THE VOLUNTARY GRIEVANCE ARBITRATION RULES OF PROCEDURE.

AS STATED IN CPLR SECTION 7503(c): "UNLESS THE PARTY SERVED APPLIES TO STAY THE ARBITRATION WITHIN TWENTY DAYS AFTER SUCH SERVICE HE SHALL THEREAFTER BE PRECLUDED FROM OBJECTING THAT A VALID AGREEMENT WAS NOT MADE OR HAS NOT BEEN COMPLIED WITH AND FROM ASSERTING IN COURT THE BAR OF A LIMITATION OF TIME."

July 31, 2015



President - Jason Weiss  
Vice President - Emily Nelson-Gerken

Secretary - James Welch  
Treasurer - John Szczepanski

## **Erie County Sheriff's PBA**

P.O. Box 932  
Orchard Park, New York 14127

**DATE:** 07/02/15

**GRIEVANCE NUMBER:** 2015-07

**GRIEVANTS NAME:** ERIE COUNTY SHERIFF'S PBA INC

**VIOLATION:**

CBA, Article XXIV Section 15 (b), Reserves, any other applicable provision of the CBA, Policies and Established practices of the Erie County Sheriff's Office.

**CIRCUMSTANCES OF DISPUTE:**

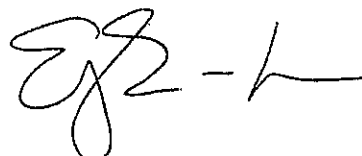
The CBA, Article XXIV, Section 15 (b), provides in pertinent part:

“The use of Reserve Employees shall be limited to the instances where extraordinary demands are placed upon the Sheriff to provide law enforcement personnel for a special event, natural disaster, civil disorder or the like, or on a “limited” basis to meet a seasonal demand for personnel. Whenever Reserve personnel are utilized, it will not be until regular full-time employees working on the respective shift have been canvassed for overtime, and at no time will regular full-time personnel be denied overtime work while at the same time Reserve personnel are called to active duty.”

On June 19<sup>th</sup>, 2015, the Erie County Sheriff's Scientific Reserves did work the Relay for Life. The Scientific Reserve Deputies were utilized by the Sheriff on June 19<sup>th</sup>, 2015 without the consent of the P.B.A. and without first canvassing regular full-time personnel to work at the Relay for Life on June 19<sup>th</sup>, 2015, thereby denying regular, full-time personnel the opportunity to work overtime at the Relay for Life. The aforementioned is in direct violation of CBA, Article XXIV, Section 15 (b).



**REMEDY SOUGHT:** To make whole any PBA member who was denied the opportunity to work overtime at Relay for Life due to the use of the Scientific Reserve Deputies, to immediately refrain from the use of Scientific Reserve Deputies to man the Relay for Life post(s) and/or represent the Sheriff's Department at the Relay for Life until all PBA members have been canvassed for the opportunity to work overtime and to have the Sheriff properly staff the Relay for Life with PBA personnel so as not to artificially create a need for the service of the Scientific Reserve Employees and for such other and further relief as to make the ECS PBA whole.



**Emily Nelson-Gerken  
Vice President  
Erie County Sheriff PBA**



7/6/15

# **Collective Bargaining Agreement**

*By and Between*

**The County of Erie**

*and*

**The Sheriff of Erie County**

*and*

**Erie County Sheriff's  
Police Benevolent Association**

Covering Calendar Years  
**2002-2016**

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| Schedule "D" Salary Schedules 2012, 2013, 2014, 2015 & 2016            |                              |    |
| Health Insurance Schedule  |                              |    |

1 **STATEMENT OF PURPOSE**

2  
3 This Agreement entered into by the County of Erie, New York, and the Sheriff of Erie  
4 County, co-employers, hereinafter referred to as the "Employer" and Erie County Sheriff's  
5 Police Benevolent Association hereinafter referred to as the "Union" has as its purpose the  
6 promotion of harmonious relations between the Employer and the Union; the establishment of  
7 an equitable and peaceful procedure for the resolution of differences and the establishment of  
8 rates of pay, hours of work, and other conditions of employment.

9  
10 **ARTICLE I**

11 **RECOGNITION**

12  
13  
14 The Employer recognizes the Union as the sole and exclusive Bargaining Agent for the  
15 purpose of establishing salaries, wages, hours, and other conditions of employment and the  
16 administration of grievances arising there-under for the term of this Agreement for all Erie  
17 County Sheriff's Office employees in all classifications reflected in Schedule "A" as determined  
18 by the New York State Public Employment Relations Board to be in the bargaining unit.

19  
20 **ARTICLE II**

21 **MANAGEMENT RIGHTS**

22  
23  
24 Except as expressly limited by other provisions of this Agreement, all the authority,  
25 rights and responsibilities possessed by the Employer are retained by it, including, but not  
26 limited to the right to determine the mission, purposes, objectives and policies of the Employer;  
27 to determine the facilities, methods, means and number of personnel for the conduct of  
28 Employer programs; to administer the merit system including the examination, selection,  
29 recruitment, hiring, appraisal, training, retention, promotion, assignment, or transfer of  
30 employees pursuant to law; to direct, deploy and utilize the work force; to establish  
31 specifications for each class of positions and to classify or reclassify, and to allocate or  
32 reallocate new or existing positions in accordance with law; and to discipline or discharge  
33 employees in accordance with law and the provisions of this Agreement.

34  
35 **ARTICLE III**

36 **PLEDGE AGAINST DISCRIMINATION**  
37 **AND COERCION**

38  
39  
40 **SECTION 1.** The provisions of this Agreement shall be applied equally to all employees in the  
41 bargaining unit without discrimination as to age, sex, marital status, race, color, creed, national  
42 origin or political affiliation. The Union shall share equally with the Employer the responsibility  
43 for applying this provision of the Agreement.

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**ARTICLE XX**

**RETIREMENT PLAN AND DEATH BENEFITS**

(a) All eligible Sheriffs Office employees will be covered in the non-contributory and/or contributory pension plan by which they are currently covered.

(b) In addition to the death benefits set forth in the New York State Retirement and Social Security law, all employees shall be provided coverage under the New York State Retirement Plan's guaranteed Minimum Death Benefit Section 360-B, that provides in case of death three (3) times the annual salary to a maximum of \$20,000 and will be permitted to credit unused sick leave to accumulated service on retirement up to a maximum of 165 days in accordance with provisions of 341 (j) Plan.

(c) The Parties agree, during the life of this Agreement, it may be reopened to discuss the Employers' adoption of the enhanced disability retirement benefits available under Article 14-b of the Retirement and Social Security Law.

(d) Effective March 15, 2002, those eligible Sheriffs employees in the Criminal Division shall be included in the twenty-year half-pay retirement plan, with additional 1/60th, provided in Section 552 and 553 under Article 14-B of the Retirement and Social Security Law, including Sheriff's service.

**ARTICLE XXI**

**GRIEVANCES AND JUDICIAL REVIEW**

**SECTION 1. GENERAL**

(a) It is the intent of this Article to promote and provide a mutually satisfactory procedure for the settlement of grievances of employees arising out of the meaning, application or interpretation of the terms of this Agreement.

(b) No provision in this Agreement shall be interpreted to require the Union to represent an employee in any stage of the grievance procedure if the Union considers the grievance to be without merit or in contradiction to any law or regulation.

**SECTION 2. DEFINITIONS**

These definitions shall apply to this section only.

(a) "Employee" shall mean any person employed by the Sheriff of Erie County and described in the bargaining unit in Schedule "A" of this Agreement.

1 (b) "Grievance" shall mean "any disputed matter" pertaining to conditions of  
2 employment, violation or misinterpretation of this Agreement.

3  
4 (c) "Division" shall mean any division of the Sheriffs Office of Erie County having  
5 employees within the bargaining as described in Schedule A.

6 (d) "Immediate Supervisor" shall mean the employee or officer of the next higher level of  
7 authority who normally assigns and supervises the employee's work and approves his time  
8 record or evaluates his work performances. The Sheriff may designate by name the immediate  
9 supervisor in a particular Division if he chooses.

10  
11 (e) "Day" refers to calendar days and not workdays.

12  
13 (f) "Work Day" shall mean all days other than Saturdays, Sundays, and legal holidays.

14  
15 (g) "Division Head" shall mean the person so designated by the Sheriff as the head of  
16 the division as previously defined in subdivision (c) above.

17  
18 **SECTION 3. MATTER RELEVANT TO GRIEVANCE PROCEDURES**

19  
20 (a) The time limits set forth in this Article are of the essence. They may, however, be  
21 extended by mutual written agreement of the parties. The failure of the Union to proceed within  
22 the time limit set forth shall terminate the grievance at that step. The failure of the Employer to  
23 answer within the time limit set forth will entitle the Union to proceed to the next step of the  
24 grievance procedure.

25  
26 (b) Any step of the grievance procedure may be by-passed by mutual agreement, in  
27 writing.

28  
29 (c) In the case of a group policy, or organization type grievance, the grievance may be  
30 submitted directly to the Division Head.

31  
32 **SECTION 4. UNION STEWARDS**

33  
34 Employees selected by the Union to act as Union Representatives shall be known as  
35 "Stewards." The names of employees selected as stewards and the names of other Union  
36 Officers and Representatives who may represent employees shall be certified in writing to the  
37 Employer by the Union.

38  
39 **SECTION 5. PROCESSING GRIEVANCE DURING WORKING HOURS**

40  
41 The Union Stewards as mentioned in Section 4 above and authorized Union Officers  
42 may, for reasonable periods of time, investigate and process grievances during their regular  
43 working hours without loss of pay. Such employees must request permission from their  
44 Division Head prior to leaving their job assignment. If the Division Head is unavailable,

1 permission may be granted by the person next highest in command. Permission to leave job  
2 assignments for the above reasons and purposes shall not be unreasonably withheld.

3  
4 **SECTION 6. LABOR MANAGEMENT COMMITTEE**

5  
6 Conferences between representatives of the Co-employers and at least three (3)  
7 representatives of the Union on important matters that may include the discussion of  
8 procedures for avoiding future grievances and other methods of improving the relationship  
9 between the parties, may be held upon request of either party. Arrangements for such  
10 meetings shall be made in advance, and shall be held at reasonable hours as mutually agreed  
11 upon by the parties. Employees acting on behalf of the Union shall suffer no loss of time or  
12 pay should such meetings fall within their regular work hours.

13  
14 **SECTION 7. RIGHTS OF THE PARTIES**

15  
16 Any party shall have access upon request to any written statements or records that  
17 shall be presented as evidence by the other party at any hearing provided by this Agreement in  
18 advance of said hearing. In the event sufficient time does not exist for any party to review such  
19 evidence, the hearing shall be adjourned to a later date at the request of either party.

20  
21 **SECTION 8. GRIEVANCE PROCEDURE**

22  
23 (a) The grievance procedure shall be:

24  
25 **Step 1.** The Union President or his designee with or without the aggrieved employee  
26 shall hand deliver a grievance in writing on a grievance form provided by the Union, setting  
27 forth the time, place and date of the alleged grievance to the Sheriff or his designee. The  
28 Sheriff or his designee shall issue a receipt stating the date the grievance form was received,  
29 the name of the person delivering the same as well as the grievance number. Facts of the  
30 grievance shall include the particular section of the contract or the Sheriffs Office rules,  
31 regulations and procedures involved and the remedy sought by the employee. The grievance  
32 must be presented within fifteen (15) calendar days of the occurrence of the grievance, or  
33 within fifteen (15) calendar days of the date on which the employee first knew of such act or  
34 omission. The Sheriff or his designee must hold an informal hearing within ten 10 calendar  
35 days from the date the grievance was first presented to the Employer. He shall render a written  
36 decision within five 5 days after the informal hearing. If the grievance is not satisfactorily  
37 resolved at Step 1, the Union may appeal within ten 10 days to Step 2.

38  
39 **Step 2.** Only in the event the grievance has not been satisfactorily resolved in Step 1,  
40 an appeal may be taken by the Union within ten (10) calendar days of the mailing of the Step 1  
41 decision. The Union may appeal the decision to the county Labor Relations Director. The  
42 County Labor Relations Director or his designee and the Sheriff or his designee shall meet with  
43 the Union within ten (10) calendar days of the mailing of such appeal. A formal hearing will be  
44 held and a written decision will be issued within ten (10) calendar days from the date of the



1 hearing.

2  
3 **Step 3.** (a) Only in the event the grievance has not been satisfactorily resolved at Step  
4 2, a request for arbitration may be brought only by the Union, through the President or his  
5 designee, within ten (10) calendar days from the date the Union received the Step 2 decision.  
6 Notice of appeal to arbitration shall be served by registered or certified mail to the Director of  
7 Labor Relations for the County of Erie, with copies to the Sheriff and the County Attorney.  
8

9 (b) Arbitration proceedings for grievances shall be conducted by an arbitrator mutually  
10 selected through the strike out procedure by the PBA and the Sheriff and County from a panel  
11 of arbitrators supplied by the New York State Public Employment Relations Board ("PERB")  
12 pursuant to § 207.7 of the PERB Rules of Procedure.  
13

14 (c) Either party may modify or eliminate this procedure by ten (10) days written notice to  
15 the other party. However, this agreement will continue in full force and effect until it is replaced  
16 by another procedure agreed to by the parties and reduced to writing.  
17

18 (d) The Arbitrator shall hold a hearing as soon as it is practical at a time and place  
19 convenient to the parties. The Arbitrator shall have no power to add to, subtract from or modify  
20 the provisions of this agreement on arriving at a decision of the issue presented. The decision  
21 or award of the Arbitrator shall be final and binding on both parties. All fees and expenses of  
22 the Arbitrator shall be divided equally between the parties except that each party shall bear the  
23 cost of preparing and presenting its own case. Either party wishing a transcript at an arbitration  
24 bearing may provide for one at its expense and shall provide a copy to the Arbitrator and the  
25 other party.  
26

27 (e) Representation: The Employer shall recognize the following grievance  
28 representative at each step of the grievance procedure and shall release such representatives  
29 from normal duties to process grievances providing that such absence from work will not  
30 interfere with proper conduct of governmental functions.  
31

32 Step #1 - Union President or his designee and the Grievant.

33  
34 Step #2 - Union President or his designee and Chief Steward.

35  
36 Step #3 - Union President or his designee, Chief Steward, Chairman of the  
37 Grievance Committee, and the Grievant.  
38  
39  
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1 **SECTION 14. TRAVEL PAY FOR TRAINING**

2  
3 Members required to travel within Erie County for purposes of attending training  
4 sessions will not be reimbursed for their travel time. Members traveling out of Erie County for  
5 the purpose of attending training sessions will be paid for their travel time at straight time in  
6 compensatory time off.

7  
8 **SECTION 15. RESERVES**

9  
10 (a) There does exist, from time to time, a need to utilize Reserve personnel premised  
11 on the specialized service they can provide in augmenting regular personnel in particular  
12 Mounted Reserves, Marine Reserves and K-9 Reserve Units. However, an honest good faith  
13 effort must be made by the Sheriff to properly staff regular units so as not to artificially create a  
14 need for the service of Reserve Employees.

15  
16 (b) The use of Reserve Employees shall be limited to the instances where  
17 extraordinary demands are placed upon the Sheriff to provide law enforcement personnel for a  
18 special event, natural disaster, civil disorder or the like, or on a "limited" basis to meet a  
19 seasonal demand for personnel. Whenever Reserve personnel are utilized, it will not be until  
20 regular full-time employees working on the respective shift have been canvassed for overtime,  
21 and at no time will regular full-time personnel be denied overtime work while at the same time  
22 Reserve personnel are called to active duty.

23  
24 (c) Reserve employees shall wear upon their uniforms a patch indicating their particular  
25 "Reserve Division." The patch shall be conspicuously placed underneath the departmental  
26 patch and be the same color as the departmental patch.

27  
28 (d) Reserve employees shall never wear a star badge, and their personal identification  
29 cards shall indicate Reserve employee.

30  
31 (e) Reserve employees placed on active duty shall wear the Deputy Sheriff uniform with  
32 no rank insignia displayed.

33  
34 (f) Reserve employees' apparel, ball caps, letterhead and the like, required to be  
35 purchased by the Sheriff, shall be conspicuously marked as belonging to or representing a  
36 Reserve employee or Unit.

37  
38 (g) Reserve employees may not purchase or use any business card which makes  
39 reference to being an employee of the Erie County Sheriffs Office.

40  
41 (h) A Reserve employee representing the Erie County Sheriffs Office at any speaking  
42 engagement, conference, seminar, school or the like shall properly identify themselves as a  
43 Reserve employee.

1 (i) The following per diem positions in the Sheriffs Office are exempt from this  
2 Agreement:

| <u>Number of Employees</u> | <u>Department</u> |
|----------------------------|-------------------|
| 1                          | Civil Typist      |
| 2                          | Civil             |
| 2                          | Arson             |
| 1                          | I.D. Cards        |
| 7                          | Ridge             |

10  
11 (j) This section shall not limit the Union's right to bring a grievance over the  
12 utilization of Reserve Employees in lieu of regular full-time employees.

13  
14 (k) The Parties agree, during the life of this Agreement, it may be reopened to  
15 discuss this Section.

16  
17 **SECTION 16. VEHICLES**

18  
19 The assignment and/or removal of vehicles rests within the sole discretion of the  
20 Sheriff or his designee. Said vehicles shall be properly marked, have at least the  
21 following equipment in working order: emergency lights, siren, spot light, radios, air  
22 conditioning and heat.

23  
24 **SECTION 17. MOUNTED RESERVES**

25  
26 The Sheriff will not utilize Mounted Reserves to perform patrol duties but may perform  
27 other assignments limited to Stadium Detail, Convention Center events, at municipal parks in  
28 the Erie County Parks System, including Riverwalk, and parades for appearances but not  
29 patrol or crowd control. Other special events subject to prior mutual agreement. Any Mounted  
30 Reserve members shall immediately notify ECS Sheriffs Deputies (Road Patrol) in the event of  
31 any incidents requiring law enforcement.

32  
33 **SECTION 18. SNOWMOBILE/ATV UNIT**

34  
35 (a) The Sheriff shall staff the Snowmobile/ATV Unit with no less than two (2) PBA  
36 members ("minimum staffing requirements") who will be assigned to the Sheriffs  
37 Snowmobile/ATV Unit ("PBA Snowmobile/ATV Unit Members") for the Snowmobile Season  
38 ("Season"), which generally starts December 15<sup>th</sup> and runs through March 15<sup>th</sup>.

39  
40 (b) During the Season, except in declared emergencies or unusual staffing demands  
41 (e.g. stadium details) and when snowmobiles are operational and conditions allow, the Sheriff  
42 shall maintain two snowmobiles for daily snowmobile patrol.

43  
44 (c) PBA Snowmobile/ATV Unit Members will be canvassed according to the Collective

1 Agreement.

2  
3 **SECTION 9. CHANGES IN MEDICAL COVERAGE BY PROVIDERS**

4  
5 In the event that any or all the providers of health care benefit insurance modify or  
6 change the levels or coverage for drug treatment related medical activities during the life of any  
7 collective bargaining agreement, the employees covered under the provisions of this drug  
8 testing policy shall have the option to select any other health care insurance plan offered by  
9 the Employer without limitation to open enrollment periods.

10  
11 **ARTICLE XXX**

12  
13 **STATUTORY PROVISIONS**

14  
15 It is understood by and between the parties that any provision of this Agreement  
16 requiring legislative action to permit its implementation by amendment of law or by providing  
17 the additional funds therefore, shall not become effective until the appropriate legislative body  
18 has given approval.

19  
20 **ARTICLE XXXI**

21  
22 **TERMINATION AND MODIFICATION**

23  
24 (a) This Agreement shall be effective as of January 1, 2002 and shall remain in full force  
25 and effect until the 31st day of December 2016. It shall be automatically renewed from year to  
26 year thereafter unless either party shall notify the other in writing one hundred eighty (180)  
27 days prior to the termination date that it desires to modify this Agreement. In the event that  
28 such a notice is given, negotiations shall begin not later than one hundred fifty (150) days prior  
29 to the termination date. This Agreement shall remain in full force and be effective during the  
30 period of negotiations and until notice of termination of this Agreement is provided to the other  
31 party in the manner set forth in the following paragraph.

32  
33 (b) In the event that either party desires to terminate this Agreement, written notice must  
34 be given to the other party not less than ten (10) days prior to the desired termination date  
35 which shall not be before the anniversary date set forth in the preceding paragraph.

36  
37 **ARTICLE XXXII**

38  
39 **TOTAL AGREEMENT**

40  
41 Notwithstanding any Personnel Rules and Regulations, Local Laws or resolutions, the  
42 foregoing constitutes the entire Agreement between the parties and shall supersede any and  
43 all personnel rules, regulations, Local Laws or resolutions and no verbal statements or other  
44 amendments, except an amendment mutually agreed upon between the parties and in writing

1 annexed hereto designated as an amendment to this Agreement, shall supersede or vary the  
2 provisions herein.

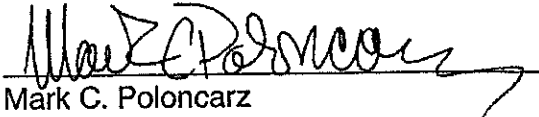
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2 IN WITNESS WHEREOF, the parties hereto have set their hand this 14<sup>th</sup> day of  
3 July, 2015.  
4

5  
6 ERIE COUNTY SHERIFF'S  
7 POLICE BENEVOLENT ASSOCIATION

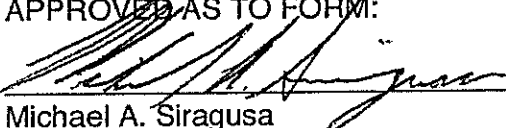
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9   
10 Jason Weiss  
11 President, Erie County Sheriff's PBA  
12

COUNTY OF ERIE

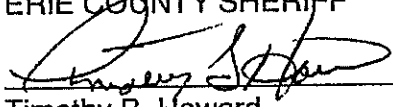
13  
14   
15 Mark C. Poloncarz  
16 Erie County Executive

17  
18   
19 David A. Palmer  
20 Commissioner of Personnel

21 APPROVED AS TO FORM:

22   
23 Michael A. Siragusa  
24 Erie County Attorney  
25

ERIE COUNTY SHERIFF

26  
27   
28 Timothy B. Howard  
29 Erie County Sheriff  
30  
31  
32  
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44



# 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

August 6, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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>PBA v. Erie County Sheriff's Office</i>  |
| Document Received:   | Demand for Arbitration  |
| Name of Grievant:    | Erie County Sheriff's Police Benevolent Association, Inc.   |
| Grievant's Attorney: | Paul D. Weiss, Esq.<br>Bartlo, Hettler & Weiss<br>22 Victoria Boulevard<br>Kenmore, New York 14217-2314 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP/dld  
Enc.

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
P.O. Box 2074, Empire State Plaza, Agency Building 2, 20th Floor  
Albany, New York 12220-0074  
VOLUNTARY GRIEVANCE ARBITRATION RULES OF PROCEDURE

DEMAND FOR ARBITRATION

**INSTRUCTIONS:** Complete in full, retain one copy and distribute in the following manner: A) **SERVE** one copy upon respondent in the same manner as a summons or by registered or certified mail; return receipt requested. B) File an original and one (1) copy with the Director of Conciliation, NYS PERB, 80 Wolf Road, Albany, New York 12205-2670, along with the \$50.00 filing fee in the form of a check or money order made payable to the **STATE OF NEW YORK**.

DATE: July 31, 2015

PUBLIC EMPLOYER

Name of Public Employer . . . . . The County of Erie and The Sheriff of Erie County

Name, Title, Address, Telephone  
and Fax Number of the  
Representative to whom PERB  
should direct correspondence. David Palmer, Commissioner, Div. of Labor Relations  
95 Franklin Street, Buffalo, New York 14202  
(716) 858-8476 Fax (716) 858-8061

EMPLOYEE ORGANIZATION

Name of Employee Organization . . . . . Erie County Sheriff's Police Benevolent Association

Name, Title, Address, Telephone  
and Fax Number of the  
Representative to whom PERB  
should direct correspondence. Paul D. Weiss, Esq.  
22 Victoria Boulevard  
Kenmore, New York 14217

IDENTIFY PETITIONER:

PUBLIC EMPLOYER

EMPLOYEE ORGANIZATION

(ATTACH ADDITIONAL SHEETS WHERE NECESSARY)

1. Effective date and expiration date of the agreement:  
2002-2016
2. Identify the provision(s) in the agreement providing for arbitration and attach a copy thereof:  
Article XXI, Grievances and Judicial Review
3. Identify the provision(s) in the agreement claimed to be violated and attach a copy thereof:  
Article XXIV, Section 17 Mounted Reserves ;  
and all other applicable articles of the contract
4. Write a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name(s) of the grievant(s)):  
See attached Grievance #2015-08 and Grievance #2015-12

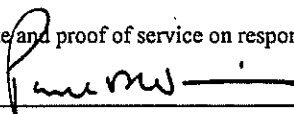
THE UNDERSIGNED, A PARTY TO THE WRITTEN AGREEMENT WHICH PROVIDES FOR ARBITRATION AS IDENTIFIED ABOVE, HEREBY DEMANDS ARBITRATION. YOU ARE HEREBY NOTIFIED THAT COPIES OF THIS DEMAND FOR ARBITRATION ARE BEING FILED WITH THE DIRECTOR OF CONCILIATION, NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 80 WOLF ROAD, ALBANY, NEW YORK 12205-2670 WITH THE REQUEST THAT HE COMMENCE THE ADMINISTRATION OF THE VOLUNTARY GRIEVANCE ARBITRATION RULES OF PROCEDURE.

AS STATED IN CPLR SECTION 7503(c): "UNLESS THE PARTY SERVED APPLIES TO STAY THE ARBITRATION WITHIN TWENTY DAYS AFTER SUCH SERVICE HE SHALL THEREAFTER BE PRECLUDED FROM OBJECTING THAT A VALID AGREEMENT WAS NOT MADE OR HAS NOT BEEN COMPLIED WITH AND FROM ASSERTING IN COURT THE BAR OF A LIMITATION OF TIME."

July 31, 2015

Via Certified Mail Return Receipt Requested, 7013 1090 0000 0047 2336, 7013

Date and proof of service on respondent 1090 0000 0047 2343, 7013 1090 0000 0047 2350

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney  
Title

July 31, 2015  
\_\_\_\_\_  
Date





President - Jason Weiss  
Vice President - Emily Nelson-Gerken

Secretary - James Welch  
Treasurer - John Szczepanski

## **Erie County Sheriff's PBA**

P.O. Box 932  
Orchard Park, New York 14127

**DATE:** 07/06/15

**GRIEVANCE NUMBER:** 2015-08

**GRIEVANT'S NAME:** ERIE COUNTY SHERIFF'S PBA INC

**VIOLATION:**

CBA, Article XXIV Section 17, Mounted Reserves, any other applicable provision of the CBA, Policies and Established practices of the Erie County Sheriff's Office.

**CIRCUMSTANCES OF DISPUTE:**

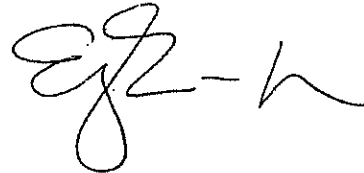
The CBA, Article XXIV, Section 17, provides in pertinent part:

"The Sheriff will not utilize Mounted Reserves to perform patrol duties but may perform other assignments limited to Stadium Detail, Convention Center events, at municipal parks in the Erie County Parks System, including Riverwalk, and parades for appearances but not patrol or crowd control. Other special events subject to prior mutual agreement. Any Mounted Reserve members shall immediately notify ECS Sheriff's Deputies (Road Patrol) in the event of any incidents requiring law enforcement."

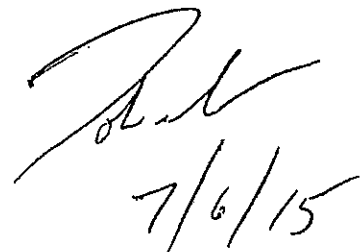
On June 19<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 26<sup>th</sup> and July 2<sup>nd</sup> and 5<sup>th</sup>, 2015, the Erie County Sheriff's Mounted Reserves did work the Chestnut Ridge Eternal Flame Patrol Detail (See CLs 15-04140, 15-041570, 042481, 063357, 044688 and 045507, respectively). The Sheriff or his designee and the County did not submit a request to the Erie County Sheriff's Police Benevolent Association requesting permission to utilize the Mounted Reserve Deputies to man a post and/or patrol while representing the Sheriff's Department at the Chestnut Ridge Eternal Flame Patrol Detail on June 19<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 26<sup>th</sup> and/or July 2<sup>nd</sup> and 5<sup>th</sup>, 2015. The Mounted Reserve Deputies were utilized by

the Sheriff on June 19<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 26<sup>th</sup>, and July 2<sup>nd</sup> and 5<sup>th</sup>, 2015 without the consent of the P.B.A. and without first canvassing regular full-time personnel to work at the Chestnut Ridge Eternal Flame Patrol Detail on June 19<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 26<sup>th</sup> and July 2<sup>nd</sup> and 5<sup>th</sup>, 2015, thereby denying regular, full-time personnel the opportunity to work overtime at the Chestnut Ridge Eternal Flame Patrol Detail. The aforementioned is in direct violation of CBA, Article XXIV, Section 17.

**REMEDY SOUGHT:** To make whole any PBA member who was denied the opportunity to work overtime at the Chestnut Ridge Eternal Flame Patrol Detail due to the use of the Mounted Reserve Deputies, to immediately refrain from the use of Mounted Reserve Deputies to man the Chestnut Ridge Eternal Flame Patrol Detail and/or represent the Sheriff's Department at the Chestnut Ridge Eternal Flame Patrol Detail until all PBA members have been canvassed for the opportunity to work overtime and to have the Sheriff properly staff the Chestnut Ridge Eternal Flame Patrol Detail with PBA personnel so as not to artificially create a need for the service of the Mounted Reserve Employees and for such other and further relief as to make the ECS PBA whole.



**Emily Nelson-Gerken  
Vice President  
Erie County Sheriff PBA**



ADAMANTY



RECEIVED  
ERIE COUNTY SHERIFF  
ADMINISTRATIVE OFFICE  
2015 JUL 20 PM 2:02

A handwritten signature in black ink, appearing to be 'J. Welch'.

President - Jason Weiss  
Vice President - Emily Nelson-Gerken

Secretary - James Welch  
Treasurer - John Szczepanski

## **Erie County Sheriff's PBA**

P.O. Box 932  
Orchard Park, New York 14127

**DATE:** 07/10/15

**GRIEVANCE NUMBER:** 2015-12

**GRIEVANTS NAME:** ERIE COUNTY SHERIFF'S PBA INC

**VIOLATION:**

CBA, Article XXIV Section 17, Mounted Reserves, any other applicable provision of the CBA, Policies and Established practices of the Erie County Sheriff's Office.

**CIRCUMSTANCES OF DISPUTE:**

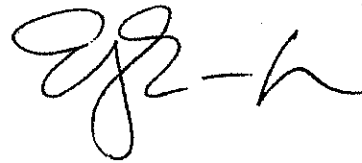
The CBA, Article XXIV, Section 17, provides in pertinent part:

“The Sheriff will not utilize Mounted Reserves to perform patrol duties but may perform other assignments limited to Stadium Detail, Convention Center events, at municipal parks in the Erie County Parks System, including Riverwalk, and parades for appearances but not patrol or crowd control. Other special events subject to prior mutual agreement. Any Mounted Reserve members shall immediately notify ECS Sheriff's Deputies (Road Patrol) in the event of any incidents requiring law enforcement.”

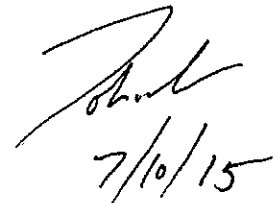
On July 8th and 9th, 2015, the Erie County Sheriff's Mounted Reserves did work the Chestnut Ridge Eternal Flame Patrol Detail (See CLs 15-046314 and 046471, respectively). The Sheriff or his designee and the County did not submit a request to the Erie County Sheriff's Police Benevolent Association requesting permission to utilize the Mounted Reserve Deputies to man a

post for the Sheriff's Department at the Chestnut Ridge Eternal Flame Patrol Detail on July 8th and 9th, 2015. The Mounted Reserve Deputies were utilized by the Sheriff on July 8th and 9th, 2015 without the consent of the P.B.A. and without first canvassing regular full-time personnel to work at the Chestnut Ridge Eternal Flame Patrol Detail on July 8th and 9th, 2015, thereby denying regular, full-time personnel the opportunity to work overtime at the Chestnut Ridge Eternal Flame Patrol Detail. The aforementioned is in direct violation of CBA, Article XXIV, Section 17.

**REMEDY SOUGHT:** To make whole any PBA member who was denied the opportunity to work overtime at the Chestnut Ridge Eternal Flame Patrol Detail due to the use of the Mounted Reserve Deputies, to immediately refrain from the use of Mounted Reserve Deputies to man the Chestnut Ridge Eternal Flame Patrol Detail and/or represent the Sheriff's Department at the Chestnut Ridge Eternal Flame Patrol Detail until all PBA members have been canvassed for the opportunity to work overtime and to have the Sheriff properly staff the Chestnut Ridge Eternal Flame Patrol Detail with PBA personnel so as not to artificially create a need for the service of the Mounted Reserve Employees and for such other and further relief as to make the ECS PBA whole.



**Emily Nelson-Gerken**  
**Vice President**  
**Erie County Sheriff PBA**



7/10/15

# **Collective Bargaining Agreement**

*By and Between*

**The County of Erie**

*and*

**The Sheriff of Erie County**

*and*

**Erie County Sheriff's  
Police Benevolent Association**

Covering Calendar Years  
**2002-2016**

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| Health Insurance Schedule  |                              |    |

1 **STATEMENT OF PURPOSE**

2  
3 This Agreement entered into by the County of Erie, New York, and the Sheriff of Erie  
4 County, co-employers, hereinafter referred to as the "Employer" and Erie County Sheriff's  
5 Police Benevolent Association hereinafter referred to as the "Union" has as its purpose the  
6 promotion of harmonious relations between the Employer and the Union; the establishment of  
7 an equitable and peaceful procedure for the resolution of differences and the establishment of  
8 rates of pay, hours of work, and other conditions of employment.  
9

10 **ARTICLE I**

11 **RECOGNITION**

12  
13  
14 The Employer recognizes the Union as the sole and exclusive Bargaining Agent for the  
15 purpose of establishing salaries, wages, hours, and other conditions of employment and the  
16 administration of grievances arising there-under for the term of this Agreement for all Erie  
17 County Sheriff's Office employees in all classifications reflected in Schedule "A" as determined  
18 by the New York State Public Employment Relations Board to be in the bargaining unit.  
19

20 **ARTICLE II**

21 **MANAGEMENT RIGHTS**

22  
23  
24 Except as expressly limited by other provisions of this Agreement, all the authority,  
25 rights and responsibilities possessed by the Employer are retained by it, including, but not  
26 limited to the right to determine the mission, purposes, objectives and policies of the Employer;  
27 to determine the facilities, methods, means and number of personnel for the conduct of  
28 Employer programs; to administer the merit system including the examination, selection,  
29 recruitment, hiring, appraisal, training, retention, promotion, assignment, or transfer of  
30 employees pursuant to law; to direct, deploy and utilize the work force; to establish  
31 specifications for each class of positions and to classify or reclassify, and to allocate or  
32 reallocate new or existing positions in accordance with law; and to discipline or discharge  
33 employees in accordance with law and the provisions of this Agreement.  
34

35 **ARTICLE III**

36 **PLEDGE AGAINST DISCRIMINATION**  
37 **AND COERCION**

38  
39  
40 **SECTION 1.** The provisions of this Agreement shall be applied equally to all employees in the  
41 bargaining unit without discrimination as to age, sex, marital status, race, color, creed, national  
42 origin or political affiliation. The Union shall share equally with the Employer the responsibility  
43 for applying this provision of the Agreement.  
44



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**ARTICLE XX**

**RETIREMENT PLAN AND DEATH BENEFITS**

(a) All eligible Sheriffs Office employees will be covered in the non-contributory and/or contributory pension plan by which they are currently covered.

(b) In addition to the death benefits set forth in the New York State Retirement and Social Security law, all employees shall be provided coverage under the New York State Retirement Plan's guaranteed Minimum Death Benefit Section 360-B, that provides in case of death three (3) times the annual salary to a maximum of \$20,000 and will be permitted to credit unused sick leave to accumulated service on retirement up to a maximum of 165 days in accordance with provisions of 341 (j) Plan.

(c) The Parties agree, during the life of this Agreement, it may be reopened to discuss the Employers' adoption of the enhanced disability retirement benefits available under Article 14-b of the Retirement and Social Security Law.

(d) Effective March 15, 2002, those eligible Sheriffs employees in the Criminal Division shall be included in the twenty-year half-pay retirement plan, with additional 1/60th, provided in Section 552 and 553 under Article 14-B of the Retirement and Social Security Law, including Sheriff's service.

**ARTICLE XXI**

**GRIEVANCES AND JUDICIAL REVIEW**

**SECTION 1. GENERAL**

(a) It is the intent of this Article to promote and provide a mutually satisfactory procedure for the settlement of grievances of employees arising out of the meaning, application or interpretation of the terms of this Agreement.

(b) No provision in this Agreement shall be interpreted to require the Union to represent an employee in any stage of the grievance procedure if the Union considers the grievance to be without merit or in contradiction to any law or regulation.

**SECTION 2. DEFINITIONS**

These definitions shall apply to this section only.

(a) "Employee" shall mean any person employed by the Sheriff of Erie County and described in the bargaining unit in Schedule "A" of this Agreement.

1 (b) "Grievance" shall mean "any disputed matter" pertaining to conditions of  
2 employment, violation or misinterpretation of this Agreement.

3  
4 (c) "Division" shall mean any division of the Sheriffs Office of Erie County having  
5 employees within the bargaining as described in Schedule A.

6 (d) "Immediate Supervisor" shall mean the employee or officer of the next higher level of  
7 authority who normally assigns and supervises the employee's work and approves his time  
8 record or evaluates his work performances. The Sheriff may designate by name the immediate  
9 supervisor in a particular Division if he chooses.

10  
11 (e) "Day" refers to calendar days and not workdays.

12  
13 (f) "Work Day" shall mean all days other than Saturdays, Sundays, and legal holidays.

14  
15 (g) "Division Head" shall mean the person so designated by the Sheriff as the head of  
16 the division as previously defined in subdivision (c) above.

17  
18 **SECTION 3. MATTER RELEVANT TO GRIEVANCE PROCEDURES**

19  
20 (a) The time limits set forth in this Article are of the essence. They may, however, be  
21 extended by mutual written agreement of the parties. The failure of the Union to proceed within  
22 the time limit set forth shall terminate the grievance at that step. The failure of the Employer to  
23 answer within the time limit set forth will entitle the Union to proceed to the next step of the  
24 grievance procedure.

25  
26 (b) Any step of the grievance procedure may be by-passed by mutual agreement, in  
27 writing.

28  
29 (c) In the case of a group policy, or organization type grievance, the grievance may be  
30 submitted directly to the Division Head.

31  
32 **SECTION 4. UNION STEWARDS**

33  
34 Employees selected by the Union to act as Union Representatives shall be known as  
35 "Stewards." The names of employees selected as stewards and the names of other Union  
36 Officers and Representatives who may represent employees shall be certified in writing to the  
37 Employer by the Union.

38  
39 **SECTION 5. PROCESSING GRIEVANCE DURING WORKING HOURS**

40  
41 The Union Stewards as mentioned in Section 4 above and authorized Union Officers  
42 may, for reasonable periods of time, investigate and process grievances during their regular  
43 working hours without loss of pay. Such employees must request permission from their  
44 Division Head prior to leaving their job assignment. If the Division Head is unavailable,

1 permission may be granted by the person next highest in command. Permission to leave job  
2 assignments for the above reasons and purposes shall not be unreasonably withheld.

### 3 4 **SECTION 6. LABOR MANAGEMENT COMMITTEE**

5  
6 Conferences between representatives of the Co-employers and at least three (3)  
7 representatives of the Union on important matters that may include the discussion of  
8 procedures for avoiding future grievances and other methods of improving the relationship  
9 between the parties, may be held upon request of either party. Arrangements for such  
10 meetings shall be made in advance, and shall be held at reasonable hours as mutually agreed  
11 upon by the parties. Employees acting on behalf of the Union shall suffer no loss of time or  
12 pay should such meetings fall within their regular work hours.

### 13 14 **SECTION 7. RIGHTS OF THE PARTIES**

15  
16 Any party shall have access upon request to any written statements or records that  
17 shall be presented as evidence by the other party at any hearing provided by this Agreement in  
18 advance of said hearing. In the event sufficient time does not exist for any party to review such  
19 evidence, the hearing shall be adjourned to a later date at the request of either party.

### 20 21 **SECTION 8. GRIEVANCE PROCEDURE**

22  
23 (a) The grievance procedure shall be:

24  
25 **Step 1.** The Union President or his designee with or without the aggrieved employee  
26 shall hand deliver a grievance in writing on a grievance form provided by the Union, setting  
27 forth the time, place and date of the alleged grievance to the Sheriff or his designee. The  
28 Sheriff or his designee shall issue a receipt stating the date the grievance form was received,  
29 the name of the person delivering the same as well as the grievance number. Facts of the  
30 grievance shall include the particular section of the contract or the Sheriffs Office rules,  
31 regulations and procedures involved and the remedy sought by the employee. The grievance  
32 must be presented within fifteen (15) calendar days of the occurrence of the grievance, or  
33 within fifteen (15) calendar days of the date on which the employee first knew of such act or  
34 omission. The Sheriff or his designee must hold an informal hearing within ten 10 calendar  
35 days from the date the grievance was first presented to the Employer. He shall render a written  
36 decision within five 5 days after the informal hearing. If the grievance is not satisfactorily  
37 resolved at Step 1, the Union may appeal within ten 10 days to Step 2.

38  
39 **Step 2.** Only in the event the grievance has not been satisfactorily resolved in Step 1,  
40 an appeal may be taken by the Union within ten (10) calendar days of the mailing of the Step 1  
41 decision. The Union may appeal the decision to the county Labor Relations Director. The  
42 County Labor Relations Director or his designee and the Sheriff or his designee shall meet with  
43 the Union within ten (10) calendar days of the mailing of such appeal. A formal hearing will be  
44 held and a written decision will be issued within ten (10) calendar days from the date of the

1 hearing.

2  
3 **Step 3.** (a) Only in the event the grievance has not been satisfactorily resolved at Step  
4 2, a request for arbitration may be brought only by the Union, through the President or his  
5 designee, within ten (10) calendar days from the date the Union received the Step 2 decision.  
6 Notice of appeal to arbitration shall be served by registered or certified mail to the Director of  
7 Labor Relations for the County of Erie, with copies to the Sheriff and the County Attorney.

8  
9 (b) Arbitration proceedings for grievances shall be conducted by an arbitrator mutually  
10 selected through the strike out procedure by the PBA and the Sheriff and County from a panel  
11 of arbitrators supplied by the New York State Public Employment Relations Board ("PERB")  
12 pursuant to § 207.7 of the PERB Rules of Procedure.

13  
14 (c) Either party may modify or eliminate this procedure by ten (10) days written notice to  
15 the other party. However, this agreement will continue in full force and effect until it is replaced  
16 by another procedure agreed to by the parties and reduced to writing.

17  
18 (d) The Arbitrator shall hold a hearing as soon as it is practical at a time and place  
19 convenient to the parties. The Arbitrator shall have no power to add to, subtract from or modify  
20 the provisions of this agreement on arriving at a decision of the issue presented. The decision  
21 or award of the Arbitrator shall be final and binding on both parties. All fees and expenses of  
22 the Arbitrator shall be divided equally between the parties except that each party shall bear the  
23 cost of preparing and presenting its own case. Either party wishing a transcript at an arbitration  
24 bearing may provide for one at its expense and shall provide a copy to the Arbitrator and the  
25 other party.

26  
27 (e) Representation: The Employer shall recognize the following grievance  
28 representative at each step of the grievance procedure and shall release such representatives  
29 from normal duties to process grievances providing that such absence from work will not  
30 interfere with proper conduct of governmental functions.

31  
32 Step #1 - Union President or his designee and the Grievant.

33  
34 Step #2 - Union President or his designee and Chief Steward.

35  
36 Step #3 - Union President or his designee, Chief Steward, Chairman of the  
37 Grievance Committee, and the Grievant.

1 **SECTION 14. TRAVEL PAY FOR TRAINING**

2  
3 Members required to travel within Erie County for purposes of attending training  
4 sessions will not be reimbursed for their travel time. Members traveling out of Erie County for  
5 the purpose of attending training sessions will be paid for their travel time at straight time in  
6 compensatory time off.  
7

8 **SECTION 15. RESERVES**

9  
10 (a) There does exist, from time to time, a need to utilize Reserve personnel premised  
11 on the specialized service they can provide in augmenting regular personnel in particular  
12 Mounted Reserves, Marine Reserves and K-9 Reserve Units. However, an honest good faith  
13 effort must be made by the Sheriff to properly staff regular units so as not to artificially create a  
14 need for the service of Reserve Employees.  
15

16 (b) The use of Reserve Employees shall be limited to the instances where  
17 extraordinary demands are placed upon the Sheriff to provide law enforcement personnel for a  
18 special event, natural disaster, civil disorder or the like, or on a "limited" basis to meet a  
19 seasonal demand for personnel. Whenever Reserve personnel are utilized, it will not be until  
20 regular full-time employees working on the respective shift have been canvassed for overtime,  
21 and at no time will regular full-time personnel be denied overtime work while at the same time  
22 Reserve personnel are called to active duty.  
23

24 (c) Reserve employees shall wear upon their uniforms a patch indicating their particular  
25 "Reserve Division." The patch shall be conspicuously placed underneath the departmental  
26 patch and be the same color as the departmental patch.  
27

28 (d) Reserve employees shall never wear a star badge, and their personal identification  
29 cards shall indicate Reserve employee.  
30

31 (e) Reserve employees placed on active duty shall wear the Deputy Sheriff uniform with  
32 no rank insignia displayed.  
33

34 (f) Reserve employees' apparel, ball caps, letterhead and the like, required to be  
35 purchased by the Sheriff, shall be conspicuously marked as belonging to or representing a  
36 Reserve employee or Unit.  
37

38 (g) Reserve employees may not purchase or use any business card which makes  
39 reference to being an employee of the Erie County Sheriffs Office.  
40

41 (h) A Reserve employee representing the Erie County Sheriffs Office at any speaking  
42 engagement, conference, seminar, school or the like shall properly identify themselves as a  
43 Reserve employee.  
44

1 (i) The following per diem positions in the Sheriffs Office are exempt from this  
2 Agreement:

| <u>Number of Employees</u> | <u>Department</u> |
|----------------------------|-------------------|
| 1                          | Civil Typist      |
| 2                          | Civil             |
| 2                          | Arson             |
| 1                          | I.D. Cards        |
| 7                          | Ridge             |

10  
11 (j) This section shall not limit the Union's right to bring a grievance over the  
12 utilization of Reserve Employees in lieu of regular full-time employees.

13  
14 (k) The Parties agree, during the life of this Agreement, it may be reopened to  
15 discuss this Section.

16  
17 **SECTION 16. VEHICLES**

18  
19 The assignment and/or removal of vehicles rests within the sole discretion of the  
20 Sheriff or his designee. Said vehicles shall be properly marked, have at least the  
21 following equipment in working order: emergency lights, siren, spot light, radios, air  
22 conditioning and heat.

23  
24 **SECTION 17. MOUNTED RESERVES**

25  
26 The Sheriff will not utilize Mounted Reserves to perform patrol duties but may perform  
27 other assignments limited to Stadium Detail, Convention Center events, at municipal parks in  
28 the Erie County Parks System, including Riverwalk, and parades for appearances but not  
29 patrol or crowd control. Other special events subject to prior mutual agreement. Any Mounted  
30 Reserve members shall immediately notify ECS Sheriffs Deputies (Road Patrol) in the event of  
31 any incidents requiring law enforcement.

32  
33 **SECTION 18. SNOWMOBILE/ATV UNIT**

34  
35 (a) The Sheriff shall staff the Snowmobile/ATV Unit with no less than two (2) PBA  
36 members ("minimum staffing requirements") who will be assigned to the Sheriffs  
37 Snowmobile/ATV Unit ("PBA Snowmobile/ATV Unit Members") for the Snowmobile Season  
38 ("Season"), which generally starts December 15<sup>th</sup> and runs through March 15<sup>th</sup>.

39  
40 (b) During the Season, except in declared emergencies or unusual staffing demands  
41 (e.g. stadium details) and when snowmobiles are operational and conditions allow, the Sheriff  
42 shall maintain two snowmobiles for daily snowmobile patrol.

43  
44 (c) PBA Snowmobile/ATV Unit Members will be canvassed according to the Collective

1 Agreement.

2  
3 **SECTION 9. CHANGES IN MEDICAL COVERAGE BY PROVIDERS**

4  
5 In the event that any or all the providers of health care benefit insurance modify or  
6 change the levels or coverage for drug treatment related medical activities during the life of any  
7 collective bargaining agreement, the employees covered under the provisions of this drug  
8 testing policy shall have the option to select any other health care insurance plan offered by  
9 the Employer without limitation to open enrollment periods.

10  
11 **ARTICLE XXX**

12  
13 **STATUTORY PROVISIONS**

14  
15 It is understood by and between the parties that any provision of this Agreement  
16 requiring legislative action to permit its implementation by amendment of law or by providing  
17 the additional funds therefore, shall not become effective until the appropriate legislative body  
18 has given approval.

19  
20 **ARTICLE XXXI**

21  
22 **TERMINATION AND MODIFICATION**

23  
24 (a) This Agreement shall be effective as of January 1, 2002 and shall remain in full force  
25 and effect until the 31st day of December 2016. It shall be automatically renewed from year to  
26 year thereafter unless either party shall notify the other in writing one hundred eighty (180)  
27 days prior to the termination date that it desires to modify this Agreement. In the event that  
28 such a notice is given, negotiations shall begin not later than one hundred fifty (150) days prior  
29 to the termination date. This Agreement shall remain in full force and be effective during the  
30 period of negotiations and until notice of termination of this Agreement is provided to the other  
31 party in the manner set forth in the following paragraph.

32  
33 (b) In the event that either party desires to terminate this Agreement, written notice must  
34 be given to the other party not less than ten (10) days prior to the desired termination date  
35 which shall not be before the anniversary date set forth in the preceding paragraph.

36  
37 **ARTICLE XXXII**

38  
39 **TOTAL AGREEMENT**


40  
41 Notwithstanding any Personnel Rules and Regulations, Local Laws or resolutions, the  
42 foregoing constitutes the entire Agreement between the parties and shall supersede any and  
43 all personnel rules, regulations, Local Laws or resolutions and no verbal statements or other  
44 amendments, except an amendment mutually agreed upon between the parties and in writing

1 annexed hereto designated as an amendment to this Agreement, shall supersede or vary the  
2 provisions herein.  
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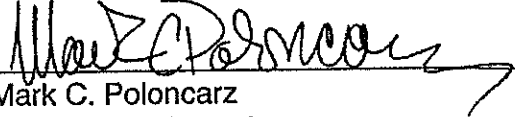



1  
2 IN WITNESS WHEREOF, the parties hereto have set their hand this 14<sup>th</sup> day of  
3 July, 2015.  
4

5  
6 ERIE COUNTY SHERIFF'S  
7 POLICE BENEVOLENT ASSOCIATION

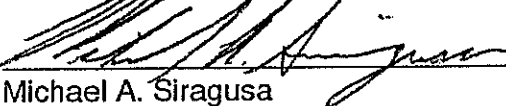
8  
9   
10 \_\_\_\_\_  
11 Jason Weiss  
12 President, Erie County Sheriff's PBA  
13

COUNTY OF ERIE


  
14 \_\_\_\_\_  
15 Mark C. Poloncarz  
16 Erie County Executive

  
17 \_\_\_\_\_  
18 David A. Palmer  
19 Commissioner of Personnel

20 APPROVED AS TO FORM:

21   
22 \_\_\_\_\_  
23 Michael A. Siragusa  
24 Erie County Attorney

ERIE COUNTY SHERIFF

  
25 \_\_\_\_\_  
26 Timothy B. Howard  
27 Erie County Sheriff



# 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

August 17, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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>Chomyn, Bohdan S., in re, v. Judge<br/>Boller, Christopher Jacobs, and<br/>Willmer Fowler, Pistol Permit<br/>Supervisor</i> |
| Document Received:     | Verified Petition  |
| Name of Petitioner:    | Bohdan S. Chomyn<br>629 Linwood Avenue<br>Buffalo, New York 14209  |
| Petitioner's Attorney: | James Ostrowski, Esq.<br>63 Newport Avenue<br>Buffalo, New York 14216  |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 18D-6  
Page 42 of 134

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

This paper received at  
Erie County Clerk's Office  
on the 8 day of Aug 2015  
at a.m. 3:48 p.m.  
by Cheryl Campbell  
Deputy Clerk

In the Matter of the Application of

BOHDAN S. CHOMYN,

*Petitioner,*

NOTICE OF PETITION

-against-

M. BOLLER BOLLER, an Acting Supreme  
Court Justice in his capacity as licensing officer for pistol permits in Erie County,  
CHRISTOPHER L. JACOBS, as Erie County Clerk, and  
WILLMER FOWLER, JR., in his capacity as Pistol Permit  
Supervisor, Erie County Clerk's Office.

*Respondents.*

2015 AUG - 7 PM 4: 25  
APPELLATE DIVISION  
FOURTH DEPARTMENT

FILED

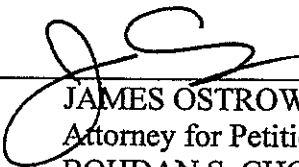
PLEASE TAKE NOTICE that upon the Verified Petition of BOHDAN S. CHOMYN,  
sworn to on August 7, 2015, and the attached exhibits, petitioner will, at 10:00 a.m. on the 14th  
day of September, 2015, at the Courthouse at 50 East Ave. Rochester, N.Y. 14604, request that  
this Court issue a judgment, pursuant to the Civil Practice Law and Rules (CPLR), and 42 U. S.  
C. 1983 granting the following relief to the petitioner:

1. reversing and annulling the order of revocation of petitioner's pistol permit dated August 10, 2015 and directing the respondents to take all necessary steps to have the petitioner's license and weapons restored to his possession forthwith;
2. entering a declaratory judgment that the provisions of the Penal Law specified herein (the pistol permit law) infringe on the right of the people to keep and bear arms and the right to due process, in violation of the Second and Fourteenth Amendments to the United States Constitution and are void;

RECEIVED  
AUG 11 2015  
ERIE COUNTY  
DEPARTMENT OF LAW  
Comm 18D-6  
Page 43 of 134

3. issue a permanent injunction enjoining respondents and their officers, agents, and employees from administration and enforcement of the pistol permit law alleged herein to violate the United States Constitution.
4. enter judgment in favor of the petitioner pursuant to 42 USC 1983 on the constitutional claims;
5. award damages, attorneys' fees and costs; and
6. grant such other and further relief as may to the court seem just and proper.

Dated: Buffalo, New York  
August 7, 2015

  
\_\_\_\_\_  
JAMES OSTROWSKI  
Attorney for Petitioner  
BOHDAN S. CHOMYN  
63 Newport Ave.  
Buffalo, New York 14216  
(716) 435-8918  
jameso@apollo3.com

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

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In the Matter of the Application of

BOHDAN S. CHOMYN,

*Petitioner,*

**VERIFIED PETITION**

-against-

M. BOLLER BOLLER, an Acting Supreme Court Justice in his capacity as licensing officer for pistol permits in Erie County, CHRISTOPHER L. JACOBS, as Erie County Clerk, and WILLMER FOWLER, JR., in his capacity as Pistol Permit Supervisor, Erie County Clerk's Office.

*Respondents.*

---

The petitioner, BOHDAN S. CHOMYN, by his attorney James Ostrowski, for his verified petition, alleges as follows:

1. This petition seeks relief pursuant to Article 78 of the CPLR and 42 U. S. C. 1983.
2. Petitioner resides at 1421 Borden Rd., Depew, New York, 14043.
3. Petitioner is 60 years old and, until 2010, possessed an unrestricted license to possess a handgun in New York State.
4. Petitioner has never been convicted of a crime and retired from the Department of Corrections in 2010 after 27 years of service.
5. The respondent M. WILLIAM BOLLER is an Acting New York State Supreme Court Justice and is the licensing officer for pistol permits in Erie County.
6. At all times herein, Justice Boller was not acting in his capacity as a judge but rather in the capacity of a licensing officer.

7. CHRISTOPHER L. JACOBS, is the Erie County Clerk, and, as such, has supervisory authority over the Erie County Pistol Permit Department.
8. WILLMER FOWLER, JR., is the supervisor of the Pistol Permit Department which is part of the Erie County Clerk's Office.

STATEMENT OF FACTS APPLICABLE TO ALL CAUSES OF ACTION

*Allegations Concerning the Revocation of Petitioner's License*

9. On June 1, 2010, petitioner received a letter from William Fowler, Jr., Supervisor of the Pistol Permit Department of the Erie County Clerk's office. See, Exhibit "A".
10. The letter stated that "Based on information received from the Buffalo Police Department, your Pistol License, C20405C, has been suspended by direction of the Licensing Officer for Erie County."
11. The letter demanded that petitioner surrender his weapons and unrestricted license and stated that "in order to regain your pistol license, you must provide . . . –  
Written request for reinstatement hearing. You must briefly state your reasons for requesting reinstatement."
12. There is no apparent statutory authority for Mr. Fowler or the unidentified "licensing officer" to suspend petitioner's license or right to bear arms based on unsubstantiated hearsay allegations and in the absence of any prior notice, hearing or opportunity to be heard.
13. Such action violated state law, state and federal due process and the right to keep and bear arms.

14. Petitioner does not recall if he completed such a written statement and none was provided to his counsel in response to a request to review and copy records related to this proceeding.
15. By letter to petitioner's prior counsel, a hearing was scheduled for December 13, 2010. See, Exhibit "B".
16. The letter contains no information about the issues to be addressed at the hearing.
17. At the hearing, Justice Boller asked what happened when the police came to his home on or about February 3, 2010.
18. Petitioner responded that the police came because he accidentally set off his burglar alarm.
19. At the hearing, Justice Boller never stated what the allegations against petitioner were.
20. Petitioner had to basically guess what the Judge's concerns were.
21. Petitioner was told that he needed to provide a psychiatric evaluation and the records from ECMC. See also, Exhibit "C", letter of Frederick J. Platek, Firearms Licensing Examiner, June 25, 2014.
22. Petitioner did so under duress as it was made clear that his right to bear arms would be "suspended" until he provided confidential medical records.
23. Coercing petitioner to provide such records violated his statutory and constitutional rights to medical privacy.
24. This action also violated his right to notice of the allegations against him and shifted the burden of making and proving such allegations onto petitioner as the revocation was ultimately based in part on "allegations" contained in documents

produced by petitioner long after the time respondents themselves were obligated to put him on notice of the charges against him.

25. Petitioner did nothing improper at the hearing.
26. Petitioner subsequently provided a medical report from Michael S. Mogergerman, M.D., dated, January 4, 2015, which concluded that “It is my impression that Mr. Chomyn does not at this time demonstrate a danger to self or others, in the past, nor at present.”
27. On April 15, 2015, Petitioner received a letter, dated April 13, 2015 and postmarked on April 14, 2015 (see Exhibit “D”), that “By order of Acting Supreme Court Justice M. William Boller your pistol permit #C20405C has been revoked.”
28. The letter was signed by Willmer Fowler, Jr., Supervisor, Erie County Pistol Permit Department and enclosed a copy of an Order of Revocation signed by Justice Boller on April 10, 2015. See Exhibit “E”.
29. The order stated that the revocation was based on (1) “Licensee’s prior suspension in 2006,” (2) “his involuntary admission to Erie County Medical Center for delusional and threatening behavior,” and (3) his “demonstrating paranoia and aggressive behavior during his suspension hearing. . . .”
30. On information and belief, although the order refers to a “hearing,” no record of said hearing was maintained or presently exists.
31. On information and belief, petitioner’s counsel contacted Justice Boller’s office several times requesting the opportunity to review the file.



32. While counsel was not allowed to directly review the file, he was provided with selected documents therefrom.
33. However, no documents were provided concerning the prior suspension in 2006 referred to in the revocation order and, on information and belief, apparently there are no such documents in Justice Boller's file.
34. On information and belief, petitioner's temporary suspension in the 2006 incident was lifted on or about April 10, 2008, because the allegations that led to the temporary suspension were found to be without merit.
35. Thus, it was error for Justice Boller to base his revocation in part on the prior suspension.
36. Further, on information and belief, no records from the Buffalo Police concerning the "information received from the Buffalo Police Department" mentioned in the letter of June 1, 2010 were contained in Justice Boller's file.
37. Petitioner made a request to the Police for just such records and was informed by letter of June 17, 2011 that no "incident report" exists. See, Exhibit "F."
38. Regarding the allegation that petitioner was "delusional and threatening" during the hearing, since there is no record of the hearing, there is no basis in the record to sustain this finding and the petitioner's statutory and due process rights to court review have been violated.
39. An unsupported finding of "delusional and threatening behavior" constitutes arbitrary and capricious decision-making and abuse of discretion as a matter of law.

40. The revocation order states that petitioner was “involuntarily” admitted to ECMC; however, on information and belief, the record before the licensing officer does not contain any specific information on direct knowledge about the incident that led to the admission.
41. The ECMC discharge summary contains no basis to conclude that petitioner is violent, homicidal or suicidal.
42. Petitioner has never been adjudicated to be mentally incompetent.
43. No prior application has been made for the relief now requested.
44. All administrative remedies have been exhausted.

*Allegations Concerning the Constitutionality of the Pistol Permit Law*

45. The petitioner would like to exercise his natural right to keep and bears arms, a right the existence of which is acknowledged by and protected by the Second Amendment to the United States Constitution, applicable to the States pursuant to the Fourteenth Amendment to the United States Constitution. *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742 (2010).
46. This right is threatened by New York State laws and their enforcement by the respondents herein.
47. The Supreme Court has held that the right to bear arms is a “fundamental right.” *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).
48. The right to bear arms is entitled to at least the same amount of respect, protection and enforcement that is provided to the other fundamental rights such as free speech, petition, assembly and due process.

49. If there is to be any disparate treatment of the right to bear arms due to its unique nature, it should be given even greater respect, protection and enforcement than the other rights because, logically, historically and empirically, *it is the most important right enumerated in the Bill of Rights; it is the right that protects and guarantees all the others.*
50. Unlike the rights to free speech, religion, assembly and petition, being deprived of the right to bear arms can result in immediate death at the hands of a criminal or a tyrannical government (see, e.g., Kent State, Wounded Knee), such death rendering the entire remainder of the Bill of Rights moot and meaningless at that point.

#### **New York Gun Laws**

51. Presently, in the State of New York, the petitioner cannot lawfully purchase, possess, carry, keep or bear a “firearm” in their home as that term is defined in the New York without the permission of local officials. N.Y. PEN. LAW § 265.00(3).
52. Petitioner can only keep and bear a pistol or revolver or handgun in their home with the prior permission of the state—a license—after meeting, in the subjective opinion of a state licensing officer, a number of different criteria the imposition of which violates the Second Amendment.
53. The United States Court of Appeals described the latitude provided state judges in denying licenses as being “vested with considerable discretion.” *Kachalsky v. County of Westchester*, 701 F.3d 81, 87 (2d Cir. 2012).
54. Such unlicensed possession would constitute a crime under the Penal Law and subject the petitioner to the risk of prosecution and imprisonment merely for

exercising his natural and constitutional right to bear arms in his own home for noble purposes.

55. Thus, New York State explicitly treats the right to bear arms as a “privilege,” not a right, and *boasts of this unconstitutional policy* in numerous court decisions. E.g., *Guddemi v. Rozzi*, 210 AD2d 479 (2<sup>nd</sup> Dept. 1994); *Shapiro v. New York City Police Dept.*, 201 AD2d 333 (1<sup>st</sup> Dept. 1994).
56. For example, applicants must prove they have “good moral character.”
57. The state may not condition the exercise of a fundamental right on prior proof of “good moral character.”
58. The term “good moral character” is undefined in the statute and is not susceptible of any precise definition or any rational definition whatsoever.
59. In our society, there is no general agreement of what “good moral character” means.
60. Some behavior that years ago would have been considered proof of the lack of good moral character is no longer considered to be such.
61. The statute also conditions the issuing of a permit on the absence of “good cause . . . for the denial of the license,” yet, provides no definition of “good cause,” thus placing the recognition of constitutional rights in the hands of bureaucrats and their arbitrary and subjective judgments. Penal Law 400(1)(g).
62. The imposition of such conditions that are impossible to define violates both the Second Amendment right to bear arms and the due process clauses of the Fifth and Fourteenth Amendments.
63. In most counties in the state, it can take a year or more to obtain a permit.

64. If the permit is denied, judicial intervention can take an additional year and a half including one appeal as of right to the Appellate Division and cost as much as \$5000 for legal fees and costs.
65. The permit process involves a massive invasion of privacy, forcing the applicant to identify his or her closest friends who are then subjected to a criminal record check themselves.
66. The permit process can be expensive, thus preventing many low-income persons from applying for a permit.
67. The permit process can also be time-consuming, constituting a burden not imposed for the exercise of numerous other fundamental constitutional rights.
68. In the case of an application for a carrier permit, the applicant must prove “proper cause” in order to exercise a fundamental right.
69. While this requirement has been ruled constitutional by the United States Court of Appeal’s for the Second Circuit, that ruling on not binding on this Court. See, *Kachalsky v. County of Westchester*, 701 F.3d 81. (2d Cir. 2012); but see *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014).
70. A right that can only be exercised by seeking prior permission of the government, which permission can be withheld at the government’s subjective discretion, is a right that has ceased to exist.
71. Because of the administration and enforcement of the above provisions of the pistol permit law by the respondents, the petitioner has, and will continue to be, subjected to irreparable harm.
72. At all times herein, the respondents were acting under color of state law.

73. All of the statutes, regulations, court actions, customs and practices referenced herein constitute state action within the meaning of the Constitution.

74. At all times herein, the actions of the respondents have been intentional or in reckless disregard of the clearly established rights of the petitioner.

#### DAMAGES FOR CONSTITUTIONAL CLAIMS

75. On account of the respondents' actions and violations of his rights as set forth above, the petitioner suffered actual damages, including loss of liberty, pain, suffering, humiliation and emotional distress, loss of reputation and was forced to expend funds for attorneys' fees and related expenses.

76. Petitioner is entitled to recover damages, attorney's fees and costs.

77. Petitioner demands prejudgment interest on all elements of out-of-pocket loss including attorneys' fees.

#### FIRST CAUSE OF ACTION—Article 78 CPLR

78. Respondents failed to perform a duty enjoined upon it by law, specifically the statutes and constitutional provisions detailed in the petition.

#### SECOND CAUSE OF ACTION—Article 78 CPLR

79. Respondents proceeded and continue to proceed in excess of jurisdiction.

80. Respondents had no legal right to suspend petitioner's license without a hearing, coerce him into providing confidential medical records, or even revoke his license for the reasons stated in the determination.

THIRD CAUSE OF ACTION—Article 78 CPLR

81. Respondents' determination was made in violation of lawful procedure and was affected by errors of law as detailed in the petition.

FOURTH CAUSE OF ACTION—Article 78 CPLR

82. Respondents' determination was arbitrary and capricious and an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed.
83. The record fails to provide a rational basis for any of the three findings of the licensing officer that led to the revocation: the prior temporary suspension, the involuntary hospitalization or petitioner's behavior at the hearing.

FIFTH CAUSE OF ACTION—Article 78 CPLR

84. Respondent's determination was not supported by substantial evidence.
85. Since no record exists of the hearing, petitioner's statutory and due process rights to judicial review have been violated and the determination must be annulled.

SIXTH CAUSE OF ACTION—DUE PROCESS,

STATE AND FEDERAL CONSTITUTIONS

86. The respondents' determination was made in violation of due process as it was made without proper notice and an opportunity to be heard as detailed in the petition.
87. As a direct result of the respondents' conduct, the petitioner suffered actual damages, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION—SECOND AMENDMENT, RIGHT TO BEAR ARMS

88. The New York pistol permit law (Penal Law Sections 400.00 and 265.00), on its face and as it was applied by state and local officials herein, violates the Second Amendment and Fourteenth Amendment rights of the petitioner to possess firearms in their homes for the following reasons:

- a. A state may not license or impose a prior restraint on a fundamental right. See, e.g., the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments; *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).
- b. The requirements of proving “good moral character,” integrity and the absence of “good cause” to deny a license violate the Second Amendment. See, *Schneider v. New Jersey*, 308 U.S. 147 (1939).
- c. The apparently unrestrained grant of authority to licensing officials to revoke licenses “at any time” violates the petitioner’s right to bear arms.
- d. The costs of obtaining a permit are unduly burdensome for poor persons and persons of modest means.
- e. The amount of time permit applicants are required to wait for approval is unduly burdensome, particularly for people who are elderly, terminally ill and who have an urgent need for firearms for self-defense because they live in a high crime area or have been threatened.
- f. In the case of the terminally ill or the elderly, the waiting period could exceed their actual lifespan or a large portion of their lifespan.
- g. The statute’s requirement that an applicant prove he has not been convicted of a “serious offense” is unconstitutionally overbroad.



- h. The mandatory disclosure of close friends for references, together with the imposition on them of a criminal background check and the imposition upon the applicant of the burden of confessing to one's close friends all of one's sins and shortcomings that a licensing official might conceivably deem significant (see, *Novick v. Hillery*, 183 AD2d 1007 (3<sup>rd</sup> Dept. 1992)), violates the privacy of all concerned, is unduly burdensome and invites retaliation against political activists and their closest friends.
- i. The mandate to provide references in the county where the application is processed violates the rights of those who recently moved into an area.
- j. Applicants bear the burden of proof of their entitlement to the "right" to bear arms; receive no hearing before their entitlement to this right is initially determined, and receive post-deprivation judicial review that presumes the licensing officer's decision is correct and applies a deferential standard of review and imposes the burden of proving error upon the alleged "right"-holder.

89. As a direct result of the respondents' conduct, the petitioner suffered actual damages, attorneys' fees, and costs.

#### EIGHTH CAUSE OF ACTION—SECOND AMENDMENT, RIGHT TO BEAR ARMS

90. The New York pistol permit law (Penal Law Section 400.00 and 265.00), on its face, violates the Second Amendment and Fourteenth Amendment rights of the petitioner to carry firearms in public for the following reasons:

- a. The requirement of an applicant for a carrier permit to show “proper cause,” a determination ultimately based on the virtually unfettered discretion of licensing officials and review judges, violates the Second Amendment.
- b. A state may not license or impose a prior restraint on a fundamental right. See, e.g., the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments; *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).
- c. The requirements of proving “good moral character,” integrity and the absence of “good cause” to deny a license violate the Second Amendment. See, *Schneider v. New Jersey*, 308 U.S. 147 (1939).
- d. The apparently unrestrained grant of authority to licensing officials to revoke licenses “at any time” violates the petitioner’s right to bear arms.
- e. The costs of obtaining a permit are unduly burdensome for poor persons and persons of modest means.
- f. The amount of time permit applicants are required to wait for approval is unduly burdensome, particularly for people who are elderly, terminally ill and who have an urgent need for firearms for self-defense because they live in a high crime area or have been threatened.
- g. In the case of the terminally ill or the elderly, the waiting period could exceed their actual lifespan or a large portion of their lifespan.
- h. The statute’s requirement that an applicant prove he has not been convicted of a “serious offense” is unconstitutionally overbroad.
- i. The mandatory disclosure of close friends for references, together with the imposition on them of a criminal background check and the imposition upon the

applicant of the burden of confessing to one's close friends all of one's sins and shortcomings that a licensing official might conceivably deem significant (see, *Novick v. Hillery*, 183 AD2d 1007 (3<sup>rd</sup> Dept. 1992)), violates the privacy of all concerned, is unduly burdensome and invites retaliation against political activists and their closest friends.

- j. The mandate to provide references in the county where the application is processed violates the rights of those who recently moved into an area.
  - k. Applicants bear the burden of proof of their entitlement to the "right" to bear arms; receive no hearing before their entitlement to this right is initially determined, and receive post-deprivation judicial review that presumes the licensing officer's decision is correct and applies a deferential standard of review and imposes the burden of proving error upon the alleged "right"-holder.
  - l. Because the requirement of "good moral character" and absence of a "serious offense" are essential parts of the statutory scheme, the entire statute should be vacated.
  - m. Applicants bear the burden of proof of their entitlement to the "right" to bear arms; receive no hearing before their entitlement to this right is initially determined, and receive post-deprivation judicial review that presumes the licensing officer's decision is correct and applies a deferential standard of review and imposes the burden of proving error upon the alleged "right"-holder.
91. As a direct result of the respondents' conduct, the petitioner suffered actual damages, attorneys' fees, and costs.

NINTH CAUSE OF ACTION--DUE PROCESS—14<sup>th</sup> AMENDMENT

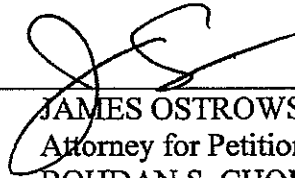
92. The requirements that an applicant prove: that he has “good moral character;” “proper cause” for the issuance of a carrier permit; and the absence of “good cause” to deny a license—violate due process.
93. That is, these terms are not capable of definition in such a way that puts an applicant, a licensing officer or a reviewing court on notice of the meaning of the terms.
94. Therefore, the state, its licensing officers and reviewing judges, are given unfettered discretion in denying an application based on their own whimsical notion of what these terms mean.
95. As a direct result of the respondents’ conduct, the petitioner suffered actual damages, attorneys’ fees, and costs.

WHEREFORE, your deponent respectfully requests that this Court:

1. reverse and annul the order of revocation and direct the respondents to take all necessary steps to have the petitioner’s license and weapons restored to his possession forthwith;
2. enter a declaratory judgment that the provisions of the Penal Law specified herein infringe on the right of the people to keep and bear arms and the right to due process, in violation of the Second and Fourteenth Amendments to the United States Constitution and are void;
3. issue a permanent injunction enjoining respondents and their officers, agents, and employees from administration and enforcement of the provisions alleged herein to violate the United States Constitution.

4. Enter judgment in favor of the petitioner pursuant to 42 USC 1983 on the constitutional claims;
5. award damages, attorneys' fees and costs; and
6. grant such other and further relief as may to the Court seem just and proper.

Dated: Buffalo, New York  
August 7, 2015



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JAMES OSTROWSKI  
Attorney for Petitioner  
BOHDAN S. CHOMYN  
63 Newport Ave.  
Buffalo, New York 14216  
(716) 435-8918  
[jameso@apollo3.com](mailto:jameso@apollo3.com)

**VERIFICATION**

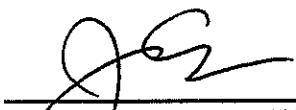
STATE OF NEW YORK

COUNTY OF ERIE: ss:

BOHDAN S. CHOMYN, being duly sworn, deposes and says that: I am the petitioner in this proceeding; I have read the foregoing petition and know the contents thereof; the same are true to my own knowledge, except as to matters therein stated to be alleged on information and belief; and as to those matters I believe them to be true.

  
BOHDAN S. CHOMYN

Sworn to before me this  
7<sup>th</sup> day of August, 2015

  
JAMES OSTROWSKI  
Notary Public  
Qualified in Erie County  
My Commission Expires 7/5/19

# Exhibit "A"



# County of Erie

**KATHLEEN C. HOCHUL**  
COUNTY CLERK

June 1, 2010

Bohdan S. Chomyn  
629 Linwood Avenue  
Buffalo, NY 14215  
Last known phone: 994-1892

Dear Mr. Chomyn:

Based on information received from the Buffalo Police Department, your Pistol License, C20405C, has been suspended by direction of the Licensing Officer for Erie County.

**You must IMMEDIATELY comply with the following:**

-The five (5) guns registered on your permit must be surrendered to: **Buffalo Police Department-Administrative Services Bureau, 74 Franklin Street, Buffalo, NY 14202. You must contact the Administrative Services Bureau at 851-4567 to notify them that you will be surrendering weapons due to the suspension of your pistol license, and of the number of weapons being surrendered. (Please refer to the enclosed list of weapons.)**

**PLEASE NOTE: WE HAVE BEEN INFORMED BY POLICE AGENCIES THAT WEAPONS HELD IN THEIR CUSTODY FOR MORE THAN 1 YEAR WILL BE SUBJECT TO DESTRUCTION.**

-Your pistol license must be surrendered to this department either in person or by mail, **ALONG WITH A COPY OF THE PROPERTY RECEIPT FOR GUNS SURRENDERED TO THE POLICE AGENCY AND A \$3.00 SUSPENSION PROCESSING FEE.**

**Failure to comply with this Court Directive upon receipt of this letter will be sufficient grounds for the revocation of your pistol license.**

**In order to regain your pistol license, you must provide the following:**

-Written request for reinstatement hearing. You must briefly state your reasons for requesting reinstatement.

**Upon receipt of all required documents, your file will be forwarded to the Licensing Officer for review. If you have any questions, please contact this department 858-6600.**

Very truly yours,

Willmer Fowler, Jr.  
Supervisor  
Pistol Permit Department

CC: CPS Lab; Buffalo Police Department-Administrative Services Bureau

**NOTE: THE BUFFALO POLICE DEPARTMENT IS IN POSSESSION OF THE GUNS; PISTOL PERMIT DEPARTMENT HAS PERMIT.**



# Exhibit “B”



SUPREME COURT CHAMBERS  
STATE OF NEW YORK  
BUFFALO, N.Y. 14202-2721

CHAMBERS OF

**M. WILLIAM BOLLER**  
JUDGE OF THE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE  
SUPERVISORY JUDGE FOR JUSTICE COURTS  
8TH JUDICIAL DISTRICT

716-845-9357  
FAX: 851-3327  
email: [wboller@courts.state.ny.us](mailto:wboller@courts.state.ny.us)

December 3, 2010

Chris Brunea, Esq.  
170 Franklin St., Suite 600  
Buffalo, NY 14202-2412

Re: Bohdan Chomyn  
Firearms License

Dear Mr. Brunea:

A hearing on your client's request for reinstatement of his firearms license has been scheduled on December 13, 2010, at 12:00 PM in Supreme Court Part 13 which is located on the 2nd Floor of 25 Delaware Avenue, Buffalo, NY. The hearing will be conducted by the undersigned Hearing Officer.

If you are unable to attend, please telephone me at 845-9358 to reschedule the matter.

Very truly yours,

A handwritten signature in cursive script that reads "Frederick J. Platek".

FREDERICK J. PLATEK  
FIREARMS LICENSE HEARING OFFICER

sek  
cc: Bohdan Chomyn

# Exhibit "C"



SUPREME COURT CHAMBERS  
STATE OF NEW YORK  
BUFFALO, N.Y. 14202-2721

CHAMBERS OF

**M. WILLIAM BOLLER**

JUDGE OF THE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE  
SUPERVISORY JUDGE FOR JUSTICE COURTS  
8TH JUDICIAL DISTRICT

716-845-9357  
FAX: 716-845-5153  
email: [woller@courts.state.ny.us](mailto:woller@courts.state.ny.us)

June 25, 2014

Dragic D. Stevanovic, Esq.  
3729 Union Road, Suite 8  
Cheektowaga NY 14225

Re: Firearms License of Bohdan S. Chomyn

Dear Mr. Stevanovic:

Prior to your representation of Mr. Chomyn he was afforded a hearing for the reinstatement of his firearms license. At the conclusion of that hearing Mr. Chomyn was informed that before any decision on reinstatement was to be made he must supply me with the following: Buffalo Police reports for the day in question, hospital records from Erie County Medical Center and a report from a psychiatrist or psychologist of his choosing, regarding his current mental health status. His firearms license will continue to be suspended until these documents are received. If you have any further questions you may contact me at 845-9358.

Sincerely,

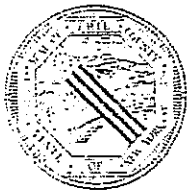
Frederick J. Platek  
Firearms Licensing Examiner

FJP/sek

RECEIVED

JUN 26 2014

# Exhibit “D”



COUNTY OF ERIE

CHRISTOPHER L. JACOBS  
COUNTY CLERK

PISTOL PERMIT DEPARTMENT

WILLMER FOWLER, JR.  
PISTOL PERMIT SUPERVISOR

April 13, 2015

Mr. Bohdan S. Chomyn  
629 Linwood Avenue  
Buffalo, NY 14209

Dear Mr. Chomyn:

By order of Acting Supreme Court Justice M. William Boller your Pistol Permit #C20405C has been revoked.

Please be advised that you should make arrangements to dispose of the handgun(s) registered on your now revoked pistol permit. Failure on your part to take immediate action could result in the destruction of the weapon (s). Whoever you sell or turn your weapon (s) over to must have a receipt from you listing the weapon (s) by manufacturer, caliber and serial number so we can register the weapon (s) on their permit or you can sell them to an authorized NYS Gun Dealer.

If you have any questions, please feel free to contact me at (716) 858-6272.

Very truly yours,

Willmer Fowler, Jr.  
Supervisor  
Erie County Pistol Permit Department

Enc.

CC: CPS Lab; Buffalo Police Department-Administrative Services Bureau

WEAPONS REGISTERED: Seecamp, 32acp, S/N 038913  
Browning, 9mm, S/N 245PM39900  
Sig Arms, 45, S/N G421036  
Walther, 380, S/N S036947  
Colt, 10mm, S/N DS19544

DUPE REVOKED

THE COUNTY CLERK'S OFFICE  
COUNTY HALL, 92 FRANKLIN STREET  
BUFFALO, NY 14202  
CHRISTOPHER L. JACOBS  
COUNTY CLERK

Bohdan S. Chomyn  
629 Linwood Avenue  
Buffalo, NY 14209

CHRISTOPHER L. JACOBS

COALS-1421 SCREEN NO # R JACOBS

# Exhibit “E”



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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IN THE MATTER OF THE  
FIREARMS LICENSE OF

FIREARMS LICENSE  
#C20405C


BOHDAN S. CHOMYN, Licensee

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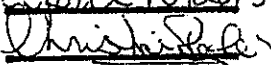
ORDER OF REVOCATION

It appearing to the satisfaction of the Court that the firearms license previously issued to the above-named Licensee on May 1, 1979, was suspended by the Licensing Officer on June 1, 2010 and the matter having come before this Court for review, and the Court now having completely reviewed the information received, including medical reports, together with the Licensee's file and history, and hearing having been held and the Court now having determined that good cause exists to revoke the firearms license of the above-named Licensee, based upon Licensee's previous suspension in 2006, his involuntary admission to Erie County Medical Center for delusional and threatening behavior, along with Licensee demonstrating paranoia and aggressive behavior during his suspension hearing, it hereby ,

ORDERED, that the firearms license of the above-named Licensee is  
REVOKED.

  
HON. M. WILLIAM BOLLER  
ACTING SUPREME COURT JUSTICE

Dated: April 10, 2015  
Buffalo, New York

GRANTED  
April 10, 2015  
  
COURT CLERK

Comm. 18D-6  
Page 73 of 134

# Exhibit “F”



BYRON W. BROWN  
MAYOR

CITY OF BUFFALO  
DEPARTMENT OF POLICE



DANIEL DERENDA  
COMMISSIONER

JUNE 17, 2011

TO WHOM IT MAY CONCERN:

THERE IS NO INCIDENT REPORT FILED FOR THIS CALL TO 629 LINWOOD,  
THE POLICE DID ASSIST MR. CHOMYN TO ECMC AND HIS GUNS WERE TAKEN  
FOR SAFEKEEPING.

RESPECTFULLY,

CHIEF ANTHONY BARBA  
D DISTRICT



# 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

August 17, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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>Garcia, Samuel v. County of Erie and City of Lackawanna</i>  |
| Document Received:   | Notice of Claim   |
| Name of Claimant:    | Samuel Garcia<br>110 Jackson Avenue<br>Lackawanna, New York 14218   |
| Claimant's attorney: | Scott T. Pelozza, Esq.<br>William Mattar, P.C.<br>6720 Main Street, Suite 100<br>Williamsville, New York 14221-5986 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 18D-6  
Page 76 of 134

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**IN THE MATTER OF THE CLAIM OF:**

**SAMUEL GARCIA**  
110 Jackson Avenue  
Lackawanna, NY 14218

Claimant,

-against-

**NOTICE OF CLAIM**

**CITY OF LACKAWANNA**  
714 Ridge Road  
Lackawanna, NY 14218

**COUNTY OF ERIE**  
95 Franklin Street  
Buffalo, NY 14202

Respondents.

---

**PLEASE TAKE NOTICE** that **SAMUEL GARCIA**, hereby makes claims against the **CITY OF LACKAWANNA** and the **COUNTY OF ERIE**, and in support thereof alleges:

1. That the undersigned, **SAMUEL GARCIA**, residing at 110 Jackson Avenue, Lackawanna, New York 14218, by and through his attorneys, **WILLIAM MATTAR, PC**, 6720 Main Street, Suite 100, Williamsville, NY 14221-5986, claims damages against the **CITY OF LACKAWANNA** and **COUNTY OF ERIE** for personal injuries, pain and suffering, general and special damages, medical expenses, and property damages sustained by him.
2. That the said injuries were sustained by **SAMUEL GARCIA** on May 10, 2015 at approximately 8:18 p.m. at the intersection of Wilson Street and Holland Avenue in the City of

Lackawanna, in Erie County, in the State of New York. On that date and at that approximate time, Mr. Garcia was driving his motorcycle through this intersection on Wilson Street when his motorcycle was struck by a 1998 Pontiac. The 1998 Pontiac was owned and operated by Willie L. Robinson. A copy of the police report is attached hereto as Exhibit A.

3. Upon information and belief, Wilson Street in the area of its intersection with Holland Avenue is controlled, operated, owned and maintained by the City of Lackawanna.

4. Upon information and belief, Wilson Street in the area of its intersection with Holland Avenue is controlled, operated, owned and maintained by the County of Erie.

5. That the Claimant's damages and injuries occurred as a result of the negligence, carelessness, and reckless disregard for the safety of the lawful traveling public, including Claimant, SAMUEL GARCIA, by the CITY OF LACKAWANNA and the COUNTY OF ERIE, their servants, agents or employees in failing to provide a safe roadway, highway and/or travelway; in failing to correct a known safety risk at the general location of the accident herein mentioned; in failing to adequately warn of the intersection; in failing to maintain and sign said roadway and intersection in a reasonably safe manner for users thereof; in failing to monitor and control the speed of vehicles traveling on and in the roads involved herein; along with the other acts of negligence, carelessness and recklessness.

6. That the aforesaid CITY OF LACKAWANNA and the COUNTY OF ERIE by and through their agents, servants, and employees had actual or constructive notice of the dangerous condition and hazard caused by said activity, or caused the same. Agents, servants and employees of the Respondents knew or in the exercise of reasonable care, should have known of the potential

danger of vehicles traveling through the above-referenced intersection, but failed to take any corrective measures. Agents, servants and employees of the Respondents herein knew of the injuries Mr. Garcia sustained. Agents, servants and employees of the Respondents herein were present at the intersection on the date of the accident, administered first aid and handled Mr. Garcia's removal from the scene to the hospital.

7. That, as a result of the foregoing, the Claimant, SAMUEL GARCIA, sustained very serious injuries, including a wound to his left foot requiring stitches, a wound to his left knee requiring stitches, a broken bone in his left arm between his shoulder and elbow, left leg and left ankle injuries, a right foot injury requiring stitches, scarring, psychological damage and trauma, left shoulder surgery, and other injuries that are just now being able to be discerned, due to his unstable and serious medical condition for months after the accident. Some of these injuries will be of a permanent or indefinite duration, and Claimant, SAMUEL GARCIA, was and will in the future be forced to expend sums of money for hospitals, doctors and other medical expenses.

8. Claimant seeks damages for personal injury, past, present and future pain and suffering, past, present and future mental and emotional distress, past and future medical costs, lost wages, change of lifestyle and a loss of enjoyment of life and every other item of like general damages as may properly be proven at a trial of this action.

9. That the said injuries were occasioned solely and wholly as a result of the negligence of Willie L. Robinson, the driver of the vehicle that struck Mr. Garcia's motorcycle, and the negligence of the Respondents the CITY OF LACKAWANNA and the COUNTY OF ERIE, by

and through their agents, servants and employees and without any negligence on the part of the Claimant contributing thereto.

**WHEREFORE**, Claimant, SAMUEL GARCIA requests that his claim be allowed and paid by the Respondents, and each of them.

DATED:           Williamsville, New York  
                    August 5, 2015



---

Scott T. Pelozo, Esq.  
WILLIAM MATTAR, P.C.  
Attorneys for Claimant  
6720 Main Street  
Suite 100  
Williamsville, NY 14221-5986  
(716) 633-3535

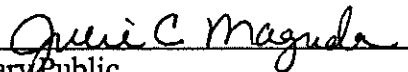


STATE OF NEW YORK )  
COUNTY OF ERIE ) ss:

SAMUEL GARCIA , being duly sworn, depose and say that he is the Claimant in this action; that he has read the foregoing Notice of Claim and know the contents thereof; that the same is true to the knowledge of deponents, except as to matters therein stated to be alleged on information and belief, and that as to those matters they believe them to be true.

  
\_\_\_\_\_  
SAMUEL GARCIA

Sworn to before me this  
5<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
Notary Public

JULIE C. MAGUDA  
NOT. # 011143031302  
NOTARY PUBLIC STATE OF NEW YORK  
QUALIFIED BY EXAMINATION  
MY COMMISSION EXPIRES MAY 5, 2019

# EXHIBIT A

New York State Department of Motor Vehicles  
**POLICE ACCIDENT REPORT**

MV-104A (6/04)

**COPY**

Local Codes  
15-003637

AMENDED REPORT POLICE COPY 2

|   |   |                       |  |                       |  |  |  |                                     |  |  |
|---|---|-----------------------|--|-----------------------|--|--|--|-------------------------------------|--|--|
| 1   | Accident Date<br>Month: 5, Day: 10, Year: 2015    | Day of Week<br>SUNDAY | Military Time<br>20:18   | No. of Vehicles<br>2  | No. Injured<br>1                                 | No. Killed<br>0  | Not Investigated at Scene <input type="checkbox"/> | Left Scene <input type="checkbox"/> | Police Photos <input type="checkbox"/> |  |
| VEHICLE 1   |   |                       | VEHICLE 2  |                       |  | <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN |  |                                     |  |  |
| 2   | VEHICLE 1 - Driver License ID Number<br>100045315 | State of Lic.<br>NY   | VEHICLE 2 - Driver License ID Number<br>781120804                |                       |  | State of Lic.<br>NY  |  |                                     |  |  |
| Driver Name - exactly as printed on license<br>GARCIA, Samuel A |   |                       | Driver Name - exactly as printed on license<br>RUBINSON Willie L |                       |  |  |  |                                     |  |  |
| Address (Include Number & Street)<br>110 JACKSON AVE            |   |                       | Address (Include Number & Street)<br>38 GLENWOOD AVE             |                       |  |  |  |                                     |  |  |
| City or Town<br>LACKAWANNA                                      |   |                       | City or Town<br>LACKAWANNA                                       |                       |  |  |  |                                     |  |  |
| State<br>NY   |   |                       | State<br>NY  |                       |  |  |  |                                     |  |  |
| Zip Code<br>14218   |   |                       | Zip Code<br>14218  |                       |  |  |  |                                     |  |  |
| 3   | Date of Birth<br>Month: 5, Day: 4, Year: 78       | Sex<br>M              | Unlicensed <input type="checkbox"/>                              | No. of Occupants<br>1 | Public Property Damaged <input type="checkbox"/> | Date of Birth<br>Month: 8, Day: 25, Year: 38   | Sex<br>M   | Unlicensed <input type="checkbox"/> | No. of Occupants<br>3                  | Public Property Damaged <input type="checkbox"/> |
| Name - exactly as printed on registration<br>GARCIA Samuel A    |   |                       | Name - exactly as printed on registration<br>RUBINSON Willie L   |                       |  |  |  |                                     |  |  |
| Address (Include Number & Street)<br>110 JACKSON AVE            |   |                       | Address (Include Number & Street)<br>38 GLENWOOD AVE             |                       |  |  |  |                                     |  |  |
| City or Town<br>LACKAWANNA                                      |   |                       | City or Town<br>LACKAWANNA                                       |                       |  |  |  |                                     |  |  |
| State<br>NY   |   |                       | State<br>NY  |                       |  |  |  |                                     |  |  |
| Zip Code<br>14218   |   |                       | Zip Code<br>14218  |                       |  |  |  |                                     |  |  |
| 4   | Plate Number<br>80Y164                            | State of Reg.<br>NY   | Vehicle Year & Make<br>01 YAMAHA                                 | Vehicle Type<br>MC    | Ins. Code<br>-                                   | Plate Number<br>GBA 1947   | State of Reg.<br>NY                                | Vehicle Year & Make<br>98 PONTIAC   | Vehicle Type<br>4D                     | Ins. Code<br>639                                 |
| Ticket/Arrest Number(s)<br>LK294BQWJK, LK294RQ9, LK294RYSK      |   |                       | Ticket/Arrest Number(s)<br>-                                     |                       |  |  |  |                                     |  |  |
| Violation Section(s)<br>VII 319 504-1 1190-A                    |   |                       | Violation Section(s)<br>-  |                       |  |  |  |                                     |  |  |

|  |   |   |  |  |  |  |  |  |
|--|---|---|--|--|--|--|--|--|
| 6  | Check if involved vehicle is:<br><input type="checkbox"/> more than 95 inches wide;<br><input type="checkbox"/> more than 34 feet long;<br><input type="checkbox"/> operated with an overweight permit;<br><input type="checkbox"/> operated with an overload permit. | Check if involved vehicle is:<br><input type="checkbox"/> more than 95 inches wide;<br><input type="checkbox"/> more than 34 feet long;<br><input type="checkbox"/> operated with an overweight permit;<br><input type="checkbox"/> operated with an overload permit. | Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.   |  |  |  |  |  |
|  | VEHICLE 1 DAMAGE CODES<br>Box 1 - Point of Impact: 3, 2<br>Box 2 - Most Damage: 2, 2<br>Enter up to three more Damage Codes: 3, 4, 5 (10, 11, 5)  | VEHICLE 2 DAMAGE CODES<br>Box 1 - Point of Impact: 1, 3<br>Box 2 - Most Damage: 1, 3<br>Enter up to three more Damage Codes: 3, 4, 5 (17, 2, 5)   | ACCIDENT DIAGRAM<br>Refer to NARRATIVE   |  |  |  |  |  |
| 7  | Vehicle Towed: By To: mucci's   | Vehicle Towed: To: -  | Cost of repairs to any one vehicle will be more than \$1000.<br><input checked="" type="checkbox"/> Unknown/Unable to Determine <input type="checkbox"/> Yes <input type="checkbox"/> No |  |  |  |  |  |
| VEHICLE DAMAGE CODING:<br>1-13. SEE DIAGRAM ON RIGHT.<br>14. UNDERCARRIAGE 17. DEMOLISHED<br>15. TRAILER 18. NO DAMAGE<br>16. OVERTURNED 19. OTHER |   |   |  |  |  |  |  |  |

|                  |  |  |
|------------------|--|--|
| Reference Marker | Coordinates (if available)<br>Latitude/Northing:<br><br>Longitude/Easting: | Place Where Accident Occurred:<br>County <u>ERIE</u> <input type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Town of <u>LACKAWANNA</u><br>Road on which accident occurred <u>Wilson St.</u> (Route Number or Street Name)<br>at 1) intersecting street <u>HULLAND AVE</u> (Route Number or Street Name)<br>or 2) <u>        </u> <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W of <u>        </u> (Milepost, Nearest Intersecting Route Number or Street Name) |
|------------------|--|--|

Accident Description/Officer's Notes: Vehicle #1 traveling west on Wilson St. Vehicle #2 traveling east on Wilson St. waiting to make left hand turn onto Hulland Ave. Vehicle #1 struck front of vehicle #2. Escorted vehicle #1 from motorcycle before motorcycle struck both front porch and front door of 169 Hulland Ave. Residence of (BUTON).

| ALL INVOLVED | Names of all involved |   |    |    |    |    |    |    |    |     | Date of Death Only |                   |    |    |
|--------------|-----------------------|---|----|----|----|----|----|----|----|-----|--------------------|-------------------|----|----|
|              | 8                     | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17  | 18                 | BY                | TO | 18 |
| A            | 1                     | 1 | Y  | 3  | 37 | M  | 8  | 12 | 6  | 539 | 1405               | SAMUEL A GARCIA   |    |    |
| B            | 2                     | 1 | Y  | 1  | 76 | M  | -  | 13 | 6  | -   | -                  | WILLIE L RUBINSON |    |    |
| C            | 2                     | 4 | Y  | 1  | 8  | F  | -  | 13 | 6  | -   | -                  | ALICIA GOLDEN     |    |    |
| D            | 2                     | 6 | Y  | 1  | 8  | F  | -  | 13 | 6  | -   | -                  | PATIENCE RUBINSON |    |    |
| E            |                       |   |    |    |    |    |    |    |    |     |                    |                   |    |    |
| F            |                       |   |    |    |    |    |    |    |    |     |                    |                   |    |    |

|   |                         |                       |                                     |                                      |                                       |                                    |
|---|-------------------------|-----------------------|-------------------------------------|--------------------------------------|---------------------------------------|------------------------------------|
| Officer's Rank and Signature<br>Print Name in Full: <u>PRM CASEY SLIMAK</u> | Badge/ID No.: <u>98</u> | NCIC No.: <u>0140</u> | Precinct/Post Troop/Zone: <u>01</u> | Station/Beat Sector: <u>        </u> | Reviewing Officer: <u>Comm. 18D76</u> | Date/Time Reviewed: <u>5/11/14</u> |
|---|-------------------------|-----------------------|-------------------------------------|--------------------------------------|---------------------------------------|------------------------------------|

New York State Department of Motor Vehicles  
**POLICE ACCIDENT REPORT**  
MV-104A (8/04)  
 AMENDED REPORT POLICE COPY 2

19

|   |             |               |                 |             |            |  |                                     |  |
|---|-------------|---------------|-----------------|-------------|------------|--|-------------------------------------|--|
| Accident Date<br>Month Day Year                 | Day of Week | Military Time | No. of Vehicles | No. Injured | No. Killed | Not Investigated at Scene <input type="checkbox"/> | Left Scene <input type="checkbox"/> | Police Photos <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Accident Reconstructed <input type="checkbox"/> |             |               |                 |             |            | Left Scene <input type="checkbox"/>                |                                     | Police Photos <input type="checkbox"/> Yes <input type="checkbox"/> No |

20

|   |  |  |  |           |  |  |  |               |  |  |  |            |  |  |  |                                      |  |  |  |          |  |  |  |               |  |  |  |  |  |  |  |          |  |  |  |  |  |  |  |       |  |  |  |          |  |  |  |
|---|--|--|--|-----------|--|--|--|---------------|--|--|--|------------|--|--|--|--------------------------------------|--|--|--|----------|--|--|--|---------------|--|--|--|--|--|--|--|----------|--|--|--|--|--|--|--|-------|--|--|--|----------|--|--|--|
| VEHICLE 1                                   |  |  |  | VEHICLE 2 |  |  |  | BICYCLIST     |  |  |  | PEDESTRIAN |  |  |  | OTHER PEDESTRIAN                     |  |  |  |          |  |  |  |               |  |  |  |  |  |  |  |          |  |  |  |  |  |  |  |       |  |  |  |          |  |  |  |
| VEHICLE 1 - Driver License ID Number        |  |  |  |           |  |  |  | State of Lic. |  |  |  |            |  |  |  | VEHICLE 2 - Driver License ID Number |  |  |  |          |  |  |  | State of Lic. |  |  |  |  |  |  |  |          |  |  |  |  |  |  |  |       |  |  |  |          |  |  |  |
| Driver Name - exactly as printed on license |  |  |  |           |  |  |  |               |  |  |  |            |  |  |  | Address (Include Number & Street)    |  |  |  |          |  |  |  |               |  |  |  |  |  |  |  | Apt. No. |  |  |  |  |  |  |  |       |  |  |  |          |  |  |  |
| City or Town                                |  |  |  |           |  |  |  |               |  |  |  |            |  |  |  | State                                |  |  |  | Zip Code |  |  |  | City or Town  |  |  |  |  |  |  |  |          |  |  |  |  |  |  |  | State |  |  |  | Zip Code |  |  |  |

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22

|   |  |  |  |     |                                     |                  |  |   |  |  |  |     |                                     |                  |  |
|---|--|--|--|-----|-------------------------------------|------------------|--|---|--|--|--|-----|-------------------------------------|------------------|--|
| Date of Birth<br>Month Day Year           |  |  |  | Sex | Unlicensed <input type="checkbox"/> | No. of Occupants | Public Property Damaged <input type="checkbox"/> | Date of Birth<br>Month Day Year           |  |  |  | Sex | Unlicensed <input type="checkbox"/> | No. of Occupants | Public Property Damaged <input type="checkbox"/> |
| Name - exactly as printed on registration |  |  |  |     |                                     |                  |  | Name - exactly as printed on registration |  |  |  |     |                                     |                  |  |

23

|                                   |  |  |  |               |  |  |  |                     |  |  |  |                |  |  |  |                                   |  |  |  |              |  |  |  |               |  |  |  |                     |  |  |  |              |  |  |  |           |  |  |  |
|-----------------------------------|--|--|--|---------------|--|--|--|---------------------|--|--|--|----------------|--|--|--|-----------------------------------|--|--|--|--------------|--|--|--|---------------|--|--|--|---------------------|--|--|--|--------------|--|--|--|-----------|--|--|--|
| Address (Include Number & Street) |  |  |  |               |  |  |  | Apt. No.            |  |  |  | Haz. Mat. Code |  |  |  | Released <input type="checkbox"/> |  |  |  |              |  |  |  |               |  |  |  |                     |  |  |  |              |  |  |  |           |  |  |  |
| City or Town                      |  |  |  |               |  |  |  | State               |  |  |  | Zip Code       |  |  |  | City or Town                      |  |  |  |              |  |  |  | State         |  |  |  | Zip Code            |  |  |  |              |  |  |  |           |  |  |  |
| Plate Number                      |  |  |  | State of Reg. |  |  |  | Vehicle Year & Make |  |  |  | Vehicle Type   |  |  |  | Ins. Code                         |  |  |  | Plate Number |  |  |  | State of Reg. |  |  |  | Vehicle Year & Make |  |  |  | Vehicle Type |  |  |  | Ins. Code |  |  |  |

24

|                         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |                         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|-------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|-------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Ticket/Arrest Number(s) |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | Ticket/Arrest Number(s) |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Violation Section(s)    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | Violation Section(s)    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

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|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Check if involved vehicle is:<br><input type="checkbox"/> more than 95 inches wide;<br><input type="checkbox"/> more than 34 feet long;<br><input type="checkbox"/> operated with an overweight permit;<br><input type="checkbox"/> operated with an overdimension permit. |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | Check if involved vehicle is:<br><input type="checkbox"/> more than 95 inches wide;<br><input type="checkbox"/> more than 34 feet long;<br><input type="checkbox"/> operated with an overweight permit;<br><input type="checkbox"/> operated with an overdimension permit. |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>VEHICLE 1 DAMAGE CODES</b><br>Box 1 - Point of Impact<br>Box 2 - Most Damage<br>Enter up to three more Damage Codes   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | <b>VEHICLE 2 DAMAGE CODES</b><br>Box 1 - Point of Impact<br>Box 2 - Most Damage<br>Enter up to three more Damage Codes   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | Rear End 1. Left Turn 3. Right Angle 5. Right Turn 7. Head On<br>Sideswipe (same direction) 2. Left Turn 4. Right Turn 6. Sideswipe (opposite direction) 8. |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Vehicle By Towed: To   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | Vehicle By Towed: To   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | ACCIDENT DIAGRAM<br>9.  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

26

27

28

VEHICLE DAMAGE CODING:  
 1-13. SEE DIAGRAM ON RIGHT.  
 14. UNDERCARRIAGE 17. DEMOLISHED  
 15. TRAILER 18. NO DAMAGE  
 16. OVERTURNED 19. OTHER

|                  |  |   |  |
|------------------|--|---|--|
| Reference Marker | Coordinates (if available)<br>Latitude/Northing: | Place Where Accident Occurred:<br>County _____ <input type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Town of _____<br>Road on which accident occurred _____ (Route Number or Street Name)<br>at 1) intersecting street _____ (Route Number or Street Name)<br>or 2) _____ <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W of _____ (Milepost, Nearest Intersecting Route Number or Street Name)<br>Feet Miles |  |
|------------------|--|---|--|

29

Accident Description/Officer's Notes  
 VIRGINIA DUB 3/16/28 PM 768-4432 DRYMAGWAY  
 BOTH WERE FLIGHT DUB AND PURCH. DRIVER OF VEHICLE #1 ALSO ISSUED  
 TRAFFIC VIOLATIONS FOR VTL 117-A, 1252-D, 1172-A, 402-1, 401-1A, AND 306-B

30

USE COVER SHEET

|              |   |   |    |    |    |    |    |    |    |    |    |    |    |                       |                    |
|--------------|---|---|----|----|----|----|----|----|----|----|----|----|----|-----------------------|--------------------|
| ALL INVOLVED | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | BY | TO | 18 | Names of all involved | Date of Death Only |
| A            |   |   |    |    |    |    |    |    |    |    |    |    |    |                       |                    |
| B            |   |   |    |    |    |    |    |    |    |    |    |    |    |                       |                    |
| C            |   |   |    |    |    |    |    |    |    |    |    |    |    |                       |                    |
| D            |   |   |    |    |    |    |    |    |    |    |    |    |    |                       |                    |
| E            |   |   |    |    |    |    |    |    |    |    |    |    |    |                       |                    |
| F            |   |   |    |    |    |    |    |    |    |    |    |    |    |                       |                    |

|  |                    |                   |                                |                     |                              |   |
|--|--------------------|-------------------|--------------------------------|---------------------|------------------------------|---|
| Officer's Rank and Signature<br>Print Name in Full<br>Pvt Casey Slimak | Badge/ID No.<br>90 | NCIC No.<br>01402 | Precinct/Post/Troop/Zone<br>01 | Station/Beat/Sector | Reviewing Officer<br>W. Romm | Date/Time Reviewed<br>18D-6<br>3/3/24 14:00 |
|--|--------------------|-------------------|--------------------------------|---------------------|------------------------------|---|

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# 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

August 19, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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>Sanchez, Erick v. Erie County Sheriff's Department, et al.</i>  |
| Document Received:   | Verified Petition  |
| Name of Claimant:    | Erick Sanchez<br>14-B-3250<br>Greene Correctional Facility<br>PO Box 975<br>Coxsackie, New York 12051-0975 |
| Claimant's attorney: | Greene County Public Defender<br>411 Main Street<br>Catskill, New York 12414                               |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 18D-6  
Page 85 of 134

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF GREENE

Greene County Clerk  
Document Number 419913  
Rcvd 07/20/2015 3:04:48 PM

RECEIVED

JUL 22 2015

GREENE COUNTY  
SUPREME & COUNTY COURT

VERIFIED PETITION  
FOR A WRIT OF  
HABEAS CORPUS

THE PEOPLE OF THE STATE OF NEW YORK  
Ex. rel. ERICK SANCHEZ,

Petitioner,

v.

ERIE COUNTY SHERIFF'S DEPARTMENT  
Diane H. Hulford, Coordinator  
New York State Department of Corrections  
And Community Supervision, And  
Brandon J. Smith, Superintendent  
GREENE CORRECTIONAL FACILITY,

Respondent.

Ind. No. 15-0655

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF GREENE :

The petition of Erick Sanchez, respectfully alleges and shows that ;

1. Petitioner, Erick Sanchez, is imprisoned and restrained of his liberty the New York State Department of Corrections and Community Supervision [D.O.C.C.S], at the Greene Correctional Facility, 165 Plank Road - Post Office Box 975, in the Town of Coxsackie and State of New York, the Person by whom the Petitioner is so imprisoned and restrained of his liberty is Brandon J. SMITH, the Superintendent of the Greene Correctional Facility, County of Greene, Town of Coxsackie and State of New York.

2. The cause or pretense of such detention, according to the best knowledge and belief of the Petitioner is , by virtue of Indictment [ No. 2011-02022] and Sentence of the Supreme Court, Erie County, by the honorable PENNY M. WOLFGANG, (J.S.C). A copy of Commitment is annexed hereto as Exhibit " A " .
- 3, That a Court or judge of the United States does not have exclusive Jurisdiction to Order the release of the Petitioner.
4. This writ is sought because Petitioner's imprisonment and restraint is illegal. The Nature of the Illegality being: i.) Petitioner's Commitment to D.O.C.C.S was in Violation of Law, Where some Two years and twenty-six days had elapsed from the Sentencing Date, Due to a mistake by the Erie County Sheriffs returning Petitioner to the Custody of Federal detention, at the Metropolitan Correctional Center (MCC), 150 Park Row, New York, New York.
  - i. Petitioner was arrested on August 20,2012 by the United States Secret Service (U.S.S.S), where he was being held at MCC on a Federal Charge of Conspiracy to commit Access Device Fraud (18 U.S.C § 1929(b), 1 count, and pursuant to bench warrant by the Supreme Court, Erie County for not appearing for Sentencing on April 12,2012. See, Indictment No. 2011-02022. Because of his Plea agreement held On January 4,2012, and in acceptance of a plea to the Crimes of Attempted Possession of a Forged instrument, 2nd degree(PL §§ 110.00/170.25),Two Counts.Thereafter, On September 19,2012, He was delivered before the Hon. WOLFGANG, P. and Sentenced to a Concurrent indeterminate term, having a maximum of Four years with a Minimum Period of Two Years and Ordered to be delivered to the Department Of Corrections and Community Supervision {D.O.C.C.S}.

- ii. Petitioner at the Time of Sentencing had been arrested on three different Occasions:
- a. Initially, petitioner was arrested, by the Town of Cheektowaga, County of Erie, on September 6,2011, and charged; Possession of a forged instrument(PL § 170.25), two counts of Forgery in the second degree(PL§ 170.10); Two Counts: Forgery in the 2nd degree (PL § 170.10)and Petit Larceny (PL § 155.25). He was permitted bail and released on September 15,2011.
  - b. Petitioners second arrest occurred within Bronx County, on March 30,2012.on Charge of Possession of a Forged instrument 2nd degree (PL § 170.25). Again, he was given a bail and released on April 1,2012..
  - c. Finally, petitioner was arrested by the United States Secret Service (U.S.S.S) and charged with Conspiracy to commit access device Fraud (18 U.S.C § 1029(b), on August 20, 2012. Thereby being incarcerated at the Metropolitan Correctional Center (M.C.C.), at 150 Park Row, New York, N.Y., 10007.
5. While at the M.C.C., upon producing warrant , Erie County Sheriffs took Petitioner to the Supreme Court, Erie County on September 19,2012, before the Hon. P. M, Wolfgang (J.S.C.), Who pursuant to both a Plea agreement had on January 4,2012 and Bench Warrant issued on or About April 12,2012, for Petitioners failure to appear for sentencing date scheduled on April 12,2012. Refused to permit the Defendant to withdraw his plea of Guilty to the crimes of two Counts Attempted Criminal Possession of a Forged Instrument 2d degree (PL §§ 110/170.25) . Thereby, Sentencing the petitioner to an indeterminate term of imprisonment, having a Maximum of Four Years with a minimum Period of two years. See, Exhibit " A". Thus, Ordered that the defendant be Committed to the Department of Corrections and Community Supervision [DOCCS].



6. In violation of Corrections Law, section 600-a and Criminal Procedure Law Article 430.00, the Defendant was returned to the MCC some six days later and awaited some Two Years and twenty-six days for said commitment to DOCCS.
7. On September 25,2012, Petitioner was returned to MCC by Erie County Authorities. Where he awaited approx. 7 months for Federal sentencing, which occurred on April 5,2013. (R.J.S) to a period of thirty months incarceration. Whereby, petitioner remained at the M.C.C. until June 7, 2013 upon his transfer to the Moshannon Valley Correctional Center, (M.V.C.C),555 Geo drive, Philipsburg, PA 16866, which was completed on October 10,2014.
8. Petitioner was returned to the authorities of the Erie County Sheriffs' on October 10,2014 twenty-one days later, petitioner was then taken to the Department of Corrections and Community Supervision, At Wende Correctional Facility, 3040 Wende Rd.- Post Office Box 1187, Alden, New York 14004-1187, On October 31,2014.
9. No previous application for this Writ or for the relief sought herein has been made by the petitioner or by anyone on behalf of Petitioner.
10. If for any reason that this Court shall deem that Petitioner is not entitled to the relief as stated above then by lawful procedure, the Court may dismiss the Petition for Writ of Habeas Corpus, or as an Alternative and in the interest of justice, convert said Petition into motion for Judgement pursuant to Article 78 of the Civil Practice Law and Rules. CPLR §§ 7801 – 7804.

**WHEREFORE**, I request that a Writ of Habeas Corpus issue, directed to Respondent, Brandon J, SMITH, Superintendent of the Greene Correctional Facility, or whosoever, has custody of the Petitioner, commanding Respondent to produce the Body of said Petitioner before this Court forthwith so that the Court may inquire into the legality of Petitioners' detention.

Sworn To, Before Me, This  
25th Day of June, 2015

06/25/15 Erick Sanchez

*Beverly Kehoe Shea*

Mr. Erick Sanchez, # 14-B-3250  
Petitioner - Pro Se  
GREENE CORRECTIONAL FACILITY  
165 Plank Rd. - P.O. Box 975  
Coxsackie, New York 12051

NOTARY PUBLIC:

BEVERLY KEHOE SHEA  
Notary Public, State of New York  
Qualified in Albany County  
No. 01SH6150321  
Commission Expires July 24, 2018

VERIFICATION

Greene County Clerk  
Document Number 419913  
Rcvd 07/20/2015 3:04:48 PM

State of New York )  
  ) SS. :  
County of Greene     )

**15-0655**

Petitioner, Erick Sanchez, being duly Sworn, deposes and Says:

**That** he is the Deponent herein, and has read the foregoing Verified petition for a Writ of Habeas Corpus and Knows the contents thereof; The same is true to deponent's Own knowledge, except as to those matters alleged on information and belief and, as to Those matters, deponent believes it to be true and Correct.

Affirmed under Penalty of Perjury.

Sworn To, Before Me, This  
25th Day of June, 2015  
*Beverly Kehoe Shea*  
Notary Public

06/25/15 Erick Sanchez

Mr. Erick Sanchez, # 14-B-3250  
Deponent/petitioner - Pro se  
GREENE CORRECTIONAL FACILITY

BEVERLY KEHOE SHEA  
Notary Public, State of New York  
Qualified in Albany County  
No. 01SH6150321  
Commission Expires July 24, 2018

Sworn to this 25th  
day of June, 2015

06/25/15 Rich S. Sandoz

*Beverly Kehoe Shea*  
NOTARY PUBLIC:

165 Plank Rd. - P.O. Box 975  
Coxsackie, New York 12051

BEVERLY KEHOE SHEA  
Notary Public, State of New York  
Qualified in Albany County  
No. 01SH6150321  
Commission Expires July 24, 2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF GREENE

The People of the State of New York  
Ex Rel, ERICK SANCHEZ

Petitioner;

Greene County Clerk  
Document Number 419913  
Rcvd 07/20/2015 3:04:48 PM

-against-

ERIE COUNTY SHERIFF'S DEPARTMENT  
Diane H. Hulford, Coordinator  
New York State Department of corrections  
And Community Supervision, And  
BRANDON J.SMITH, Superintendent  
GREENE CORRECTIONAL FACILITY,  
Respondent.

AFFIDAVIT IN SUPPORT OF  
ORDER TO SHOW CAUSE  
**RECEIVED**

JUL 22 2015

GREENE COUNTY  
SUPREME & COUNTY COURT

Index No.

~~15~~-0655

State of New York     )  
                                  ) SS. ;  
County of Greene     )

I, Erick Sanchez,[Hereinafter 'Petitioner'] petition this Court for an Order to the Respondent(s); Brandon J. Smith, Superintendent of the Greene Correctional Facility directing him to Credit Petitioner with 749 days towards his Sentence.

1. I am the Petitioner, Pro se, within the above entitled captioned matter and make this Affidavit in support of my Application for an Order to Show Cause pursuant to the laws of this State and that of the United States Constitution. On the ground that evidence and are not disputed are as follows. Petitioner was initially arrested for Possession of Forged instrument in the second degree (PL § 170.25), Two Counts of Forgery 2nd degree(PL § 170.10) and Petit Larceny (PL §

155.25), and was released on bail some nine days later.

2. Petitioner was arrested on September 6,2011, in the Town of Cheektowaga, Erie County on the above stated charges and was released to bail on September 15,2011.( Index No. 2011-02022). He appeared before the Hon. Penny M. Wolfgang (J.S.C), of the Supreme Court, Erie County on January 4,2012, and plead guilty to two Counts of Attempted Criminal Possession of a Forged Instrument in the 2nd degree (PL. §§ 110/170.25) each a class E Felony and was scheduled for sentencing on April 12,2012. See Exhibit 'A'.

3. However, on March 30,2012, Petitioner was arrested in Bronx County for the crime of Possession of a Forged instrument 2nd Degree (PL § 170.25), a class D felony and Unlawful Possession I.D., 3rd further the Commission of a Crime (PL § 190.81) a class A misdemeanor And was, again, release on bail on April 1,2012.

4. On April 12,2012, Petitioner failed to show for his scheduled Court appearance for sentencing and as a result a Bench warrant was issued.

5. Finally, on August 20,2012, Petitioner was arrested by the United States Secret Service (U.S.S.S) on charges of Conspiracy to Commit Access device Fraud (18 U.S.C. § 1029[b]), 1 count, therefrom the above said State cases {Index No. 2011-02022 and Bronx Case # 2012BX019435} and placed within the Metropolitan Correctional Center (MCC), a federal detention in New York City.

6. While awaiting at the MCC, On September 11,2012, Sheriff's from Erie County picked Petitioner up from the MCC, pursuant to said warrant issued by the Supreme Court, Erie County, Before the Honorable Penny M. Wolfgang, J.S.C, on or about April 12,2012. Thus, The Court On September 19,2012, refused to Accept Defendant's withdrawal of Plea agreement held on January 4,2012. Thereby, not relying on negotiated Plea and Sentenced the Petitioner/Defendant to the maximum term of four years with a minimum period of two years. Ordering that the Defendant be brought to the Department Of Corrections and Community Supervision

[D.O.C.C.S] for commitment of Concurrent Sentences. See, Exhibit ' A'. However, petitioner was returned to MCC by Erie County sheriff's on September 25,2012.

7. Meanwhile, on March 3,2015, Case No. 2012BX019 435, Bronx County was dismissed and sealed in favor of the Defendant. (CPL §§ 160.50 or 160.55).See, Exhibit ' B '.

8. On April 5,2013, Petitioner appeared before the Honorable Richard J. Sullivan (R.J.S), at the United States District Court For the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, New York. Petitioner, by plea, was sentenced to a term of imprisonment of Thirty months (2 ½ years), consecutive. See, Exhibit ' C ', as a result of his Plea of Guilty to the single count of Conspiracy to commit Access device fraud (18 U.S.C § 1029[b]).

9. Despite the above stated sentence, Petitioner was illegally returned to the MCC after his State Court Sentence on September 25,2012,(Index No. 2011-02022) until June 7, 2013, when Petitioner was transferred to the Moshannon Valley Correctional Center (MVCC), 555 Geo Drive, Phillipsburg, PA 16866, until his Maximum Expiration date of October 10,2014. At that time, Petitioner was returned to the County sheriff's, Erie County Holding Center, 40 Delaware Avenue, Buffalo, New York 14202. On or about October 13,2014, I was taken to the Erie County Correctional Facility, 11581 Walden Avenue, Alden, New York 14004. Until he was committed within the Department of Corrections and Community Supervision at the Wende Correctional Facility, 3040 Wende Road – Post Office Box 1187, Alden, New York 14004-1187, on October 31,2014.

10. Due to the Detainer lodged by State of New York {D.O.C.C.S}, Petitioner was not afforded, as similar situated Federal inmates the opportunity to be in Home arrest, programmed July 13,2014 (Three months prior to Petitioner's Release).

11. As a result of a letter dated March 25,2015, Petitioner with help from English speaking

Inmate wrote to the Clerk of the Court, Erie County requesting to Know about Jail Time Computation which had only accredited him with a total of 46 days jail time and was informed that he should make a motion pursuant to Article 78 of the Civil Practice Law and Rules (CPLR).

12. This petition argues, as stated previously that Petitioner be credited with the 749 days Jail time, from September 19,2012(date of State Sentence) until October 31,2014 (time Committed to DOCCS).

13. In section 430.20(1) reads as follows "[W]hen a sentence of imprisonment is pronounced...the defendant must forthwith be committed to the custody of the appropriate public servant and detained until the sentence is complied with". See, CPL § 430.30 ; Ayers v. Coughlin, 72 N.Y.2d 346 (N.Y. 1988).

14. In Rodriguez v. McMickens, 133 Misc.2d 154(N.Y. Sup. 1986) The Supreme Court, New York County, Special term Part 1, Similarly ruled that there was no rule of comity between governments requires a surrender for the purpose of serving a foreign sentence. Moreover, where He was not sentenced on Federal Charge until some months later. Result of unauthorized release to Federal Authorities thereafter a State Court Sentencing Order of Petitioner, Violated Petitioners rights under the Liberty Clause of the United States Constitution to commence Court imposed sentence.

15. Similarly, in Musto v. Sielaff, 194 A.D.2d 491(1 Dept. 1993), the Court affirmed a decision based that Petitioner was produced in Kings County and received two indeterminate concurrent prison terms of 2 to 4 years, and the judge committed petitioner to the custody of the State Commissioner until released. Instead he was returned to federal custody. Subsequently, upon a plea of guilty petitioner received a 33 month Federal sentence, which was to be served consecutively to the state sentence, which the federal judge believed that petitioner was serving.

Upon completion of the federal sentence , petitioner, as here, was returned to State jurisdiction. Relief was granted on the basis that the 'New York' Authorities had no right to release petitioner to Federal authorities.

**WHEREFORE** , Petitioner prays for an order directing the Respondent to credit Jail Time Of 749 days spent in federal custody, which the New York Authorities had not the right to Release him to Federal Authorities, an order for immediate release thereafter being accredited Jail time of 749 days, due to Petitioner being past his Conditional Release date and Eligibility For Parole Release and thus, any such other and further Order deemed pursuant to law by this Court to be Just and proper.

Sworn To, Before me, this  
25th Day of June, 2015

  
NOTARY PUBLIC:

BEVERLY KEHOE SHEA  
Notary Public, State of New York  
Qualified in Albany County  
No. 01SH6150321  
Commission Expires July 24, 2018



Mr. Erick Sanchez, # 14-B-3250  
Petitioner – Pro Se  
GREENE CORRECTIONAL FACILITY  
165 Plank Rd. – P.O. Box 975  
Coxsackie, New York 12051-0975





# 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

August 19, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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: *McClelland, Carl a/k/a Willie White v.  
Frank A. Sedita, III, Erie County  
District Attorney*

Document Received: Order to Show Cause

Name of Petitioner: Carl McClelland  
a/k/a Willie White  
#04-B-3307  
Wende Correctional Facility  
3040 Wende Road  
PO Box 1187  
Alden, New York 14004-1187

Petitioner Attorney: Petitioner is proceeding *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 18D-6  
Page 97 of 134

**R E C E I V E D**  
AUG 11 2015  
ERIE COUNTY *sump*  
DEPARTMENT OF LAW

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

IN THE MATTER OF THE APPLICATION OF  
**CARL MCCLELLAND**, #04-B-3307  
a/k/a **WILLIE WHITE**

ORI# NY 014015J

ORDER TO  
SHOW CAUSE

Petitioner,

-vs-

**FRANK A. SEDITA, III**, ERIE COUNTY  
DISTRICT ATTORNEY,

Index No.  
I-2015-00126

Respondent.

---

SUPREME COURT, ERIE COUNTY

**HON. PAULA L. FEROLETO**, JUSTICE PRESIDING

APPEARANCES:

Petitioner, Pro Se  
**CARL MCCLELLAND** #04-B-3307  
a/k/a **WILLIE WHITE**

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 June 30, 2015, with accompanying exhibits, and it appearing that the  
above referenced petitioner, **CARL MCCLELLAND** a/k/a **WILLIE WHITE**, a sentenced inmate,  
having made application pursuant to section 1101(f) of the CPLR, seeking poor person status and  
requesting a reduced filing fee,

**LET RESPONDENT SHOW CAUSE** at a Special Term of the Supreme Court to be held in and for the County of Erie on **SEPTEMBER 21, 2015** before the **HON. CHRISTOPHER J. BURNS**, Justice of the Supreme Court, in Part 19 at 25 Delaware Avenue, Buffalo, New York, **WHY** the relief requested in the Petition should not be granted.

**IT IS ORDERED** that John B. Lempke, Superintendent of the Wende Correctional Facility in Alden, New York where petitioner is now confined will produce the body of **CARL MCCLELLAND a/k/a WILLIE WHITE** only if the court submits a letter to the superintendent ordering the production of the petitioner; and it is further

**ORDERED** that since the petitioner lacks sufficient means to pay the full filing fee ordinarily required in the prosecution of an action pursuant to Article 78 of the CPLR, the petitioner's application for reduced filing fee is hereby granted; and it is further

**ORDERED** that the petitioner will be permitted to pay a reduced filing fee of fifteen dollars (\$15.00) to proceed with this action. This fee shall be assessed against the petitioner as an outstanding obligation and collected by the facility in which the petitioner is lodged; and it is further

**ORDERED** that the petitioner is not required to make an initial payment of a portion of the reduced filing fee and any interim or final judgment or order entered in this matter shall be filed by the county clerk whether or not any portion of said reduced filing fee has been paid; and it is further

**ORDERED** that in the event the petitioner should receive an unfavorable decision, said petitioner is hereby granted poor person relief pursuant to Article 11 of the Civil Practice Law

and Rules for the limited purpose of filing a Notice of Appeal in the Erie County Clerk's Office without paying 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 there will be no appointment of counsel to assist the petitioner in the prosecution of his Article 78 proceeding. While CPLR §1102(a) " . . . permits the assignment of counsel where leave has been granted to proceed as a poor person . . . [t]he scope of that authority does not extend to direct that such legal services be provided out of public funds in the absence of statutory authorization for such expenditure" (*Matter of Smiley*, 36 NY2d 433; *Matter of Enrique R.*, 126 AD2d 169, 175). There is simply no statutory authorization for the assignment of counsel in the instant Article 78 proceeding to be paid out of public funds. Therefore, the court is constrained to deny petitioner's request for appointment of counsel pursuant to CPLR §1102(a); 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, Frank A. Sédita, III, on or before **August 24, 2015** 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 Justice Burns, and any party receiving an adjournment shall notify the other party or parties of said adjourned date; and it is further

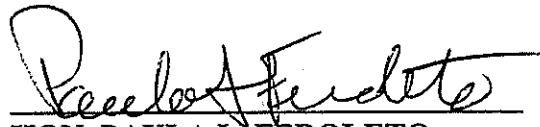
**ORDERED** that it is the petitioner's responsibility to:

(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. The reduction of the filing fee herein does not authorize court personnel to provide photo-reproduction services, nor service of papers on behalf of a *pro se* litigant, as these services are not statutorily authorized under a grant of poor person relief (CPLR 1102).

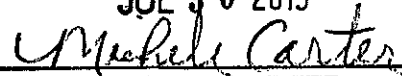
(b) Submit the original proof of service to the chambers of the **Hon. Christopher J. Burns**, 25 Delaware Avenue-Fifth Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date; and it is further

**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 Justice Burns not less than three (3) days prior to said return date.

DATED: Buffalo, New York  
July 30, 2015

  
**HON. PAULA L. FEROLETO**  
Justice of the Supreme Court

GRANTED: **GRANTED**

JUL 30 2015  
BY   
**MICHELE CARTER**  
COURT CLERK



# 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

August 19, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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>Sheehan, Ronald L. v. County of Erie, et al.</i>   |
| Document Received:   | Notice of Claim   |
| Name of Claimant:    | Ronald L. Sheehan<br>9 Southview Drive<br>Arcade, New York 14009  |
| Claimant's attorney: | Adam M. Lynch, Esq.<br>Lipsitz Green Scime Cambria LLP<br>42 Delaware Avenue, Suite 120<br>Buffalo, New York 14202-3924 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 18D-6  
Page 102 of 134

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In the Matter of the Claim of

RONALD L. SHEEHAN,

Claimant,

- against -

ERIE COUNTY,  
ERIE COUNTY SHERIFF'S  
DEPARTMENT,  
ERIE COUNTY DISTRICT  
ATTORNEY'S OFFICE,  
ERIE COUNTY DEPARTMENT  
OF PROBATION,  
BUFFALO CITY COURT,  
CITY OF BUFFALO, and  
ERIE COUNTY DWI PROGRAM

---

NOTICE OF CLAIM

This paper received at the  
Erie County Attorney's Office  
from Gary Bealacqua  
the 14<sup>th</sup> day of August, 2015  
at 3:35 a.m./p.m.  
Martin Poloway  
Assistant County Attorney

TO: ERIE COUNTY,  
ERIE COUNTY SHERIFF'S DEPARTMENT,  
ERIE COUNTY DISTRICT ATTORNEY'S OFFICE  
ERIE COUNTY DEPARTMENT OF PROBATION,  
BUFFALO CITY COURT,  
CITY OF BUFFALO, and  
ERIE COUNTY DWI COURT PROGRAM

PLEASE TAKE NOTICE, that RONALD L. SHEEHAN, has and hereby makes claim against ERIE COUNTY, ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, ERIE COUNTY DEPARTMENT OF PROBATION, BUFFALO CITY COURT, CITY OF BUFFALO, and ERIE COUNTY DWI PROGRAM, and in support of said claim states the following:

1. The Post Office address of the claimant is 9 Southview Drive, Arcade, New York 14009.

2. The attorneys for the claimant are LIPSITZ GREEN SCIME CAMBRIA LLP, and their Post Office address is 42 Delaware Avenue, Suite 120, Buffalo, New York 14202-3924.

3. The claim of RONALD L. SHEEHAN is for unlawful imprisonment, deprivation of civil rights and due process guarantees by ERIE COUNTY, ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, ERIE COUNTY DEPARTMENT OF PROBATION, BUFFALO CITY COURT, CITY OF BUFFALO, and ERIE COUNTY DWI PROGRAM, and for consequential damages generally.

4. The time of unlawful imprisonment was on or about May 20, 2015 and continuing through June 2, 2015.

5. The claim arose at the Erie County Holding Center, located at 40 Delaware Avenue, in the City of Buffalo, County of Erie and State of New York and further, at the Erie County Correctional Facility, located at 11581 Walden Avenue, in the Town of Alden, County of Erie and State of New York.

6. The claim arose in substance as follows: On or about the 20<sup>th</sup> day of May, 2015, Erie County wrongly sentenced and incarcerated the claimant to the Erie County Holding Center for three days. Claimant was then transferred to the Erie County Correctional Facility for an additional ten days of wrongful imprisonment.

7. Due to failure by ERIE COUNTY, ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, ERIE COUNTY DEPARTMENT OF PROBATION, BUFFALO CITY COURT, CITY OF BUFFALO, and ERIE COUNTY DWI PROGRAM to timely release the claimant, RONALD L. SHEEHAN was kept in custody by ERIE COUNTY at the Erie County Holding Center and the Erie County Correctional Facility through and until June 2, 2015.

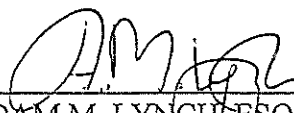


8. As a result of the foregoing, the claimant, RONALD L. SHEEHAN, was unlawfully imprisoned, deprived of his civil rights and due process guarantees during the period of May 20, 2015 and continuing through June 2, 2015, due to the failure of ERIE COUNTY, ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, ERIE COUNTY DEPARTMENT OF PROBATION, BUFFALO CITY COURT, CITY OF BUFFALO, and ERIE COUNTY DWI PROGRAM to timely release claimant and/or failure to properly sentence and/or abide by claimant's probation guidelines.

WHEREFORE, claimant requests that ERIE COUNTY, ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, ERIE COUNTY DEPARTMENT OF PROBATION, BUFFALO CITY COURT, CITY OF BUFFALO, and ERIE COUNTY DWI PROGRAM honor and pay the claim on behalf of RONALD L. SHEEHAN.

DATED: Buffalo, New York  
August 11, 2015

LIPSITZ GREEN SCIME CAMBRIA LLP

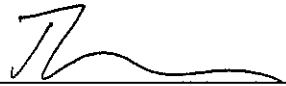
By:   
ADAM M. LYNCH, ESQ.  
Attorneys for Claimant  
Office and P.O. Address  
42 Delaware Avenue, Suite 120  
Buffalo, New York 14202-3924  
(716) 849-1333  
[ TMM : # 99283.0007 ]

STATE OF NEW YORK     )  
  ) SS.:  
COUNTY OF ^ Erie     )

RONALD L. SHEEHAN, being duly sworn deposes and says that he is the claimant above named; and makes this claim on behalf of self; he has read the foregoing claim and knows the contents thereof; the same is true to the knowledge of the claimant except for the matters herein alleged upon information and belief, and as to those matters, he believes them to be true.

  
\_\_\_\_\_  
RONALD L. SHEEHAN

Sworn to before me on this  
11<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
Notary Public

THOMAS M. MERCURE  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 17, 2019



# 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

August 24, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

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>Sugorovskiy, Maksym, Estate of, et al.</i>  |
| Document Received:   | Notice of Claim  |
| Name of Claimants:   | Mary and Vladimir Sugorovskiy<br>192 Fenton Street<br>Buffalo, New York 14206                        |
| Claimants' Attorney: | Mark H. Cantor, Esq.<br>Cantor, Fink & Taub<br>43 Court Street, Suite 930<br>Buffalo, New York 14202 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Jeremy C. Toth  
Second Assistant County Attorney  
jeremy.toth@erie.gov

JCT:dld

Enclosure

Comm. 18D-6  
Page 107 of 134

This paper received at the  
Erie County Attorney's Office  
from Richard Fink on  
the 24 day of Sept 2015  
at 8:52 a.m./p.m.

[Signature]  
Assistant County Attorney

Michael J. Liszewski

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

\_\_\_\_\_  
MARY SUGOROVSKIY and VLADIMIR SUGOROVSKIY,  
individually and as Administrators of the Estate of  
MAKSYM SUGOROVSKIY, Deceased, and as parents  
and Natural Guardians of STEPHANIE SUGORIVSKIY,

**NOTICE OF CLAIM**

Claimants,

vs.

COUNTY OF ERIE,

Respondent,

\_\_\_\_\_  
TO: Erie County Department of Law  
69 Delaware Ave # 300,  
Buffalo, NY 14202

**PLEASE TAKE NOTICE**, that the above-named claimants, hereby make claim against the  
County of Erie as follows:

1. The claimants MARY SUGOROVSKIY and VLADIMIR SUGOROVSKIY (hereinafter referred to as Claimants) address is 192 Fenton, City of Buffalo, County of Erie, State of New York. Infant claimant STEPHANIE SUGORIVSKIY resides with claimants at that address. At the time of his death MAKSYM SUGOROVSKIY resided with claimants at that address.
2. Letters of limited administration for the Estate of MAKSYM SUGOROVSKIY were granted by Erie County Surrogate's Court to Claimants. Copy of letters are attached hereto.
3. The Claimants' attorneys are Cantor, Fink & Taub with offices at 43 Court Street, Suite 930 City of Buffalo, State of New York.
4. The Claimants' claim for negligence which resulted in the wrongful death of MAKSYM SUGOROVSKIY and personal injuries to STEPHANIE SUGOROVSKIY born on

September 29, 2009, and personal injuries to MARY SUGOROVSKIY, arose as a result of an accident in the City of Buffalo what is known as Ring Road, a walking and bicycle path located in Delaware Park, on the southeast side of said Ring Road, at or near New York State DOT reference marker 198-5301-1025.

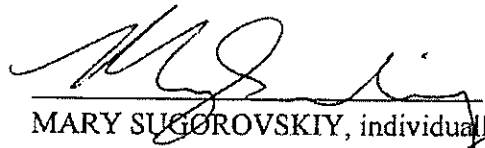
5. MARY SUGOROVSKIY, STEPHANIE SUGOROVSKIY and MAKSYM SUGOROVSKIY were pedestrians on Ring Road in an area adjacent to New York State Route 198 westbound, when they were caused to be struck by a motor vehicle traveling in a westerly direction on Route 198 that veered off of Route 198 onto said Ring Road.
6. This specific claim is that the respondent did fail to plan, design, create, install, sign, administer, inspect, maintain, barricade, and keep in proper condition, a certain portion of premises owned by them or under their control at the aforesaid location. The Respondent did fail to separate the westbound driving lanes of New York State Route 198 from the bike and walking path known as Ring Road with ample space or a physical barrier to protect pedestrians such as MAKSYM SUGOROVSKIY, STEPHANIE SUGOROVSKIY and MARY SUGOROVSKIY. The Respondent also failed to react and respond to prior accidents and was on notice that the foresaid walking and bike path was in an area that is in close proximity to New York State Route 198 westbound, and Respondent was otherwise careless, negligent and reckless.
7. Claimants' decedent, MAKSYM SUGOROVSKIY, was caused to sustain serious personal injuries, resulting in his death, resulting in pecuniary loss, pain and suffering and pre-impact terror. Claimant, MARY SUGOROVSKIY was caused to sustain serious and permanent personal injuries and as a result has been caused to sustain serious and severe pain and suffering, has been disabled, and will incur substantial medical expenses, as well as loss of enjoyment of life and also to incur substantial expenses with respect to injuries sustained by STEPHANIE SUGOROVSKIY and the death of MAKSYM SUGOROVSKIY, Infant claimant, STEPHANIE SUGOROVSKIY was caused to sustain serious and severe pain and suffering, has been disabled, and will incur substantial medical expenses, as well as loss of enjoyment of life. Claimant, VLADIMIR SUGOROVSKIY was caused to suffer the loss of the services and companionship of

MARY SUGOROVSKIY, his wife, and also to incur substantial expenses with respect to injuries sustained by MARY SUGOROVSKIY and STEPHANIE SUGOROVSKIY and the death of MAKSYM SUGOROVSKIY, resulting in pecuniary loss.


8. It is alleged that the wrongful death of MAKSYM SUGOROVSKIY and the personal injuries to MARY SUGOROVSKIY and STEPHANIE SUGOROVSKIY occurred without any negligence or carelessness on the part of the Claimants.
9. The Claim and demand is hereby presented for adjustments and payment.

**PLEASE TAKE FURTHER NOTICE**, that the undersigned present this claim and demand for adjustment and payment and notify you that unless adjusted and paid, that it is the intention of the undersigned to commence an action thereon.

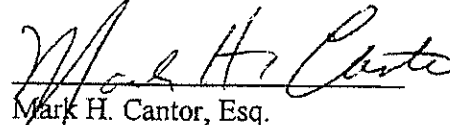
DATED: July 29, 2015  
Buffalo, NY



MARY SUGOROVSKIY, individually and  
as Co-Administrator of the Estate of  
MAKSYM SUGOROVSKIY, Deceased,  
and as parent and natural guardian of  
STEPHANIE SUGOROVSKIY



VLADIMIR SUGOROVSKIY, individually  
and as Co-Administrator of the Estate of  
MAKSYM SUGOROVSKIY, Deceased,  
and as parent and natural guardian of  
STEPHANIE SUGOROVSKIY

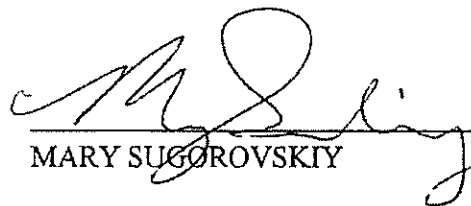


Mark H. Cantor, Esq.  
CANTOR, FINK & TAUB  
43 Court Street, Suite 930  
Buffalo, New York 14202  
(716) 848-8000

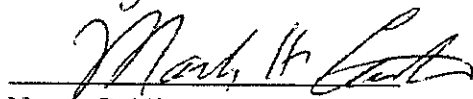
VERIFICATION

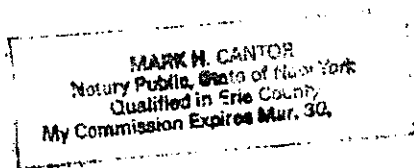
MARY SUGOROVSKIY, being duly sworn deposes and says,

That she is a Claimant in this action ; that she has read the foregoing NOTICE OF CLAIM and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matter therein stated to be alleged on information and belief, and that as to those matters she believes them to be true.

  
MARY SUGOROVSKIY

Sworn to before me this 29<sup>th</sup>  
day of July, 2015.

  
Notary Public



VERIFICATION

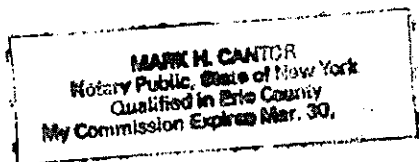
VLADIMIR SUGOROVSKIY, being duly sworn deposes and says,

That he is a Claimant in this action ; that he has read the foregoing NOTICE OF CLAIM and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matter therein stated to be alleged on information and belief, and that as to those matters she believes them to be true.

Vladimir Sugorovskiy  
VLADIMIR SUGOROVSKIY

Sworn to before me this 28<sup>th</sup>  
day of July, 2015.

Mark H. Cantor  
Notary Public







At a Surrogate's Court of the State of New York held in  
and for the County of Erie,  
at 92 Franklin Street New York  
on June 11, 2015

PRESENT: HON. BARBARA HOWE, Surrogate.

ADMINISTRATION PROCEEDING, ESTATE OF  
MAKSYM SUGOROVSKIY  
a/k/a

**DECREE APPOINTING  
ADMINISTRATOR**

Deceased.

File No. 2015- 2560

A petition having been filed by Vladimir Sugorovskiy and Mary Sugorovskiy  
praying that administration of the goods, chattels and credits of  
the above-named decedent be granted to Vladimir Sugorovskiy, to serve without bond, and Mary  
Sugorovskiy, to serve without bond.

and all persons named in such petition, required to be cited, having been duly cited to show cause why such  
relief should not be granted or having duly waived the issuance of such citation and consented thereto; and it  
appearing that Vladimir Sugorovskiy, to serve without bond, and Mary Sugorovskiy, to serve without bond.  
is in all respects competent to act as administrator of the estate of said deceased, and a

a bond having been filed and approved in the amount of \$ \_\_\_\_\_

a bond having been dispensed with

and such representative(s) otherwise having qualified therefore; now, after due deliberation, with no one  
appearing in opposition thereto, it is

**ORDERED AND DECREED** that Letters of Administration issue to Vladimir Sugorovskiy, to serve  
without bond, and Mary Sugorovskiy, to serve without bond.

**ORDERED AND DECREED**, that the authority of such representative(s) be restricted in accordance  
with, and that letters herein issued contain, the limitation, if any, which appears immediately below.  
That the authority of the representative under the foregoing Letters be limited with respect to the prosecution or  
enforcement of a cause of action on behalf of the estate, as follows: the administrator(s) may not enforce a  
judgment or receive any funds without further order of the Surrogate.

**RECEIVED**

JUN 11 2015

SURROGATE'S OFFICE  
ERIE COUNTY, N.Y.

HON. Barbara Howe  
Surrogate Judge

## Surrogate's Court of the County of Erie

On the Date Written Below LETTERS OF LIMITED ADMINISTRATION were granted by the Surrogate's Court of Erie County, New York as follows:

Name of Decedent: **Maksym Sugorovskiy** File #: 2015-2560  
Date of Death: 05-30-2015  
Domicile: **Erie County**  
Type of Letters Issued: **LETTERS OF LIMITED ADMINISTRATION**  
Fiduciaries Appointed: **Mary Sugorovskiy** **Vladimir Sugorovskiy**  
192 Fenton Street 192 Fenton Street  
Buffalo NY 14206 Buffalo NY 14206


**Limitations:** Pursuant to SCPA 702, and Uniform Rules for Surrogate's Court 207.38, no final compromise of any wrongful death or related action(s) or proceeding(s) shall be made, nor any attorney's fees taken relating to the wrongful death action, without prior application to the surrogate for leave to compromise said action(s) or proceeding(s) and obtaining an order from the surrogate approving said compromise and distribution of proceeds, if any.

THESE LETTERS, granted pursuant to a decree entered by the court, authorize and empower the above-named fiduciary or fiduciaries to perform all acts requisite to the proper administration and disposition of the estate/trust of the Decedent in accordance with the decree and the laws of New York State, subject to the limitations and restrictions, if any, as set forth above.

Dated: June 11, 2015

IN TESTIMONY WHEREOF, the seal of the Erie County Surrogate's Court has been affixed.

WITNESS, Hon Barbara Howe, Judge of the Erie County Surrogate's Court



Joseph A. Shifflett, Chief Clerk

*These Letters are Not Valid Without the Raised Seal of the Erie County Surrogate's Court*

**Attorney:**  
**Acea M Mosey**  
**Mosey Persico LLP**  
625 Delaware Avenue Suite 304  
Buffalo NY 14202

NOTICE: Attention is called to the provision of Sec. 11-1.6 of Estates, Powers and Trusts law and Sec. 719 of the Surrogate's Court Procedure Act, which makes it a misdemeanor and a cause for removal for a fiduciary to deposit or invest estate funds in his individual account or name. All funds must be deposited in the name of fiduciary and to the credit of the estate. Sec 708 and Sec 711 of the Surrogate's Court Procedure Act provide that if the address of the fiduciary changes they shall promptly notify the court of the new address and that failure to do so within thirty (30) days after such change may result in the suspension or revocation of letters.



# 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

September 9, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

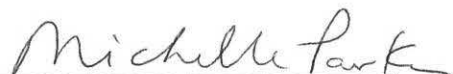
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

|                      |  |
|----------------------|--|
| File Name:           | <i>Salim, Rafiq v. County of Erie, et al.</i>                  |
| Document Received:   | Complaint  |
| Name of Claimant:    | Rafiq J. Salim<br>254 Roslyn Street<br>Buffalo, New York 14215 |
| Claimant's attorney: | Claimant is proceeding <i>pro se</i> .                         |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld

Enc.

Comm. 18D-6  
Page 115 of 134

MAY 08 2015

BY: \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

---

Rafiq J. Salim,

Plaintiff

CIVIL ACTION NO.

15 CV 418-A  
USC §1983

-against-

COUNTY OF ERIE; CITY OF BUFFALO; STATE OF NEW YORK;

Robert Joyce, individually and in his official capacity,

Cheektowaga Police Officer; Paul Lew, individually and in his

official capacity, Parole Officer (ret.); Karen Korkuc,

individually and in her official capacity, Assistant District

Attorney; Amy Benedict, individually and in her official

capacity, Assistant District Attorney; Frank Sedita III,

individually and in his official capacity, Erie County District

Attorney; Cheryl Campbell, individually and in her official

capacity, Buffalo Police Officer; Deborah Haendiges,

individually and in her official capacity, Justice, Erie County

Supreme Court; BUFFALO POLICE DEPARTMENT; CHEEKTOWAGA

POLICE DEPARTMENT; Christopher Jacobs, individually

and in his official capacity, Erie County Clerk; Daniel

Derenda, individually and in his official capacity,

Buffalo Police Commissioner; Byron Brown, individually

and in his official capacity, Mayor of Buffalo; ERIE

COUNTY SHERIFF'S DEPARTMENT, NYS DEPARTMENT  
OF CORRECTIONS AND COMMUNITY SUPERVISION,

Defendants.

---

**STATEMENT OF JURISDICTION, VENUE and NATURE OF SUIT**

1. Basis of Jurisdiction in Federal Court: Federal Question.
2. Reason for Venue in the Western District: This claim arises in Erie County within the Western District of New York.
3. Nature of Suit: Civil Rights Claim pursuant to USC § 1983

**PARTIES TO THIS ACTION**

4. **PLAINTIFFS INFORMATION:** Rafiq J. Salim  
254 Roslyn Street  
Buffalo, NY 14215
  
5. **DEFENDANTS' INFORMATION**
  - a. **Name:** COUNTY OF ERIE  
**Address:** Michael A. Siragusa, Erie County Attorney  
95 Franklin Street - Rm 1634  
Buffalo, New York 14202
  
  - b. **Name:** CITY OF BUFFALO  
**Address:** Timothy A. Ball, Corporation Counsel  
1100 City Hall  
Buffalo NY 14202
  
  - c. **Name:** STATE OF NEW YORK  
**Address:** Eric T. Schneiderman, Attorney General  
Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341
  
  - d. **Name:** Robert Joyce, Police Officer  
**Address:** Cheektowaga Police Headquarters  
3223 Union Road  
Cheektowaga, New York 14227

- e. Name: Paul Lew, Parole Officer (ret.)  
Address: New York State Division of Parole  
1220 Washington Ave, Building 2  
Albany, New York 12226-2050
- f. Name: Karen Korkuc, Assistant District Attorney  
Address: Erie County District Attorney's Office  
25 Delaware Avenue, 6th Floor  
Buffalo, NY 14202
- g. Name: Amy Benedict, Assistant District Attorney  
Address: Erie County District Attorney's Office  
25 Delaware Avenue, 6th Floor  
Buffalo, NY 14202
- h. Name: Frank Sedita III, District Attorney  
Address: Erie County District Attorney's Office  
25 Delaware Avenue, 6th Floor  
Buffalo, NY 14202
- i. Name: Cheryl Campbell, Police Officer  
Address: Buffalo Police Department  
74 Franklin Street  
Buffalo, NY 14202
- j. Name: Deborah Haendiges, Justice  
Address: Erie County Supreme Court  
25 Delaware Avenue  
Buffalo, NY 14202
- k. Name: BUFFALO POLICE DEPARTMENT  
Address: Timothy A. Ball, Corporation Counsel  
1100 City Hall  
Buffalo NY 14202
- l. Name: CHEEKTOWAGA POLICE DEPARTMENT  
Address: Kevin G. Schenk, Town Attorney  
Law Department  
3301 Broadway

2nd Floor, Room 206  
Town Hall  
Cheektowaga, NY 14227

- m. Name: Christopher Jacobs, Erie County Clerk  
Address: 92 Franklin Street  
Buffalo, New York, 14202
- n. Name: Daniel Derenda, Buffalo Police Commissioner  
Address: Buffalo Police Department  
74 Franklin Street  
Buffalo, NY 14202
- o. Name: Byron Brown, Mayor of Buffalo  
Address: 201 City Hall  
Buffalo, NY 14202
- p. Name: ERIE COUNTY SHERIFF'S DEPARTMENT  
Address: Michael A. Siragusa, Erie County Attorney  
95 Franklin Street - Rm 1634  
Buffalo, New York 14202
- q. Name: N YS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
Address: Eric T. Schneiderman, Attorney General  
Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

#### PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

6. Plaintiff *Pro Se* filed May 2011 in the UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK under seal a Qui Tam petition, **UNITED STATES ex rel. Rafiq J. Salim v. COUNTY OF ERIE, CITY OF BUFFALO, Karen Korkuc Assistant District Attorney, Byron Brown, Mayor of Buffalo, Cheryl Campbell, Buffalo Police Officer, Robert Joyce, Buffalo Police Officer, Deborah Haendiges, Erie County Supreme Court Justice, 11-CV-0535, dismissed with prejudice to the relator, but without prejudice to the United States 10/7/2011.**

#### STATEMENT OF CLAIM

7. **FIRST CLAIM:** June 19, 2009 at approximately 9:30 pm, Cheektowaga Police Officer Robert Joyce and an unknown uniformed police officer, weapons drawn, forced me to sit on the pavement in front of my residence, handcuffed me, forced me into a Cheektowaga Police cruiser, transported me to the CHEEKTOWAGA POLICE DEPARTMENT and placed me in a holding cell. Officer Joyce then transported me in a Cheektowaga Police cruiser to the Erie County Holding Center at 25 Delaware Avenue, CITY OF BUFFALO, and turned me over into the custody of the ERIE COUNTY SHERIFF'S DEPARTMENT.
  - a. The federal basis for this claim is False arrest, unlawful imprisonment, due process of law, malicious prosecution, unlawful seizure.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering
8. **SECOND CLAIM:** June 2009 – June 2010 the ERIE COUNTY SHERIFF'S DEPARTMENT unlawfully held me in custody at the Erie County Holding Center and at the Erie County Jail in Alden, NY. At the Erie County Jail I protested confinement in a cell in which the lights were never turned off; at the Erie County Holding Center I was held in punitive confinement for protesting the conditions of my confinement at the Erie County Jail and falsely labeled an escape risk.
  - a. The federal basis for this claim is unlawful imprisonment and cruel and unusual punishment.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering
9. **THIRD CLAIM:** June – August 2009 Parole Officer Paul Lew (ret), relying on a false document that he knew to be false at the time, created a Violation Of Release Report charging me with violating the rules of parole supervision and testified at a parole revocation hearing consistent with the false report he knew to be false at that time.
  - a. The federal basis for this claim is malicious prosecution, violation of the right to a presumption of innocence.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering
10. **FOURTH CLAIM:** June – August 2009 the NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, relying on a false document that they knew to be false at the time, prosecuted me for violating the rules of parole supervision and imprisoned me for 24 months.



- a. The federal basis for this claim is malicious prosecution, violation of the right to a presumption of innocence.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering
11. FIFTH CLAIM: June 2011 – June 2012 the NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, knowing that the document used to prosecute me is false and fully aware of the police documents providing incontrovertible proof of actual innocence, compelled me to wear a steel ankle monitor and attend domestic violence and anger management counseling.
  - a. The federal basis for this claim is cruel and unusual punishment, violation of the right to a presumption of innocence.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering.
12. SIXTH CLAIM: June 2009-June 2010 Karen Korkuc , Assistant District Attorney, ERIE COUNTY DISTRICT ATTORNEY’S OFFICE, in support of and in furtherance of the ERIE COUNTY DISTRICT ATTORNEY’S OFFICE “No-Drop” policy for cases in which a woman alleges domestic violence against a man, and acting outside the legal and ethical scope of her role as a prosecutor, abandoned her legal and ethical duty to discover the truth, suppressed POLICE COPY DOMESTIC INCIDENT REPORT 09-165-0951, substituted in its stead an unofficial victim document falsely labeled DOMESTIC INCIDENT REPORT ‘09-165-0951,’ then prosecuted me for crimes for which she had incontrovertible proof I did not commit and, during the trial, elicited false testimony from a witness she knew to be false at the time.
  - a. The federal basis for this claim is malicious prosecution, violation of the right to a presumption of innocence, due process of law, equal protection, denial of the right to a fair trial.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering.
13. SEVENTH CLAIM: January 2011 Assistant District Attorney Karen Korkuc and Judge Deborah Haendiges knowingly provided false and misleading information as well as a fraudulent document to the New York State Appellate Division Fourth Department within the Appendix of ***People v. Rafiq Salim***, KA 10-01173, 2009-1771I on direct appeal.

- a. The federal basis for this claim is malicious prosecution, violation of the right to a presumption of innocence, due process of law, equal protection, denial of the right to judicial review.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering.
14. EIGHTH CLAIM: June 2012 – April 17, 2015, after the June 8, 2012 Appellate Division Fourth Department reversal of judgment in *People v. Rafiq Salim*, KA 10-01173, 2009-1771l, and after the Plaintiff June 2012 properly placed before Judge Deborah Haendiges POLICE COPY DOMESTIC INCIDENT REPORT 09-165-0951 dated June 14, 2009 by Buffalo Police Officer David Cieply showing no offenses and no probable cause, and after Judge Haendiges stated for the record that POLICE COPY DOMESTIC INCIDENT REPORT 09-165-0951 dated June 14, 2009 by Buffalo Police Officer David Cieply did not accompany the Court File received from the Buffalo City Court, and after the Plaintiff properly placed before Judge Deborah Haendiges incontrovertible proof that the unofficial victim copy DOMESTIC INCIDENT REPORT '09-165-0951' that did accompany the Court File from Buffalo City Court is an illegally altered document and, in fact, not the victim copy of POLICE COPY DOMESTIC INCIDENT REPORT 09-165-0951 or any POLICE COPY report maintained by the Buffalo Police Department, Judge Deborah Haendiges, contrary to law and with malice, declared the accusatory instrument sound, refused to hold an inquiry into police misconduct, refused to recuse herself, aligned the interest of her Court with that of Assistant District Attorney Amy Benedict, and, in flagrant disregard to the Plaintiff's constitutional right to not be arrested absent probable cause or prosecuted absent a valid accusatory instrument, scheduled a trial to begin June 8, 2015 in the Supreme Court, continued to hold the Plaintiff in "criminal compliance" until, without explanation or procedure, this matter was moved April 17, 2015 from before Judge Haendiges to the Buffalo City Court before Judge Susan Eagan for appearance May 13, 2015 and trial June 8, 2015.
- a. The federal basis for this claim is malicious prosecution, violation of the right to a presumption of innocence, due process of law, equal protection, denial of the right to a fair trial.
  - b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering.
15. NINTH CLAIM: February 2015 Judge Deborah Haendiges knowingly provided false information to the ERIE COUNTY CLERK'S OFFICE that I committed assault June 20, 2009 and that the Appellate

Division Fourth Department reversed only the sentence in *People v. Rafiq Salim*, KA 10-01173, 2009-17711. The false information Judge Haendiges provided the Clerk's Officer resulted in the Plaintiff's loss of employment with Evergreen Health Services as well as loss of reputation and standing in the professional HIV Care community.

- a. The federal basis for this claim is malicious prosecution, violation of the right to a presumption of innocence, due process of law, equal protection, denial of the right to a fair trial.
- b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering.

16. TENTH CLAIM: February 2015 Christopher Jacobs, Erie County Clerk, passed on to HireRight, Inc., 3349 Michelson Dr., Suite 150, Irving, California, 92612 the false information that I stand convicted of committing the crime of assault June 20, 2009 and that the Appellate Division Fourth Department in *People v. Rafiq Salim*, KA 10-01173, 2009-17711 reversed only the sentence. The information released by the Clerk's Officer resulted in loss of employment with Evergreen Health Services as well as loss of reputation and standing in the professional HIV Care community.

- a. The federal basis for this claim is violation of the right to a presumption of innocence, due process of law, equal protection.
- b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights and loss of income.

17. ELEVENTH CLAIM: February – March 2010 Byron Brown, Mayor, CITY OF BUFFALO and Daniel Derenda, Commissioner of Police, CITY OF BUFFALO, when provided copies of the fraudulent victim copy police report used by Buffalo City Court Judge Betty Calvo-Torres, Karen Korkuc, the ERIE COUNTY DISTRICT ATTORNEY'S OFFICE, the ERIE COUNTY SUPREME COURT and the NEW YORK STATE DIVISION OF PAROLE AND COMMUNITY SUPERVISION to prosecute and imprison the Plaintiff, took no action to protect the Plaintiff from the ongoing violations of his civil rights.

- a. The federal basis for this claim is failure to protect.
- b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering.

18. TWELFTH CLAIM: June 8, 2012 to date The STATE OF NEW YORK, COUNTY OF ERIE and CITY OF BUFFALO have knowingly maintained an unlawful and malicious prosecution against the Plaintiff aware that POLICE COPY Domestic Incident Report 09-165-0951 dated June 14, 2009 and

showing no offenses and no probable cause is an absolute bar to prosecution for the crimes to which the Plaintiff, in violation of his right to not be subject to arrest absent probable cause or trial absent a valid accusatory instrument and in violation of the right to a presumption of innocence until proven guilty, is, through fraud, deceit and the machinations of the defendants, held in "criminal compliance."

a. The federal basis for this claim is malicious prosecution, violation of the right to a presumption of innocence, due process of law, equal protection, denial of the right to a fair trial, unlawful seizure.

b. The Plaintiff requests punitive and compensatory awards for violation of his civil rights, loss of income, pain and suffering.

19. This Claim accrued June 8, 2012 upon reversal of the conviction in *People v. Rafiq Salim*, KA 10-01173, 2009-17711.

#### SUMMARY OF RELIEF SOUGHT

20. Compensatory Damages: \$50,000.00/yr from June 2009 to resolution

21. Punitive Damages: \$1,000,000.00/yr from June 2009 to resolution

22. Pain and Suffering: \$3,000,000.00

23. Loss of future earnings: \$60,000/yr from date of resolution to age 65

24. The Plaintiff requests a jury trial.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of May 2015.

  
\_\_\_\_\_  
Rafiq J. Salim, Plaintiff



# 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

September 10, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

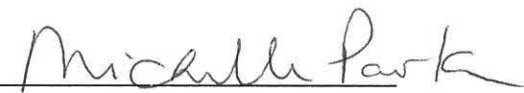
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

|                      |  |
|----------------------|--|
| File Name:           | <i>Paige, Darien v. Timothy B. Howard<br/>and Thomas Diina</i>                   |
| Document Received:   | Writ of Habeas Corpus  |
| Name of Claimant:    | Darien Paige   |
| Claimant's attorney: | Michael G. O'Rourke<br>112 Franklin Street, Suite 200<br>Buffalo, New York 14202 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld

Enc.

Comm. 18D-6  
Page 125 of 134

SH  
2015 SEP -3 PM 12:

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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PEOPLE OF THE STATE OF NEW YORK  
ex rel. **DARIEN J. PAIGE**, #65048

ORI# NY 014015J

Petitioner,

WRIT OF  
HABEAS CORPUS

-vs-

**TIMOTHY B. HOWARD**, ERIE COUNTY SHERIFF,  
**THOMAS DIINA**, SUPERINTENDENT, ERIE  
COUNTY CORRECTIONAL FACILITY,

Index No  
I-2015-810067

Respondent.

---

THE PEOPLE OF THE STATE OF NEW YORK  
UPON RELATION OF **DARIEN J. PAIGE**, #65048  
GREETINGS.

TO: Thomas Diina, Superintendent  
Erie County Correctional Facility  
Buffalo, New York 14202

**WE COMMAND YOU** that you have and produce the body of  
**DARIEN J. PAIGE**, by you imprisoned and detained as it is said, together with the time and  
cause of said imprisonment and detention, by whatever name the said **DARIEN J. PAIGE** is  
called or charged, before the **HON. JOHN L. MICHALSKI**, Acting Justice of the Supreme  
Court, in Part 18 at 25 Delaware Avenue, Buffalo, New York on **SEPTEMBER 22, 2015** at  
**9:30 A.M. OR ANY ADJOURNED DATE**, to do and receive what shall then and there be  
considered, concerning the said **DARIEN J. PAIGE**, and you then and there have this writ; and  
it is further

**ORDERED** that the petitioner's application for reduced filing fee pursuant to CPLR 1101(f) is granted since the petitioner has insufficient means to pay the full filing fee; and it is further

**ORDERED** that the petitioner must pay a reduced filing fee of fifteen dollars (\$15.00). This fee shall be assessed against the petitioner as an outstanding obligation and collected by the Erie County Correctional Facility; and it is further

**ORDERED** that the petitioner is not required to make an initial payment of a portion of the reduced filing fee and any interim or final judgment or order entered in this matter shall be filed by the county clerk whether or not any portion of said reduced filing fee has been paid ; and it is further

**ORDERED** that in the event the petitioner should receive an unfavorable decision after the hearing, said petitioner is hereby granted poor person relief pursuant to Article 11 of the Civil Practice Law and Rules for the limited purpose of filing a Notice of Appeal in the Erie County Clerk's Office without paying the fee required by CPLR 8022(a); and it is further


**ORDERED** that attorney Michael O'Rourke, Esq., 112 Franklin Street, Buffalo, New York, is assigned to represent the petitioner in this matter; and it is further

**ORDERED** that it is the responsibility of counsel for the petitioner, Michael O'Rourke to serve a signed and executed copy of the writ, the petition and any supporting papers, by ordinary First-Class Mail or by personal service, upon the respondents, Thomas Diina, Superintendent of the Erie County Correctional Facility and Timothy B. Howard, Sheriff

of Erie County on or before **September 8, 2015** In addition, counsel for 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

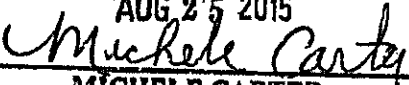
**ORDERED** that it is also the responsibility of counsel for the petitioner to forward the original proof of service of the writ upon the respondents as well as the Erie County Attorney to the chambers of Acting Justice Michalski, 25 Delaware Avenue-Third Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date.

**WITNESS**, the **HON. PAULA L. FEROLETO**, Justice of the Supreme Court, this 25<sup>th</sup> day of August 2015.

  
**HON. PAULA L. FEROLETO**  
Justice of the Supreme Court

GRANTED:

**GRANTED**

'AUG 25 2015  
BY   
**MICHELE CARTER**  
COURT CLERK





# 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

September 10, 2015

Ms. Karen McCarthy, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Ms. McCarthy:

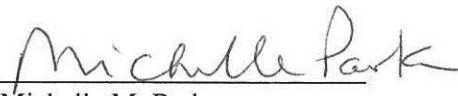
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

|                      |   |
|----------------------|---|
| File Name:           | <i>Palmowski, Joleen v. Erie County Fair, Erie County Agricultural Society and County of Erie</i>             |
| Document Received:   | Notice of Claim   |
| Name of Claimant:    | Joleen Palmowski<br>4520 Bayview Road<br>Hamburg, New York 14075  |
| Claimant's attorney: | Michael R. Zosh, Esq.<br>Nicholas, Perot, Smith, Bernhardt & Zosh<br>12364 Main Road<br>Akron, New York 14001 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 18D-6  
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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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JOLEEN PALMOWSKI  
4520 Bayview Road  
Hamburg, New York 14075

NOTICE OF CLAIM

Claimant

vs.

ERIE COUNTY FAIR  
5600 McKinley Parkway  
Hamburg, New York 14075

ERIE COUNTY AGRICULTURAL SOCIETY  
5600 McKinley Parkway  
Hamburg, New York 14075

COUNTY OF ERIE  
Edward A. Rath County Office Building  
95 Franklin Street  
Buffalo, New York 14202

Defendants

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TO: Erie County Fair  
Erie County Agricultural Center  
County of Erie

The claimant, Joleen Palmowski, by and through her attorneys, Nicholas, Perot, Smith, Bernhardt & Zosh, P.C., Michael R. Zosh, Esq., of counsel, hereby presents her claim as follows, upon information and belief:

1. That the claimant's proper name is JOLEEN PALMOWSKI.
2. The claimant's date of birth is March 15, 1981.

3. That the attorneys for the claimant herein are Nicholas, Perot, Smith, Bernhardt & Zosh, P.C., Michael R. Zosh, Esq., 12364 Main Road, Akron, New York 14001.

4. Upon information and belief the ERIE COUNTY FAIR, ERIE COUNTY AGRICULTURAL SOCIETY and COUNTY OF ERIE are municipal corporations and/or entities.

5. The claim is against the ERIE COUNTY FAIR, ERIE COUNTY AGRICULTURAL SOCIETY and COUNTY OF ERIE, their respective employees, servants, agents, and/or representatives for injuries sustained by JOLEEN PALMOWSKI, as a result of an accident which occurred at the portable toilets at or near the Conventional Garden Beer Tents at the Erie County Fair located at 5600 McKinley Parkway, Hamburg, New York.

6. The claim arose on or about August 22, 2015 at approximately 10:00 p.m. at or about the trailer containing the portable toilets near the Conventional Garden Beer Tents at the Erie County Fair located at 5600 McKinley Parkway, Hamburg, New York 14075, wherein claimant, JOLEEN PALMOWSKI, was at the ERIE COUNTY FAIR when she was caused to fall down the stairs after utilizing said portable toilets due to a stair that was incomplete and a railing that did not go the full length of the staircase that could have prevented the severe injuries to claimant, JOLEEN PALMOWSKI.

7. Said claimant, JOLEEN PALMOWSKI, was caused to fall therein allowing the claimant, JOELLEN PALMOWSKI'S, leg to come in contact with a jagged piece of metal from the improperly constructed stairs and railings, which were and was otherwise negligently maintained, repaired and constructed, thus causing the claimant, JOLEEN PALMOWSKI, a gash in her left leg requiring stiches and possible permanent scarring and/or severe bodily injuries.

8. Upon information and belief, the portable toilets near the Conventional Garden Beer Tent where the claimant was injured, was under the direct control, maintenance and supervision of the ERIE COUNTY FAIR, ERIE COUNTY AGRICULTURAL SOCIETY and COUNTY OF ERIE, its servants, agents, and employees.

9. That the aforesaid incident occurred as a result of the acts and/or omissions of the ERIE COUNTY FAIR, ERIE COUNTY AGRICULTURAL SOCIETY and COUNTY OF ERIE, their agents, servants, and/or employees, who negligently and recklessly failed to maintain, repair and control their premises; failed to properly maintain the aforesaid trailer containing the portable toilets located near the Conventional Garden Beer Tents at the ERIE COUNTY FAIR and ERIE COUNTY AGRICULTURAL SOCIETY, 5600 Mc Kinley Parkway, Hamburg, New York 14075; failed to provide proper and safe equipment; failed to adequately control, warn and caused the dangerous conditions to exist; failed to train staff, individuals, and maintenance personnel in proper procedures to prevent said injuries; and by failing to properly control, maintain and repair the area where people used said portable toilets.

10. As of this date, and so far as can be presently determined, the claimant JOLEEN PALMOWSKI, has sustained injuries and/or damages which include, but are not limited to the following:

- a. Injuries to left leg, resulting in a severe gash requiring stitches and potential permanent scarring / injuries to her leg;
- b. Injuries requiring medical attention;
- c. Injuries that will leave permanent and severe problems;

- d. Great bodily injuries which require medical aid, which were in fact rendered;
- e. Great bodily injuries which result in pain and suffering both, mental and physical;
- f. Great bodily injuries which caused the claimant to become incapacitated from her usual duties and activities; and
- g. Great bodily injury resulting in possible future medical aid and attention, pain and suffering, expenses, and incapacitation from her usual activities.

PLEASE TAKE NOTICE, that in the event that these claims are not adjusted and settled, it is the intention of the claimant, JOLEEN PALMOWSKI, to bring an action against the ERIE COUNTY FAIR, ERIE COUNTY AGRICULTURAL SOCIETY and COUNTY OF ERIE.

Dated: August 27, 2015

Joleen Palmowski  
JOLEEN PALMOWSKI

Sworn to before me this  
27<sup>th</sup> day of August, 2015

Sharyl L. Hummel

Notary Public  
SHARYL L. HUMMEL  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 12/15/17



Michael R. Zosh, Esq.  
NICHOLAS, PEROT, SMITH,  
BERNHARDT & ZOSH, P.C.  
Attorneys for Claimants  
12364 Main Road, P.O. Box 176  
Akron, New York 14001  
(716) 542-5413

Sworn to before me this 27<sup>th</sup>  
day of August 2015

Sharyl L. Hummel  
Notary Public

SHARYL L. HUMMEL  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 12/5/17