MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 14, 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:	*Johnson, Robert W. v. Thomas Diina and Erie County Correctional Facility*
Document Received:	Order to Show Cause
Name of Claimant:	Robert W. Johnson #04-B-1515 Franklin Correctional Facility 62 Bare Hill Road, P.O. Box 10 Malone, New York 12953
Claimant's attorney:	Claimant is proceeding *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle Parker
First Assistant County Attorney

MMP:dld
Enc.

RECEIVED
JAN 10 2015
ERIE COUNTY
DEPARTMENT OF LAW

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

Case #3

IN THE MATTER OF THE APPLICATION OF
ROBERT W. JOHNSON, #04-B-1515

ORI# NY 014015J

Petitioner,

-vs-

THOMAS DIINA, SUPERINTENDENT,
ERIE COUNTY CORRECTIONAL FACILITY,
ERIE COUNTY CORRECTIONAL FACILITY,

Respondents.

ORDER TO
SHOW CAUSE

RETURN ON
PAPERS ONLY

Index No.
I-2014-00213

SUPREME COURT, ERIE COUNTY

HON. PAULA L. FEROLETO , JUSTICE PRESIDING

APPEARANCES:

Petitioner, Pro Se
ROBERT W. JOHNSON, #04-B-1515

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, and verified the 16th day of May 2014, with accompanying exhibits, and it appearing that the above referenced petitioner, **ROBERT W. JOHNSON,** 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 RESPONDENTS SHOW CAUSE at a Special Term of the Supreme Court to be held in and for the County of Erie on **FEBRUARY 19, 2015** before the **HON. PENNY M. WOLFGANG,** Justice of the Supreme Court, in Part 16 at 25 Delaware Avenue, Buffalo, New York, **WHY** the relief requested in the Petition should not be granted.

IT IS ORDERED **that the production of petitioner or appearance by or on behalf of the respondents on said return date is not required, and the matter shall be decided on all papers submitted to the Court prior to said return date;** 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 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 respondents, Thomas Diina and the Erie County Correctional Facility on or before **January 22, 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 Wolfgang, 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).

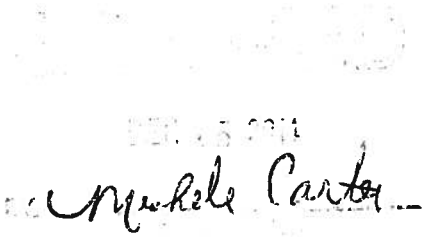
(b) Submit the original proof of service to the chambers of the **Hon. Penny M. Wolfgang,** 25 Delaware Avenue-Fifth Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date; and it is further

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 Wolfgang not less than three (3) days prior to said return date.

DATED: Buffalo, New York
December 15, 2014

HON. PAULA L. FEROLETO
Justice of the Supreme Court

GRANTED:



State of New York
County of Erie
Supreme Court

In the matter of the application of
Robert W. Johnson
Petitioner

Order to show cause

Index # 2014-00213

-v-
Superintendent Thomas Diina, Erie County Corr. Facility Staff & Erie County Corr. Facility Medical Dept.
Respondent

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

Upon the annexed affidavit in support of an Order to show cause of Relief Sought By Petitioner, verified on the 16TH day of May, 2014, and upon the annexed Petition of Robert W. Johnson, sworn to on the 16TH day of May, 2014, it is hereby ordered that Respondent Sup. Thomas Diina ECCF Staff & ECCF Med. Dept. show cause at a term of this Court to be held in the County of Erie, on the 16TH day of May, 2014, or as soon thereafter as counsel can be heard, why a judgment should not be made and entered in this matter judgment pursuant to Article 78 of the NYS Civil Practice Laws and Rules:

Vacating and setting aside Respondent's determination of: not Knowing of Petitioners surgery injections on October 2, 2013 & recent accident at a higher bunk on May 6, 2014.

AND/OR

Directing Respondent to: plead guilty to Knowing of all grounds for this complaint & overall negligence by staff.

State of New York
County of Erie
Supreme Court

In the matter of the application of

Robert W. Johnson
Petitioner

Petition

Index # 2014-00243

-v-

Superintendent, Thomas Diing, Erie County Corr. Facility, Staff & Erie County Correctional Facility Medical Dept.
Respondent

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

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To: Supreme Court

This Petition, of Robert W. Johnson, duly sworn to and complaining of the Respondent, respectfully alleges:

Petitioner is an inmate at the Erie County Correctional Facility, 11581 Walden Avenue, Town of Alden, County of Erie, State of New York 14004.

Respondent is Superintendent Thomas Diing, Erie County Correctional Facility & Erie County Corr. Facility Medical Dept.

The grounds for this complaint and Petition are: Denial of Medical Followup Treat, Neglect to follow compelling orders of Medical Staff, Neglect in Keeping inmate in Lower Bunk because of recent injuries in higher Bunk, Medical Malpractice, Medical Negligence in not assuring inmate was not at risk of any injuries because of knowledge in inmate having surgery in Oct 2, 2013 spinal injections.

WHEREFORE, Petitioner respectfully prays that a judgment be entered pursuant to Article 78 of the NYS Civil Practice Laws and Rules:

vacating and setting aside Respondent's determination of: Not Knowing of Petitioners Medical injuries and him needing a permanent lower bunk while housed at Erie County Correctional Facility & Medical Negligence

AND/OR

directing Respondent to: plead guilty to all grounds for this complaint with no excuses at all.

and for such other and further relief as this Court may deem just and proper.

Date: May 16, 2014

Robert W. Johnson

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

Sworn to before me on
this 16th day of
MAY, 2014

Notary Public

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 2017

VERIFICATION

In the matter of the application of

Robert W. Johnson
Petitioner

-v-

Superintendent Thomas Diing, ECCF Staff & ECCF Medical Dept.
Respondent

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

Robert W. Johnson, the above named Petitioner, being duly sworn, deposes and says that the contents of the foregoing petition are well known to him/her, and that same is true to his/her own knowledge, except as to matters therein stated on information and belief, and as to those matters (s)he believes it to be true.

Dated: 5-16-14

Robert W. Johnson
Signature, Petitioner Pro Se

Robert W. Johnson
Print Name of Petitioner

Sworn to before me this 16th
day of MAY, 2014

Signature, Notary Public

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 2017

State of New York
Erie County
Supreme Court

----------x

Robert W. Johnson
Petitioner/Plaintiff

v

District Attorneys
Frank Sedita & Frank Clark
Respondent/Defendant

----------x

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

Index/File # 2014-00213 *
DIN # 04B1515
NYSID # 02 304 142 R

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

I, Robert W. Johnson, being duly sworn, hereby declare as follows:

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

2) I currently receive income from the following sources, exclusive of correctional facility wages:
Workers Compensation (on hold because I am incarcerated due to alleged Parole Violations)

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

☑ NONE

1) List Property: Value

4) I have no savings, property, assets or income other than as set forth herein.
None

*Will be assigned by the Court/County Clerk

5) I am unable to pay the total fee necessary to prosecute this procedure.
6) No other person who is able to pay the total filing fee has a beneficial interest in the result of this proceeding.
7) The facts of my case are described in my claim and other papers filed in the court.
8) I have made no prior request for this relief in this case.
9) My date of birth is 2-26-84.
10) NYSID # 02304142R.
11) Aliases None.

Robert W. Johnson
(signature)

Sworn to before me this 22nd day of August, 2014.

Carolyn St Denis
Notary Public

CAROLYN ST DENIS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN FRANKLIN COUNTY
NO. 01ST6049154
COMMISSION EXPIRES OCT. 10, 2014

AUTHORIZATION

I, Robert W. Johnson, inmate number 04B1515. request and authorize the agency holding me in custody to send to the Clerk of the Court certified copies of the correctional facility trust fund account statement (or the institutional equivalent) for the past six months.

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

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

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

Robert W. Johnson
(signature)

ICAS SYSTEM
NYS DEPT OF CORRECTIONS
209-INMATE BALANCE SCREEN

11/14/14
14:31:55

NYSID: 02304142R
DOB: 02/26/84
FULL NAME: JOHNSON ROBERT
DIN: 04B1515

PHONE: (518) 483 6040 EXT: 4100
FAX: (518) 483 6040 EXT: 4199
CURRENT FACILITY: FRANKLIN C F

SPENDABLE BALANCE: 6.14

ENCUMBRANCES	
TOTAL:	0.00
COLLECTED:	0.00
OUTSTANDING:	0.00

	SPENDABLE FOR LAST SIX MONTHS	TOTAL DEPOSITS FOR LAST SIX MONTHS
OLDEST	0.00	0.00
||	2.52	62.46
||	3.44	66.35
||	2.82	47.39
\/	2.25	19.27
NEWEST	2.35	48.80

ANOTHER LOOKUP - KEY NEXT DIN PRESS <ENTER> NEXT DIN:
RETURN TO MENU PRESS <PF3>

AFFIDAVIT OF SERVICE

I; Robert W. Johnson #04B1515 being duly sworn depose & says;

1. I am over the age of 18 years old and currently reside at Franklin Correctional Facility; 62 Bare Hill Road; PO Box 10; Malone, NY 12953.
2. On December day of 29TH, 2014, I served the within: Notice of Petition, Show Cause Order and all other supporting papers upon the following:
   1. Superintendent Thomas Diina; Erie County Correctional Facility; 11581 Walden Ave.; Alden, NY 14004.
   2. Erie County Correctional Facility; 11581 Walden Ave.; Alden, NY 14004.
   3. Erie County Attorney; 95 Franklin St.; Room 1634; Buffalo, NY 14202.
   4. Hon. Penny M. Wolfgang; 25 Delaware Ave.; Fifth Floor; Buffalo, NY 14202.

Robert W. Johnson
Robert W. Johnson
04B1515

#

State of New York
County of Erie
Supreme Court

In the matter of the application of
Robert W. Johnson
Petitioner

Affidavit in support of order to show cause

Index # 2014-00213

-v-

Superintendent Thomas Diina, Erie County Corr. Facility Staff & Erie County Corr. Facility Medical Department,
Respondent

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

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

I, Robert W. Johnson, being duly sworn, depose and say that:

I am the Petitioner I the above-entitled proceeding.

I make this affidavit in support of my annexed application for an Order to show cause to prosecute the attached petition pursuant to Article 78 of the New York Civil Practice Laws and Rules which challenges: the neglect of all respondents role in the petitioners recent injuries despite him acknowledging said surgery injections & back injuries, tailbone injuries, head injuries, neck injuries & pelvic injuries.

The facts surrounding this Petition are as follows: medical records by ECMC on October 30, 2012; January 7, 2004 & January 6, 2014, Workers Compensation Board Case #G005321, Kaleida Health Records on October 2, 2013 at Buffalo General, Erie County Correctional Facility Inmate Records on Medical from April 15, 2014 to date & ECCF Medical Correspondence with housing unit staff members by phone & via email numerous times.

(See Statement of Facts)

Petitioner seeks to proceed by Order to Show Cause rather that by Notice of Petition because: Petitioner is Pro Se and would like to seek the truth by Court Order and disclosure as soon as possible.

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

Petitioner designates Erie County as the place of venue.

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

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

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

Date: May 16, 2014

Robert W. Johnson
Signature, Petitioner Pro Se
11581 Walden Avenue
Alden, New York 14004

Sworn to before me on
this 16th day of
MAY, 2014

Notary Public

CHRISTOPHER T. COUGHLIN
No. 01CO6294898
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Dec. 23, 2017

Does this proceeding seek recovery for property damage? [ ] Yes [✓] No

Estimated time period for case to be ready for trial: (0 – 12 months) 1 week, respectively.

Attorney for Petitioner(s) Robert W. Johnson

Address: _____

Attorney for Respondent(s) N/A

Address: _____

Dated: May 16, 2014

Robert W Johnson

Signature, Petitioner