



# COUNTY OF ERIE

MICHAEL A. SIRAGUSA  
COUNTY ATTORNEY

MARK C. POLONCARZ  
COUNTY EXECUTIVE

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: April 16, 2015  
RE: Transmittal of New Claims Against Erie County

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Ms. McCarthy:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find seven (7) new claims brought against the County of Erie. The claims are as follows:

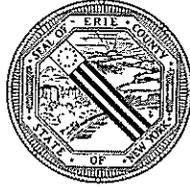
### Claim Name

David LeRoy Lenczyk v. County of Erie  
David & Deborah Barbaritz v. Edward P. Clinch, et al.  
Peter Koschuk v. County of Erie, et al.  
Antonio Jones v. Erie County District Attorney  
Estate of Vincent Marrano v. County of Erie, et al.  
Charles Gray v. County of Erie  
Jackson Bojarski by png Tom Bojarski v. County of Erie, et al.

MMP:dld

Attachments

Comm. 9D-7  
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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

March 20, 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>Lenczyk, David LeRoy v. County of Erie</i>
Document Received:	Complaint of Discrimination
Name of Claimant:	David L. Lenczyk 129 Walter Street Buffalo, New York 14210
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 Parker*  
Michelle Parker  
First Assistant County Attorney

MMP:dld

Enc.

Comm. 9D-7  
Page 2 of 75

STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD

Discrimination Unit  
111 Livingston Street - Room 2317  
Brooklyn, NY 11201  
718-802-6931

THIS AGENCY EMPLOYS AND  
SERVES PEOPLE WITH DISABILITIES  
WITHOUT DISCRIMINATION.

DISCHARGE OR DISCRIMINATION COMPLAINT  
(See Reverse Side for Applicable Law)

TYPE OF BENEFIT CLAIM	
<input type="checkbox"/> Disability Benefits <small>(On the Job Disability)</small>	Social Security No. <u>068-50-0725</u>
<input checked="" type="checkbox"/> Workers' Compensation <small>(On the Job Injury)</small>	WCB Case No. _____

PLEASE PRINT OR TYPE. ANSWER ALL QUESTIONS - FAILURE TO DO SO MAY DELAY PROCESSING OF YOUR COMPLAINT  
ANSWER QUESTIONS 6 AND 7 IN DETAIL. ATTACH ADDITIONAL SHEETS IF NECESSARY  
SUBMIT IN DUPLICATE TO THE ADDRESS AT THE TOP OF THIS FORM.

1. Employee's Name: DAVID LEROY LEWOCZYK  
First Name Middle Name Family Name

2. Address: 129 WALTER ST. BUFFALO, NY 14210  
Street Address City State Zip

3. Employer's Name: ERIE COUNTY

4. Employer's Address: 810 EAST FERRY BUFFALO, NY 14211  
Street Address City State Zip

5. Were you discharged? NO If "yes" give date: \_\_\_\_\_

6. State in detail the basis for your complaint, the reason you were dismissed, and the name of your supervisor, manager or other person who actually dismissed you. YOUTH DETENTION HAS BID THE EMPLOYEE'S SHIFTS FOR THE PAST 10 YEARS. FOR EACH OF THESE BIDS (EACH YEAR), THE PEOPLE OR WORKER'S COMPENSATION WERE ALLOWED TO BID FOR A SHIFT. (CONT.)

7. State the name(s) of others involved. Attach copy of your dismissal notice, if any, or other documents received.  
LISHA KELLY, NERAK SUMMERS

RECEIVED  
 WORKERS' COMPENSATION BOARD  
 JAN 5 - 2015  
 DISCRIMINATION UNIT

8. Where did you work? (Indicate address, if different than item 4 above): \_\_\_\_\_

9. Occupation: YOUTH DETENTION WORKER

10. Name and address of your attorney or representative, if any. (see statement "On Representation" on reverse): JASON G. ZACK  
2568 WALDEN AVE. THE COMMONS SUITE 101 BUFFALO, NY 14225

11. Date of accident or first day of disability: 5/16/14

I AFFIRM UNDER PENALTY OF PERJURY THAT THE INFORMATION PROVIDED HEREIN IS TRUE.

David L. Lewoczyk  
 Employee's Signature

12/28/14  
 Date

716-823-0772  
 Telephone Number

## COMPLAINT CONT.

SINCE THE NEW DEPUTY COMMISSIONER GARY DAMON ARRIVED, HE HAS STATED THAT THE PEOPLE ON WORKER'S COMP. COULD NOT BID FOR A SHIFT, WHEN I INFORMED HIM THAT THIS WAS PUNISHING THE PEOPLE ON WORKER'S COMP, DUE TO THE FACT THAT THE PEOPLE ON WORKER'S COMP. WOULD RECEIVE THE WORST SHIFTS AVAILABLE INSTEAD OF THE SHIFTS THEIR SENIORITY ENTITLED THEM TO, HE TRIED TO JUSTIFY HIS ~~THE~~ DECISION BY GIVING ONE EXPLANATION, THEN A SECOND EXPLANATION. BOTH THESE EXPLANATIONS CAN'T JUSTIFY HIS DECISION.

DEPUTY COMMISSIONER GARY DAMON'S FIRST ~~EXCUSE~~ EXPLANATION WAS THAT THE PEOPLE ON WORKER'S COMP. COULD NOT ENTER THE WORK PLACE BECAUSE THEY MAY FALL DOWN AND HURT THEMSELVES MORE, WHEN I POINTED OUT THERE WAS NOTHING IN WRITING IN THE NEW YORK STATE LAW, POLICIES AND PROCEDURES FOR ERIE COUNTY, POLICIES AND PROCEDURES FOR DETENTION AND THE COLLECTIVE BARGAINING AGREEMENT (BETWEEN ERIE COUNTY AND A.F.S.C.M.E. LOCAL 1095), MR. DAMON THEN CHANGED HIS STANCE AND EXCUSE.

MR. DAMON'S SECOND EXCUSE, WAS THAT HE WOULD HAVE TO FILL THE SHIFTS THAT THE PEOPLE ON WORKER'S COMP. BID ON UNTIL THEY CAME BACK AND THIS WAS ALOT OF WORK TO DO, THIS EXCUSE IS WEAKER THEN THE FIRST EXCUSE. SHIFTS HAVE TO BE FILLED WHETHER THE PEOPLE ON WORKER'S COMP. BID OR DON'T BID. THE ONLY DIFFERENCE BEING, THE SHIFTS TO BE FILLED IF THE PEOPLE ON WORKER'S COMP. BID, WILL BE THE BETTER SHIFTS (SINCE MOST OF THE PEOPLE ON WORKER'S COMP HAVE ALOT OF SENIORITY), THE SHIFTS TO BE FILLED IF THE PEOPLE ON WORKER'S COMP. DON'T BID, WILL BE THE WORST SHIFTS AVAILABLE.

SO THE ONLY CONCLUSION THAT CAN BE MADE IS DEPUTY COMMISSIONER GARY DAMON IS UPSET BECAUSE PEOPLE ARE OUT OF WORK BECAUSE OF INJURY (WADRE TOB) AND IS PUNISHING ALL THE INJURED WORKER.



# COUNTY OF ERIE

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March 20, 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>Barbaritz, David and Deborah v. Edward P. Clinch, Tracy Ann Claxton and Brittany Claxton</i>
Document Received:	Answer with Counterclaim
Name of Plaintiffs:	David and Deborah Barbaritz 10 Delaware Avenue Buffalo, New York 14202
Plaintiffs' attorney:	William D. Murphy, Esq. Maxwell Murphy, LLC 1230 Delaware Avenue Buffalo, New York 14209

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 9D-7  
Page 5 of 75

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

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**COPY**

**DAVID C. BARBARITZ and DEBORAH  
BARBARITZ,**  
**Plaintiff,**

**ANSWER WITH  
AFFIRMATIVE DEFENSES,  
COUNTERCLAIM AND  
CROSS-CLAIM**

vs.

**Index No.: 800260/2015**

**EDWARD P. CLINCH  
TRACY ANN CLAXTON and  
BRITTANY CLAXTON,**

**Defendants.**

---

The Defendant, EDWARD CLINCH, by his attorney, the Law Office of Daniel R.

Archilla, answering the Complaint of the Plaintiffs, alleges the following:

1. Admit the allegations contained in paragraphs numbered 2 and 5 of the Plaintiffs' Complaint.
2. Deny the allegations contained in paragraphs numbered 11, 12 and 13 of the Plaintiffs' Complaint.
3. Deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered 1, 3, 4, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the Plaintiffs' Complaint and therefore deny same.
4. Deny each and every other allegation of the Plaintiffs' Complaint not hereinabove specifically admitted, controverted or denied.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

5. That the Plaintiff acted in such a careless and negligent manner so as to cause or contribute to the cause of his own injuries as alleged in the Complaint.

6. That in the event Plaintiffs shall become entitled to recover a verdict against the Defendant, the Defendant shall be entitled to have said verdict reduced or diminished in the proportion, which the culpable conduct attributed to the Plaintiff bears to the culpable conduct, which caused Plaintiff's injuries.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

7. That any recovery in favor of the Plaintiffs be reduced or diminished to the extent which said Plaintiff's injuries were caused or aggravated by the said Plaintiff's failure to wear seat belts or other safety restraining device.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

8. In the event that the Plaintiffs have judgment against Defendant, the Defendant is entitled to a setoff or reduction of any damage award, liability for which is expressly denied, for amounts received from any collateral source pursuant to Section 4545(c) of the CPLR.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

9. The Plaintiff did not sustain a serious personal injury as defined by Section 5102(d) of the Insurance Law, and therefore the Plaintiffs' action is barred.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

10. That the injuries alleged in Plaintiffs' Complaint were not caused by the negligence, carelessness and/or culpable conduct of the Defendant nor were the injuries caused by the result of the act or omission of the said Defendant.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

11. The Defendant was acting reasonably in an emergency situation.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES, AND AS AND FOR A COUNTERCLAIM  
AGAINST THE PLAINTIFF DAVID C. BARBARITZ, THE ANSWERING  
DEFENDANT ALLEGES:**

12. That if the Plaintiff, DAVID C. BARBARITZ, was caused to sustain damages at the time and place set forth in the Plaintiffs' Complaint through any carelessness, recklessness, or negligence, and/or other than the Plaintiff's own carelessness, recklessness and negligence, that his damages were sustained in whole or in part by reason of the sole, active and primary carelessness, recklessness, negligence, and/or affirmative acts of commission omission by the Plaintiff, DAVID C. BARBARITZ, who is or will be primarily liable therefore.

13. That by reason of the foregoing, the Plaintiff, DAVID C. BARBARITZ, will be liable in whole or in part to the Defendant, EDWARD P. CLINCH, for all or part of any recovery of the Plaintiffs, DAVID C. BARBARITZ, is bound to any and all attorneys' fees and costs of investigation and disbursements.

**AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE,  
AND FOR A CROSS- CLAIM AGAINST THE DEFENDANT, TRACY ANN CLAXTON  
AND BRITTANY CLAXTON, THE ANSWERING DEFENDANT ALLEGES:**

14. That the Complaint alleges the Plaintiffs sustained damages by reason of the culpable conduct of the answering Defendant.

15. That the answering Defendant denies that any culpable conduct or other act on the part of the said answering Defendant caused or contributed to any damages sustained by the Plaintiffs.

16. That if the accident, incident and damages were not caused or contributed to by the negligence and culpable conduct or other act of the Plaintiff, then it was the culpable conduct of the Defendants, TRACY ANN CLAXTON AND BRITTANY CLAXTON, that were responsible in whole or in part for the accident, incident and damages alleged in the Complaint.

17. That if by virtue of the allegations in the Complaint, the answering Defendant is found liable to the Plaintiffs or to any other party, Defendant will be entitled to indemnification by, or contribution from, and judgment over/against the Defendants, TRACY ANN CLAXTON AND BRITTANY CLAXTON, for the full amount of such liability or for such proportionate share as represents the amount, degree and kind of negligence, culpability, or other act attributable to the answering Defendant.

WHEREFORE, the Defendant, EDWARD P. CLINCH, demands judgment dismissing the Complaint herein as to him; and further demands that the culpable conduct of the Plaintiff be determined upon the trial of this action, and that the amount of damages otherwise recoverable by the Plaintiffs against this answering Defendant be diminished in the proportion which the culpable conduct attributable to the Plaintiff bear to the culpable conduct which caused the damages alleged; and further demand that any recovery in favor of the Plaintiffs be reduced or diminished to the extent which said Plaintiff's injuries were caused or aggravated by the Plaintiff's failure to wear seat belts or safety restraining devices; and further demand that the ultimate rights and responsibilities as among the parties to be apportioned in accordance with the liability and fault attributable to each party as determined by the trier of the facts; and that this

answering Defendant has judgment over and against the said Plaintiffs for all or a part of any verdict or judgment which may be obtained herein by the Plaintiffs against the answering Defendant together with costs and disbursements of this action.

DATED: Buffalo, New York  
February 9, 2015

Yours, etc.,



BY: Jill C. Diemer, Esq.  
Law Office of Daniel R. Archilla  
Attorneys for Defendant  
EDWARD P. CLINCH  
170 Franklin Street, Suite 500  
Buffalo, New York 14202  
(716) 856-0875

TO: William D. Murphy, Esq.  
Maxwell Murphy, LLC  
Attorney for Plaintiffs  
DAVID C. BARBARITZ  
and DEBORAH BARBARITZ  
1230 Delaware Avenue  
Buffalo, New York 14209  
(716) 885-1300

Michael J. Chmiel, Esq.  
Chelus, Herdzik, Speyer & Monte, P.C.  
Attorney for Defendants  
TRACY ANN CLAXTON  
and BRITTANY CLAXTON  
438 Main Street, Tenth Floor  
Buffalo, New York 14202  
(716) 852-3600

ABS-7 (6/11) Page 1 of 2 Pages

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

Local Codes
SP4T70000926

AMENDED REPORT

Accident Date: 06/09/2013, Day of Week: Sun, Military Time: 09:49, No. of Vehicles: 2, No. Injured: 2, No. Killed: 0

VEHICLE 1 - Driver License ID Number: 139961475, Driver Name: BARBARITZ, DAVID C, Address: 10 DELAWARE AVE, BUFFALO, NY 14202

VEHICLE 2 - Driver License ID Number: 894514046, Driver Name: CLINCH, EDWARD P, Address: 1456 BEAVER MEADW RD, JAVA CENTER, NY 14082

Plate Number: FDH4653, State of Reg: NY, Vehicle Year & Make: 2011 FORD POLI, Ins. Code: 997

Check if involved vehicle is: more than 85 inches wide, more than 34 feet long, operated with an overweight permit, operated with an overdimension permit

VEHICLE 1 DAMAGE CODES, VEHICLE 2 DAMAGE CODES, ACCIDENT DIAGRAM

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

Place Where Accident Occurred: County ERIE, City/Village/Town of BUFFALO, CITY OF, Road on which accident occurred: 190

REPORT OF A 2 CAR PIAA. VEHICLE-1/VEHICLE-2 TRAVELING IN THE LEFT LANE ON I-190 N/B MPM 2.3. DRIVER OF VEHICLE-2 STATES THAT HE SLAMMED ON HIS BRAKES TO AVOID HITTING A UNINVOLVED DISABLED VEHICLE IN THE LEFT LANE. DRIVER OF VEHICLE-1 STATES THAT HE ALSO SLAMMED ON HIS BRAKES BUT WASN'T ABLE TO STOP HIS VEHICLE BEFORE HE REAR-ENDED VEHICLE-2. DRIVER OF VEHICLE-1 TRANSPORTED TO ECMC. PASSENGER

Table with columns: A, B, C, D, E, F, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, BY, TO, 18, Name of all involved, Date of Death Only

Officer's Rank and Signature: TROOP, Shaun T Dougherty, Badge No. 5131, NCIC No. 11404, Precinct/Post: T4, Station/Sect: 11, Reviewing Officer: MITCHELL, ELTON, Date/Time Reviewed: 06/12/2013 00:04

This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

Barbara J. Fule, COMMISSIONER OF MOTOR VEHICLES 3

ABS-7 (5) Page 2 of 2 Pages

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (6/04)
DMV COPY

Local Code: SP4T7D000926

AMENDED REPORT

1 Accident Date: Month 06, Day 09, Year 2013. Day of Week: Sun. Military Time: 09:49. No. of Vehicles: 2. No. Injured: 2. No. Killed: 0. Not Investigated at Scene: [ ]

2 VEHICLE 1 - Driver License ID Number, State of Lic. VEHICLE 2 - Driver License ID Number, State of Lic. Driver Name, Address, City or Town, State, Zip Code.

3 Date of Birth, Sex, Unlicensed, No. of Occupants, Public Property Damaged. VEHICLE 1 and VEHICLE 2 information.

4 Title/Arrest Number(s), Violation Section(s). Includes checkboxes for vehicle damage codes.

5 VEHICLE 1 DAMAGE CODES, VEHICLE 2 DAMAGE CODES, ACCIDENT DIAGRAMS. Includes checkboxes for vehicle damage codes and a diagram section.

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

7 Reference Marker, Coordinates (if available), Place Where Accident Occurred: County ERIE, City Buffalo, City of Buffalo, Road on which accident occurred I 190.

8 Accident Description/Officer's Notes: OF VEHICLE-2 TRANSPORTED TO WOMAN AND CHILDREN'S HOSPITAL. BOTH WITH MINOR INJURIES. NO THRUWAY PROPERTY DAMAGE. CBI UNINVOLVED VEHICLE INFORMATION. DRIVER- BRITTANY R CLAXTON VEHICLE- GAZ9356. DRIVER STATED THAT SHE RAN OUT OF GAS. DRIVER ALSO STATED THAT HER GAS GAUGE DOESN'T WORK AND THAT SHE WAS AWARE OF THAT AT THE TIME OF THE ACCIDENT.

Table with columns for names of all involved (A-F) and date of death only.

Officer's Rank and Signature: TROOP, Shaun T Daugherty. Badge/ID No. 5131. NCIC No. 11404. Precinct/Post Troop/Zone T4. Station/Beat/Sector 11. Reviewing Officer MITCHELL, ELTON. Date/Time Reviewed 06/12/2013 00:04.

This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

Barbara J. Zula, COMMISSIONER OF MOTOR VEHICLES



# 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

March 26, 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>Koschuk, Peter v. Erie County Sheriff's Office, County of Erie and Sheriff Howard</i>
Document Received:	Notice of Claim
Name of Claimant:	Peter Koschuk 80 Schlemmer Road Lancaster, New York 14086
Claimant's attorney:	Richard H. Wyssling, Esq. 375 Linwood Avenue Buffalo, New York 14209-1607

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.

Comm. 9D-7  
Page 13 of 75

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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In the Matter of the Claim of  
PETER KOSCHUK  
80 Schlemmer Road  
Lancaster, New York 14086

Claimant,

v.

ERIE COUNTY SHERIFF'S OFFICE  
10 Delaware Avenue  
Buffalo, New York 14202

ERIE COUNTY  
95 Franklin Street  
16th Floor  
Buffalo, New York 14202

TIMOTHY B. HOWARD  
In his individual and official capacity as Sheriff  
For ERIE COUNTY SHERIFF'S OFFICE and  
ERIE COUNTY  
10 Delaware Avenue  
Buffalo, New York 14202

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To: ERIE COUNTY SHERIFF'S OFFICE  
10 Delaware Avenue  
Buffalo, New York 14202

ERIE COUNTY  
95 Franklin Street  
16th Floor  
Buffalo, New York 14202

TIMOTHY B. HOWARD  
In his individual and official capacity as Sheriff  
For ERIE COUNTY SHERIFF'S OFFICE and  
ERIE COUNTY  
10 Delaware Avenue  
Buffalo, New York 14202

This paper received at the  
Erie County Attorney's Office  
from Bruce G. ... on  
the 24 day of March 2015  
at 9:57 a.m./p.m.

Assistant County Attorney

NOTICE OF CLAIM

PLEASE TAKE NOTICE, that PETER KOSCHUK (“Claimant”) hereby makes a claim against the ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, and in support thereof the Claimant states the following upon information and belief:

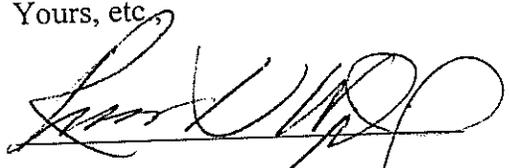
1. Claimant, PETER KOSCHUK, resides at 80 Schlemmer Road, Lancaster, New York 14086.
2. The name and address of the Claimant’s attorney is Richard H. Wyssling, 375 Linwood Avenue, Buffalo, NY 14209.
3. The occurrence of the incidents resulting in this claim arose on or about January 12, 2015 and January 13, 2015 at 10 Delaware Avenue, Buffalo, New York 14202.
4. The claim arose in the following manner: On January 12, 2015 Claimant’s employment as a Corrections Officer, Sheriff of Erie County, was terminated by the ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD. Claimant’s Notice of Termination, dated January 5, 2015, stated that the, “termination under your probationary period is based upon your unsatisfactory time and attendance record.”
5. That at all relevant times Claimant was not in a probationary period and therefore there was no basis for Claimant’s termination.
6. That on or about January 13, 2015, the ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD did communicate false and/or defamatory statements (“Statements”) to the New York State Police regarding, including but not limited to, Claimant’s termination, and upon information and belief the Statements were also communicated by ERIE COUNTY SHERIFF’S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD to others.

7. That the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD had prior knowledge that Claimant was seeking employment with the New York State Police.
8. That the Statements regarding the Claimant that were made by the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, to the New York State Police, were the only reason that Claimant was not hired by the New York State Police.
9. That as a result of the wrongful, malicious, and/or negligent actions of the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, the Claimant has been damaged.
10. That the totality of the Claimant's damages may not be fully ascertained at this time and include, but are not limited to, lost income, lost benefits, damage to Claimant's good name and reputation, and intentional infliction of emotional distress, by reason of acts and/or omissions of the ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY, and TIMOTHY B. HOWARD, its agents, servants, employees, and/or representatives, in the matter set forth herein.
11. PLEASE TAKE FURTHER NOTICE, that the Claimant respectfully requests that this claim be allowed and paid by the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD; and hereby notifies the ERIE COUNTY SHERIFF'S OFFICE, ERIE COUNTY, and TIMOTHY B. HOWARD, that unless the claim set forth herein is adjusted and paid within thirty (30) days from the presentation of this claim, it is the Claimant's intention to commence an action against the ERIE COUNTY SHERIFF'S DEPARTMENT, ERIE COUNTY, and TIMOTHY B.

HOWARD, to recover for the damages sustained by the Claimant, together with the cost and disbursements of such action.

Dated: Buffalo, New York  
March 20, 2015

Yours, etc,



RICHARD H. WYSSLING  
Attorney for Claimant  
375 Linwood Avenue  
Buffalo, New York 14209  
Phone: 716-882-2243  
Fax: 716-882-6113  
Richard@RichardWyssling.com

TO: ERIE COUNTY SHERIFF'S OFFICE  
10 Delaware Avenue  
Buffalo, New York 14202

ERIE COUNTY  
95 Franklin Street  
16th Floor  
Buffalo, New York 14202

TIMOTHY B. HOWARD  
In his individual and official capacity as Sheriff  
For ERIE COUNTY SHERIFF'S OFFICE and  
ERIE COUNTY

VERIFICATION

STATE OF NEW YORK     )  
COUNTY OF ERIE        : SS.:  
CITY OF BUFFALO        )

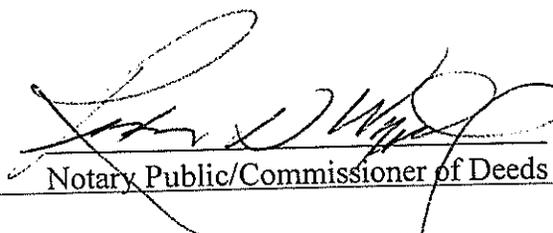
PETER KOSCHUK being duly sworn, deposes and says that he is the plaintiff in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

  
PETER KOSCHUK

STATE OF NEW YORK     )  
COUNTY OF ERIE        : SS.:  
CITY OF BUFFALO        )

On the 23<sup>RD</sup> day of MARCH, in the year 2015 before me, the undersigned, personally appeared PETER KOSCHUK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in his capacity and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

RICHARD H. WYSSLING  
Notary Public State of New York  
Qualified in Erie County  
#02WY4746413  
My Commission Expires Nov. 30, 2017

  
Notary Public/Commissioner of Deeds



# 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

April 8, 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>Jones, Antonio v. Erie County District Attorney re: FOIL</i>
Document Received:	Order to Show Cause
Name of Claimant:	Antonio Jones #96-B-1330 Elmira Correctional & Reception Center P.O. Box 500 Elmira, New York 14902-0500
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 Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 9D-7  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

In The Matter Of The Application Of

ANTONIO JONES,  
Petitioner

AFFIDAVIT IN Support  
OF ORDER TO SHOW CAUSE

INDEX No. 2015-0001

For a Judgement Pursuant to Article 78  
Of the Civil Practice Law and Rules

— against —

FRANK A. SEDITA III  
District Attorney of Erie County Respondent

STATE OF NEW YORK  
COUNTY OF CHEMUNG, ss.:

I, Antonio Jones, being duly Sworn, deposes and Says

1. I am the Petitioner in the above captioned Matt  
Proceedings pro-se.

2. 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  
CPLR, which Challenges the Respondent Frank A.  
Sedita, III, District Attorney of Erie County, denial  
(4)

Comm. 9017

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Of Petitioner's Freedom Of Information Requests For Records, documents and assistant district attorney Joseph J. Marusak interview notes of witnesses and Police reports.

3. I Proceed by Order to Show Cause rather than Notice Of Petition because I am incarcerated, and cannot effect personal service. Therefore, I respectfully request that timely service by mail be deemed sufficient.

4. Petitioner designates Erie County as the Place Of the Special Proceedings. The basis Of Venue is that the respondent Frank A. Sedita, III, District Attorney Of Erie County main Office is located in Erie County. Respondent made the final decision on Petitioner's Freedom Of Information Requests in Erie County.

5. No Previous application for the relief requested herein has been made.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

In The Matter Of the Application Of,

ANTONIO JONES,  
Petitioner

PETITION FOR  
ORDER TO SHOW CAUSE

Index No. 2015-00045

For a Judgement Pursuant to Article 78  
of the Civil Practice Law and Rules

— against —

FRANK A. SEDITA, III  
District Attorney of Erie County Respondent

STATE OF NEW YORK,  
COUNTY OF CHEMUNG ) ss:

I, Antonio Jones, being duly Sworn, deposes and says

1. I am an inmate at Elmira Correctional Facility located in Elmira, New York, P.O. Box 500, 14902.

2. Respondent is Frank A. Sedita, III, District Attorney of Erie County, And located at the Erie County District Attorney's Office 25 Delaware Avenue, Buffalo, New York, 14202.

3. This Petition Challenges the denial of the Petitioner's Freedom of Information Requests dated December 1<sup>st</sup>, 2014, January 8<sup>th</sup>, 2015, and January 19<sup>th</sup>, 2014, and the final determinations made by Michael S. Flaherty Sr, First Assistant District Attorney and Counsel to Respondent Frank A. Sedita, III, Erie County District Attorney on December 30, 2014, January 29<sup>th</sup>, 2015 and January 30<sup>th</sup>, 2015.

4. PARTIES: The Petitioner, Antonio Jones, is a Prisoner presently incarcerated in the custody of the New York State Department of Corrections and Community Supervision (DOCCS) at the Elmira Correctional Facility, Elmira New York 14902. P.O. Box 500.

5. The Respondent, Frank A. Sedita, III, is the District Attorney of Erie County and is the legal custodian of all the records and documents within the District Attorney's Office.

### STATEMENT OF FACTS:

6. On 12-15-14' Petitioner filed a Freedom of Information Request with the Erie County District Attorney's Office seeking documents and reports regarding the arrest of Arnold B. Medley on 2-27-95. Petitioner FOIL request was denied. Comm. 98-7  
the disposition of Arnold B. Medley's arrest. Page 23 of 75

On 2-27-95 and the nature of any Plea deals made with Arnold B. Medley regarding his arrest on 2-27-95. Petitioner filed request of 12-15-14, also sought any and all Interview notes made by A.D.A. Joseph J. Marusak and Homicide Det/Sgt James A. Murphy Jr, on or about 3-18-95, 3-19-95, and 3-20-95 regarding Arnold B. Medley. The Freedom of Information request of 12-15-14 also sought a copy of the PT3 report / Interview notes from the interview that was conducted on June 21 1995, at the Erie County Holding Center by Homicide Det/Sgt James A. Murphy Jr, and Det. Resinald Minor and any and all interview notes made by A.D.A. Joseph J. Marusak regarding homicide Det./Sgt James A. Murphy Jr, on 8-24-95. See Exhibit A.

7. On 12-22-14, Petitioner received a letter from A.D.A. Donna A. Milling denying my FOIL request of 12-15-14. See Exhibit B.

8. On 12-22-14 Petitioner filed an Appeal to his FOIL denial of 12-22-14, and Michael J. Flaherty, Jr. First Assistant District Attorney denied the FOIL appeal on 12-30-14. See Exhibit C.

9. On 1-8-15' Petitioner filed a Freedom of Information request with the Erie County District Attorney's Office seeking copies of A.D.A. Joseph J. Maruska interview notes of the following witnesses: Gordon Miller Sr, Anselia House, Bessie Scott, Keonna Bell, Larry Durham, Beacy House, Anthony Johnson, Det/Sgt James A. Murphy Sr, and Arnold B. Medley. Petitioner also requested within his FOIL request. The Memorandums and records used to convey to A.D.A. Tina M. Palmer that there was a conflict of interest in Petitioner's case between Petitioner and his attorney William Parks. The FOIL request also included any and all Memorandums and records and documents as well as transmissions conveyed by A.D.A. Christopher J. Bellino to A.D.A. Tina M. Palmer regarding a conflict of interest in Petitioner's case, and any and all District Attorney's Office Investigator's interview notes regarding the case of the People v. Antonio Jones, Ind No. 95-1279-001; And A.D.A. Joseph J. Maruska and Det/Sgt. James A. Murphy Sr interview notes of Eloise Durham. See Exhibit D.

10. On 1-15-15' Petitioner received a letter from A.D.A. Donna A. Milline regarding his request

Of 1-8-15. See Exhibit E.

11. On 1-19-15' Petitioner filed an Appeal to his FOIL denial of 1-8-15, and Michael S. Flaherty Sr, First Assistant District Attorney denied Mr. FOIL appeal on 1-28-15. See Exhibit E.

12. On 1-19-15' Petitioner filed a Freedom of Information request with the Erie County District Attorney's Office seeking the IDENTITY of the person who was interviewed on June 24, 1995, by the Buffalo Police Homicide Unit Det/Sgt James A. Murphy Sr, which is the subject of a PIS report dated June 24th, 1995. See Exhibit I.

13. On 1-23-15' Petitioner received a letter from A.D.A. Donna A. Milling denying his FOIL request of 1-19-15. See Exhibit H.

14. On 1-26-15' Petitioner filed an Appeal to the denial of his FOIL request dated 1-23-15 and Michael S. Flaherty Sr, First Assistant District Attorney denied his FOIL appeal on 1-30-15. See Exhibit I.

## FIRST CAUSE OF ACTION:

The Denial Of Petitioner's  
Freedom Of Information Requests  
By The Respondent Was Arbitrary  
And Capricious

15. It is not necessary herein to restate the Fourteenth Amendment to the United States Constitution, however, the mere fact that New York State has enacted legislation which more clearly defines the access to records in the Public Offices is not dispositive of the Petitioner's right to access under Federal Laws.

16. FOIA implements the legislative declaration that "Government is the Public's Business." (Public Officers Law § 84) imposes a broad standard of open disclosure upon agencies of the Government. The Statute "Proceeds under the Premise that the Public is vested with an inherent right to know and that Official Secrecy is anathematic to our Form of Government." See Fink v. Lefkowitz, 47 N.Y.2d 567, at 577. comment 7. See Page 27 of 75

17. Petitioner's right to access the files of the Respondent is clearly established by Federal Laws: The Freedom of Information Act enacted in 1966 (amended in 1974, 1976, 1984, 1986, 1988, 1994 and 1996) and the Privacy Act of 1974. The Freedom of Information Act (FOIA) permits the Petitioner to request all public records and documents, including those relating to him.

18. FOIA gives access to all government records unless they fall into one of the narrowly defined categories of materials that agencies are permitted (but not required) to withhold. The requested record and documents and notes and reports in this case does not fall under any of the one narrowly defined categories of materials and should be turned over to Petitioner.

19. In Key v. Hynes, 205 A.D.2d 779, 781, 631 N.Y.S.2d 926, 928, (2nd Dep't 1994) (the Court held that affirmation of information and belief that the Prosecutor's Office did not have the report that the inmate had requested was insufficient, since entirely conclusory statements do not constitute evidentiary proof). The Petitioner in this case was

Provided with nothing more than a letter from the Respondent stating that after a "diligent search" of the files the requested records does not exist or that the requested records was turned over to trial counsel and would not be turned over to Petitioner on those grounds. See Exhibits # ~~B~~ A.D.A. Donna A. Milling Letter.

20. Petitioner does have a listing of all the "Kosario Material" that was turned over to his trial attorney Mr. Glenn I. Davis by the District Attorney's Office. See Exhibit # 1. The Kosario Material listing notes all the records and documents and notes and statements that was turned over to Petitioner's trial counsel. The listing also clearly shows who "authored" what reports, statements, notes and documents. No interview notes made by any A.D.A. was among the documents, statements and notes and reports that was turned over to Petitioner's trial counsel. And none of the records, documents, reports, notes or other material that the petitioner had requested in his FOIL requests was among the Kosario Material that was turned over to his trial counsel. See Exhibit # 1 Comms 9D-71 Page 29 of 75.

Rosario Material Index that Outline all the Rosario Material that was turned Over to Petitioner Trial Counsel.

21. Clearly if the interview notes was in fact turned Over to Petitioner Trial Counsel as A.D.A. Donna A. Milling has Stated in her denial for such records than they would be listed in the Rosario Material Index among the material that was turned Over to Petitioner Trial Counsel. The Rosario Material Index Shows no listing for any of the requested material in Petitioner's FOIL requests.

22. Furthermore, Petitioner is more than willing to Pay for all Photo Copying fees for the requested materials. Also, all the requested materials in Petitioner FOIL requests are clearly discoverable under FOIL and should be turned Over to Petitioner.

23. In view of the broad mandates of the Freedom of Information (Act) and Brad v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963), People v. Rosario, 267 A.D.2d 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 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1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236,

§18 (1990), the Respondent should be Compelled by this Court to turn over all the material requested by the Petitioner in his FOIL Requests. This would impose no undue hardship upon the Respondent to turn the requested material over to Petitioner as he is the defendant in the Case and is only seeking material that would have been affordable to him and his Trial Counsel.

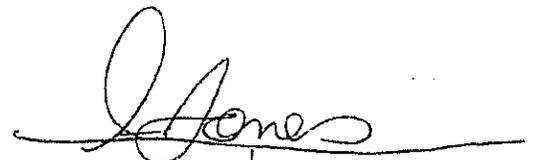
24. Trial Counsel and Appellate Counsel both turned over their entire files to Petitioner regarding his Criminal Case under Ind. # 95-1279-001. Petitioner asserts that the files does not contain any of the requested materials he requested under FOIL.

25. The Respondent's determinations herein were arbitrary and capricious, and an abuse of discretion because it abridged Petitioner's fundamental right to disclosure and access of records sought under FOIL.

WHEREFORE, Petitioner respectfully request that Judgement be entered Pursuant to Article 78 Of the Civil Practice Law and Rules.

1. ORDERING, Respondent to Turn Over and deliver, instanter, all the records, reports documents, interview notes, Memorandums and transmissions as previously requested by the Petitioner in all his FOIL request
2. ORDERING, Respondent to pay all the necessary fees, costs and expenses of this action.
3. ORDERING, Petitioner Filing Fee returned to him.
4. GRANTING Such Other and Further Relief as this Court deem just and Proper.

Dated: 2-17-15



Anton Comm 007  
Page 32 of 75

Antonio Jones, being duly Sworn, deposes and Says: That I the Petitioner, Pro Se in the action; That I have read and know the Contents of the foregoing Petition; That it is true and Correct to my own knowledge, except as to those matters therein Stated upon information and belief, and as to those I believe them to be true.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_ 2012.

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

Respectfully  
Antonio Jones  
Antonio Jones, pro-se

VERIFICATION IN ABSENCE OF NOTARY

I, Antonio Jones, am an incarcerated inmate under the custody and control of the New York State Department of Correction and Community Supervision, ( D.O.C.C.S.), and my ability to acquire the services of Notary Public is entirely under the control of prison officials. I have made numerous requests through the proper channel for such services at the facilities law library seeking to obtain the services of Notary Public. Contrary to the edict of the United States Supreme Court in Bounds v. Smith, 430 U.S. 817, 824-25, 97 S.Ct. 1941, 1946 ( 1977 ), I have not been provided such services to date, nor have I been apprised as to when such services will be made available to my person. I, therefore, must Verify the annexed documents by the method approved by the New York State Court of Appeals in People v. Sullivan, 56 N.Y.2d 378, 452 N.Y.S.2d 373 ( 1982 ); to wit:

I UNDERSTAND THAT FALSE STATEMENTS MADE IN THE ANNEXED FOREGOING DOCUMENT ARE PUNISHABLE AS A CLASS-A MISDEMEANOR PURSUANT TO SECTION 210.40 OF THE NEW YORK STATE PENAL LAW. I FURTHER UNDERSTAND THAT OFFERING OR PRESENTING THE ANNEXED DOCUMENT TO A JUDICIAL OFFICER, KNOWING OR BELIEVING IT WILL BE FILED BY THAT OFFICER AND CONTAINS FALSE STATEMENTS IS PUNISHABLE AS A CLASS-A MISDEMEANOR PURSUANT TO SECTION 175.30 OF THE NEW YORK STATE PENAL LAW.

Executed on: 2-17-15

Michael Sampson

D.O.C.C.S. No. 05A5479

Cordaeise Houston

D.O.C.C.S. No. 14B2536

O.B.C. No. 08A 2433

[Signature]  
Signature

12-15-14

Freedom of Information Officer  
Erie County District Attorney  
23 Delaware Avenue  
Buffalo, New York, 14202

Re: FOIA Request  
People v. Antonio Jones  
Ind No# 95-1279-001

From Antonio Jones # 96B1330  
Southport Correctional Facility  
P.O. Box 2200  
Pine City, New York, 14871

Dear Sir/Ms.:

This request is made under the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552 and the Privacy Act, 5 U.S.C. 552a-1.

Please send me copies of the following documents or materials: Any and all documents or reports regarding Arnold B. Medley, D.O.B. 1-5-73, Arrest of 2-27-95. The Disposition of Arnold B. Medley Arrest of 2-27-95. All records regarding any plea deals made with Arnold B. Medley regarding his Arrest of 2-27-95. Any and all interview notes made by A.D.A. Joseph S. Marusak and Homicide Det/Sgt. James A. Murphy Jr. on or about 3-18-95, 3-19-95, 3-20-95, regarding Arnold B. Medley.

2) A copy of the P-13 report / Interview that was conducted on June 24th, 1995, at the Erie County Holding Center by Homicide Det/Sgt. James A. Murphy Jr. and Det. Resinald Minor.

3) Any and all interview notes made by A.D.A. Joseph S. Marusak and Homicide Det/Sgt. James A. Murphy Jr. on 8-24-95.

Thank you

att A



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

December 19, 2014

Antonio Jones, 96B1530  
Southport Correctional Facility  
PO Box 2000  
Parsippany, NY 07054

Re: People v Antonio Jones  
Indictment No 95-1279-001

Dear Mr Jones:

Your freedom of information request dated December 15, 2014, received December 18, 2014 is denied. The Freedom of Information Law requires specificity. Please describe in detail the documents you seek pertaining to your request for "any and all documents or reports regarding Antonio Medley, DOB: 5-73, arrest of 2-27-95".

I certify that after a diligent search of the file, it does not contain the "disposition of Arnold Medley arrest of 2-27-95" (*Matter of Rattley v New York City Police Dept.*, 96 NY 2d 873, 875). Your request for interview notes and records regarding "plea deals" made with Arnold Medley is denied. A review of the records and the trial transcript reveals that information concerning "plea deals" was provided to your trial attorney. Notes, if any, were turned over to your attorney pursuant to discovery rules. Accordingly, this agency is under no obligation to produce additional copies (*Matter of Moore v Santucci*, 151 AD2d 677 [2nd Dept 1989]).

You may appeal this determination by contacting First Assistant District Attorney Michael J. Flaherty, Jr. at the address below.

Very truly yours,

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

DONNA A. MILLING  
Assistant District Attorney  
Chief, Appeals Bureau

DAM/sc

Ex B

12-22-14

To: Michael S. Flaherty, Jr  
First Assistant District Attorney  
35 Delaware Avenue  
Suffolk, New York, 14202

Re: FOIA Appeal

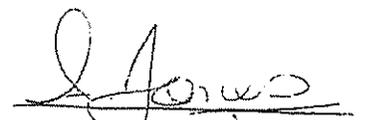
From: Antonio Jones # 96B1330  
Southport Correctional Facility  
P.O. Box 2000  
Pine City, N.Y. 14871

Mr. Flaherty,

I am filing this FOIA Appeal with you because on 12-22-14, I received a letter from Donna A. Milling A.D.A. denying my FOIA Request of 12-15-14 seeking the Court disposition of Arnold E. Medley arrest of 2-27-95, and copies of the interview notes from interviews conducted of Arnold E. Medley with A.D.A. Joseph J. Marusak.

Please be informed that I consider the requested material clearly releasable under FOIA and consider your Office denial of my FOIA request to be arbitrary and capricious and I expect that upon reconsideration you will reverse the decision to deny my FOIA request. However if you do deny this request I fully intend to file a lawsuit to compel full disclosure.

Thank you

  
Antonio Jones

Comm. 9D-7

Page 37 of 75

(See also 12-22-14)

Exh



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

December 30, 2014

ANTONIO JONES, 96B1330  
SOUTHPORT CORRECTIONAL FACILITY  
PO BOX 2000  
PINE CITY, NY 14871

Re: People v Antonio Jones  
Indictment No. 95-1279-001

Dear Mr. Jones:

Your appeal from the denial of your freedom of information request dated December 15, 2014 is denied. As Ms. Milling certified in her letter to you dated December 19, 2014, your file does not contain the "disposition of Arnold Medley arrest 2-27-95" (*Matter of Rattley v New York City Police Dept.*, 96 NY2d 873, 875[2001]). Interview notes and records concerning "plea deals" made with Arnold Medley, if any, were turned over to your trial attorney. Accordingly, this agency is under no obligation to produce additional copies (*Matter of Moore v Suttucci*, 151 AD2d 677[2nd Dept 1989]).

Very truly yours,

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

BY:   
MICHAEL J. FLAHERTY, JR.  
First Assistant District Attorney

MJF kas

1-8-15

Free Info Information Officer  
Craw County District Attorney Office  
25 Delaware Avenue  
Suffalo, N.Y. 14202

Re: FOIL Request  
People v. Antonio Jones  
Ind No. 98-1279-001

From: Antonio Jones #96B1330  
Elmira Correctional Facility  
P.O. Box 500  
Elmira, N.Y. 14902

Sir/Ms.:

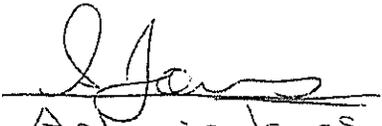
This request is made under the Freedom of Information Act (FOIL), 5 U.S.C. Sec. 552 and the Privacy Act, 5 U.S.C. 552a

Base on the research of the relevant Strady and Rosario Material that was turned over in the above case... A.D.A. Joseph J. Marpska interview notes of the following witnesses: Gordon Miller, Sr., Angela House, HESSIE SCOTT, Keonna Sell, Larry Durham, Anthony Johnson, Det/Sgt James A Murphy Sr., Keacy House and Arnold Meley was never turned over via Rosario and/or Strady Material and therefore, I request that you turnover these records in a accordance with the above FOIL Law.

(2). I also request in accordance of the Freedom of Information Act, 5 U.S.C. Sec. 552 and the Privacy Act, 5 U.S.C. 552a. The Memorandums and records used to convey to A.D.A. Tina M. Palmer that there was a Conflict of Interest in my case between me and attorney William Parks. This request is to include any and all Memorandums & records and ~~Documents~~ and transmissions conveyed to A.D.A. ~~Exhibit~~

Christopher S. Bellino to A.D.A. Tina M. Palmer regarding any Conflict of Interest between me and Attorney Parks. This FOIL request is to include the Arrest Disposition of Arnold Medley - arrest of 2-27-95. And all District Attorney Office Investigators Interview Notes regard the Case of People v. Antonio Jones Ind No# 95-1279-001. A.D.A. Joseph J. Maruska and Det/Sgt James A. Murphy Sr. Interview Notes of Eloise Durham. Det/Sgt. James A. Murphy, Jr. and Det Resinald Minor Interview Note and P73 report of June 24, 1995.

Thank you.

  
Antonio Jones



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

January 14, 2015

Antonio Jones, 96B1330  
Elmira Correctional Facility  
PO Box 500  
Elmira, NY 14902

Re: People v Antonio Jones  
Indictment No. 95-1279-001

Dear Mr Jones:

Your freedom of information request dated January 8, 2015 is denied. Notes, if any, were turned over prior to the named witnesses testimony at trial, pursuant to *People v Rosario*, 9 NY2d 286 (1961). Your request for "memorandums" is again denied (CPLR 3101[c]; Public Officer's Law § 87[2][g]). This same request was denied in my letter dated December 12, 2014. As I informed you in my letter dated December 19, 2014, when you made the same request for the "arrest disposition of Arnold Medley, after a diligent search of the file, there is no such document in the file (*Matter of Rottley v New York City Police Dept.*, 96 NY2d 873, 875 [2001]). Continuing duplicate requests for these documents will not be answered (*see Mendez v New York City Police Dept.*, 260 AD2d 262 [1st Dept 1999]; *Lebron v Smith* 40 AD3d 515 [1st Dept 2007]. *In denied* 9 NY3d 810). Police reports were turned over to your trial attorney pursuant to discovery rules. Accordingly, this agency is under no obligation to produce additional copies (*Matter of Moore v Santucci*, 151 AD2d 677 [2nd Dept 1989]).

You may appeal the denial determination by contacting First Assistant District Attorney Michael J. Flaherty, Jr. at the address below.

Very truly yours,

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

By: DONNA A. MILLING  
Assistant District Attorney  
Chief, Appeals Bureau

DAM sc

Exh E

1-19-15

To: Michael A. Flaherty, Jr  
First Assistant District Attorney  
25 Delaware Avenue  
Buffalo, N.Y. 14202

Re: FOIL Appeal

From: Antonio Jones #96B1330  
Elmira Correctional Facility  
P.O. Box 500  
Elmira, N.Y. 14902

Mr. Flaherty,

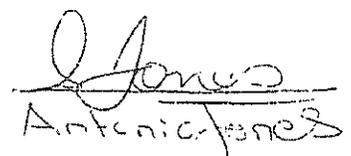
I am filing this FOIL Appeal with you because on 1-15-15, I received a letter from Donna A. Milling A.D.A. denying my FOIL request dated 1-8-15, seeking A.D.A. Joseph S. Maruska interview notes of the following witnesses: Gordon Miller Sr, Angela House, Kessie Scott, Keonmaisey, Larry Durham, Anthony Johnson, Det/Sgt James A. Murphy Sr, Reacy House, and Arnold Medley. My FOIL request also requested all records and documents regarding the 2-27-95 arrest of the Peoples witness Arnold Medley and copies of the interview notes from interviews conducted of Arnold B. Medley with A.D.A. Joseph S. Maruska. I also requested copies of all records and documents and memorandums and transmission conveyed by A.D.A. Christopher J. Selling to A.D.A. Tina M. Palmer regarding a conflict of interest in my case between me and attorney William Parks. I also requested and an all District Attorney's Office investigators interview notes regarding the case of Peoples v Antonio Jones Ind. No. # 95-1279-001. A.D.A. Joseph S. Maruska and Det/Sgt James A. Murphy Sr, interview notes of Eloise Durham Det/Sgt. James A. Murphy Sr, and Det. Resinaid Mincey interview notes & P73 report of June 24, 1995. Interview

Please be informed base on the research of the relevant Brady # Rosario Material Comm 9D-7a S turned over by your Office in the above case. Page 42 of 75. (See next page for details) EXH F

Note If the requested records or Documents was turned Over and after Correspondence with trial Counsel. He does not have any of the requested records or documents.

I Consider the requested material Clearly release Under FOIL and Consider your Office denial of my FOIL request to be arbitrary and Capricious and I now expect that upon reconsideration, you will reverse the decision to deny my FOIL request. However if you do deny this request Appeal, I intend to file a lawsuit to Compel full disclosure.

Thank you

  
Antonio Jones



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

January 26, 2015

Antonio Jones, 96B1330  
Elmira Correctional Facility  
PO Box 500  
Elmira, NY 14902

Re: People v Antonio Jones  
Indictment No. 95-1279-001

Dear Mr Jones:

Your appeal from the denial of your freedom of information request dated January 8, 2015 is denied. As Ms. Milling informed you in her letter dated January 14, 2015, notes, if any, were turned over to your attorney, prior to the witnesses' testimony at trial pursuant to *People v Rosario*, 9 NY2d 286 (1961). Your request for "memorandums" authored by Assistant District Attorneys Christopher Belling and Tina Stanford is denied (CPLR 3101[c]; Public Officer's Law § 87[2][g]).

As Ms. Milling certified, a diligent search of the file reveals that it does not contain any "arrest disposition" or records pertaining to a 2/27/95 arrest of Arnold Medley. Continuing duplicate requests for notes, "memorandums" and Mr Medley's records will no longer be answered (*Mendez v New York City Police Dept.*, 260 AD2d 262 [1st Dept 1999]; *Lebron v Smith*, 40 AD3d 515 [1st Dept 2007], *lv denied* 9 NY3d 810). Police reports were turned over to your trial attorney pursuant to discovery rules. Accordingly, this agency is under no obligation to produce additional copies (*Matter of Moore v Santucci*, 151 AD2d 677 [2nd Dept 1989]). Your self-serving and unsubstantiated claim that you corresponded with your trial counsel and "he does not have any of the requested records or documents" is insufficient. Proof that the documents no longer exist must be presented in evidentiary form (*Matter of Moore v Santucci* at 678).

Very truly yours,

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

BY: MICHAEL J. FLAHERTY, JR.  
First Assistant District Attorney

MJF/sc

1-19-15

To: Freedom Of Information Officer  
Erie County District Attorney's Office  
35 Delaware Avenue  
Buffalo, N.Y. 14202

FOI Request

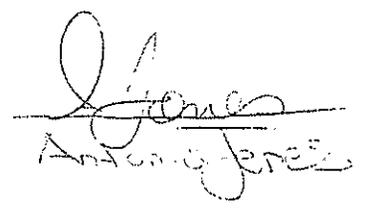
From: Antonio Jones # 96131330  
Elmira Correctional Facility  
P.O. Box 500  
Elmira, N.Y. 14902

Dear Sir/Ms.:

This request is made under the Freedom Of Information Act (FOIA), 5 U.S.C. Sec 552 and the Privacy Act 5 U.S.C. § 552a.

Please send me copies of all plea deals regarding Arnold B. Medley arrest of 2-27-95 and all records or documents pertaining to the 2-27-95 arrest of Arnold B. Medley. The identity of the person who was interviewed on June 21, 1995, by Det/ Sgt. James A. Murphy, Jr. of the Buffalo Police Homicide Unit which is the subject of a PYS report.

Thank you  
J

  
Antonio Jones



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

January 23, 2015

Antonio Jones, 96B1330  
Elmira Correctional Facility  
PO Box 500  
Elmira, NY 14902

Re: People v Antonio Jones  
Indictment No. 95-1279-001

Dear Mr Jones:

Pursuant to your freedom of information request dated January 19, 2015, received January 22, 2015, I certify that after a diligent search of the file, it does not contain any "plea deals" regarding Arnold Medley or any arrest records relating to Mr. Medley's arrest on 2/27/95 (*Matter of Rattley v New York City Police Dept.* 96 NY2d 873, 875 [2001]). You have made numerous requests seeking this information and each time I have advised you that these records are not contained in your file. Continuing requests for these records will not be answered (*Lebrun v Smith*, 40 AD3d 515 [1st Dep't 2007], *lv denied* 9 NY2d 810).

All police reports were turned over to your attorney pursuant to discovery rules. Accordingly, this agency is under no obligation to produce additional copies (*Matter of Moore v Santucci*, 151 AD2d 677 [1989]). The Freedom of Information Law requires an agency to provide access to disclosable records, it does not require an agency to provide answers to questions.

You may appeal this denial determination by contacting First Assistant District Attorney Michael J. Flaherty, Jr. at the address below.

Very truly yours,

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

By: DONNA A. MILLING  
Assistant District Attorney  
Chief, Appeals Bureau

DAM/sc

1-26-15

To: Michael S. Flaherty, Jr.  
First Assistant District Attorney  
25 Delaware Avenue  
Buffalo, N.Y. 14202

FOIA Appeal

From: Antonio Jones # 96B1330  
Elmira Correctional Facility  
P.O. Box 500  
Elmira, New York, 14902

Mr. Flaherty

I am filing this FOIA Appeal with you because on 1-23-15 your Office denied my FOIA request of 1-19-15 which was seeking and a copy of all records regarding Arnold B. Medley arrest of 2-27-95. I was also seeking and a copy of all information regarding the Disposition & plea deal of Arnold Medley arrest of 2-27-95.

I consider the requested material clearly & releasable under FOIA and ask that you please turn over the requested material

Thank you

  
Antonio Jones

(See next Page)



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

December 30, 2014

ANTONIO JONES, 96B1330  
SOUTHPORT CORRECTIONAL FACILITY  
PO BOX 2000  
PINE CITY, NY 14871

Re: People v Antonio Jones  
Indictment No. 95-1279-001

Dear Mr. Jones:

Your appeal from the denial of your freedom of information request dated December 15, 2014 is denied. As Ms. Milling certified in her letter to you dated December 19, 2014, your file does not contain the "disposition of Arnold Medley arrest 2-27-95" (*Matter of Rattley v New York City Police Dept.*, 96 NY2d 873, 875[2001]). Interview notes and records concerning "plea deals" made with Arnold Medley, if any, were turned over to your trial attorney. Accordingly, this agency is under no obligation to produce additional copies (*Matter of Moore v Santucci*, 151 AD2d 677[2nd Dept 1989]).

Very truly yours,

FRANK A. SEDITA, III  
DISTRICT ATTORNEY

BY: MICHAEL J. FLAHERTY, JR.  
First Assistant District Attorney

MJF kas

COUNTY OF ERIE : STATE OF NEW YORK  
SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK

- vs -

ANTONIO JONES AKA ANTONIO STEELE,  
Defendant

"ROSARIO" MATERIAL  
Indictment No. 95-1279-001

I. HEARING TESTIMONY

<u>Witness</u>	<u>Proceeding</u>	<u>Date</u>
Anores Ortiz	Family Court	6/9/95
Paul Roberts	Family Court	6/9/95
Patrick Roberts	Family Court	6/9/95
Gordon Miller, Jr.	Family Court	6/9/95
David Rodriguez	Family Court	6/9/95

II. GRAND JURY TESTIMONY

<u>Witness</u>	<u>Date</u>
Andrew Streicher	8/24/95
<u>Angela House</u>	8/23/95
<u>Ressie Scott</u>	8/23/95
<u>Keonna Bell</u>	8/23/95
Stuart Easter	8/30/95
Paul Roberts	8/23/95
David Littere	8/23/95
<u>James Murphy</u>	8/28/95
Dr. Loghmanee	8/23/95
Gordon Miller, Jr.	8/23/95
Charles Wilson	9/24/95
<u>Larry Durham</u>	8/23/95
<u>Anthony Johnson</u>	8/23/95
James Whetstone	8/30/95

### III. SWORN STATEMENTS

<u>Witness</u>	<u>Date</u>
<u>Reacy Rouse</u>	6/1/95
Karmen Bell	8/15/95
Tyrone Rawlings	6/1/95
Timothy Anderson	6/1/95
<u>Keonna Bell</u>	6/2/95
Keoki Bell	6/10/95
Gordon Miller, Jr.	6/1/95
<u>Ressie Scott</u>	6/10/95
<u>Arnold Medley, Jr.</u>	8/5/95
<u>Larry Durham</u>	8/2/95
<u>Angela House</u>	6/23/95
Demetrius Gray	8/15/95
<u>Anthony Johnson</u>	8/15/95

### IV. SCIENTIFIC/MEDICAL DOCUMENTS

<u>Document</u>	<u>Author</u>	<u>Date</u>
Autopsy Report	Dr. Loghmanee	
Autopsy Notes	Dr. Loghmanee	6/1/95
* CPS Lab Report & Notes	Paul Hojnacki	9/20/95
* CPS Lab Report & Notes	Richard Spencer	7/11/95
Firearms Operability Report & Notes	Stuart Easter	6/21/95
LaSalle Ambulance "Run Record"	M. Derme	5/31/95
* CPS Lab Report	Richard Spencer	10/6/95
ECMC Personal Property Statement		6/1/95
* CPS Lab Exam Request	Andrew Streicher	6/2/95

V. POLICE DOCUMENTS:

<u>Document</u>	<u>Author</u>	<u>Date</u>
P-1191	D. Rodriguez	5/31/95
P-1191	D. Littere	5/31/95
P-1124	P. Roberts	5/31/95
P-1124	D. Littere	5/31/95
P-73	J. Murphy, Jr.	5/31/95
P-73	R. Minor	5/31/95
P-73	Ortiz/Lipinczyk	5/31/95
P-73	Roberts/Roberts	6/1/95
P-73	Rodriguez & Littere	6/1/95
P-73 & Notes	M. Stambach	6/1/95
P-73 & Notes	DiPirro/Morales, etc.	6/1/95
P-73 & Notes	A. Streicher	6/1/95
P-73 & Notes	K. Suto	6/4/95
P-73	J. Murphy, Jr.	6/4/95
P-73	R. Minor	6/6/95
P-73	J. Murphy, Jr.	6/8/95
P-73	J. Murphy, Jr.	6/14/95
P-73 & Notes	J. Murphy, Jr.	6/19/95
P-73	J. Murphy, Jr.	7/10/95
P-73	J. Murphy, Jr.	8/2/95
P-73 & Notes	J. Murphy, Jr.	8/5/95
P-73	J. Murphy, Jr.	8/16/95
P-163	K. Suto	8/30/95
Arrest/Booking Form	J. Murphy, Jr.	8/30/95
P-112's (#1-17)	A. Streicher	5/31, 6/1, 6/8, 6/20 and 8/6/95

V. POLICE DOCUMENTS: (cont'd)

<u>Document</u>	<u>Author</u>	<u>Date</u>
Property Report	A. Streicher	6/2/95
P-10A	A. Streicher	5/31/95
Death Notice	A. Streicher	6/1/95
P-77B	A. Streicher	6/6/95
P-77B	A. Streicher	6/7/95
Notes	A. Ortiz	8/6/95
P-77B	A. Streicher	6/20/95
P-77B	A. Streicher	1/5/96
Fingerprint Memo	A. Streicher	1/5/96

VI. MISCELLANEOUS DOCUMENTS

<u>Document</u>	<u>Witness (Author)</u>	<u>Date</u>
Plea Colloquy (Family Court)	Larry Durham	8/1/95

KEVIN M. DILLON  
DISTRICT ATTORNEY OF ERIE COUNTY

JOSEPH J. MARUSAK  
Assistant District Attorney of Counsel

State of New York  
Frank A. Sedite County  
Supreme Court

-----X  
Antonio Jones Petitioner

v.

Frank A. Sedite Defendant  
District Attorney-----X

Affidavit in Support of Application  
Pursuant to CPLR 1101  
(Poor Person Status for Inmate)

Index/File # 2015-00076#  
DIN# \_\_\_\_\_  
NYSID# \_\_\_\_\_

State of New York )  
 )ss:  
County of Chemung )

Antonio Jones, being duly sworn, says:

- 1) I am the Petitioner/Plaintiff in the above-entitled case. I am an inmate in a federal, state, or local correctional facility (state place of incarceration: Clinton C.F.), and I submit this affidavit in support of my application for poor person status in such case.
- 2) I currently receive income from the following sources, exclusive of correctional facility wages:  
None
- 3) I own the following valuable property (other than miscellaneous personal Property):  
 NONE  
 List property: \_\_\_\_\_ Value: \_\_\_\_\_  
None \_\_\_\_\_  
\_\_\_\_\_
- 4) I have no savings, assets, or income other than as set forth herein

\* Will be assigned by the Court/County Clerk

- 5) I am unable to pay the costs, fees, and expenses necessary to prosecute this case.
- 6) No other person who is able to pay these costs, fees, and expenses has a beneficial interest in the result of this case.
- 7) The nature of this case and the facts therein are described in my pleadings and other papers filed with this court.
- 8) I have made no prior request for this relief in this case.

  
 \_\_\_\_\_  
 (signature)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

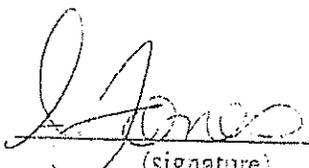
AUTHORIZATION

I, L. Antonio Jones, inmate number 96B1330, 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 deduct the amount of the filing fee ordered by the Court pursuant to CPLR 1101 (f) (2) from my correctional facility trust fund account (or the institutional equivalent) and to disburse such amount 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.

  
 \_\_\_\_\_  
 (signature)

VERIFICATION IN ABSENCE OF NOTARY

I, Antonio Jones, am an incarcerated inmate under the custody and control of the New York State Department of Correction and Community Supervision, ( D.O.C.C.S.), and my ability to acquire the services of Notary Public is entirely under the control of prison officials. I have made numerous requests through the proper channel for such services at the facilities law library seeking to obtain the services of Notary Public. Contrary to the edict of the United States Supreme Court in Bounds v. Smith, 430 U.S. 817, 824-25, 97 S.Ct. 1941, 1946 ( 1977 ), I have not been provided such services to date, nor have I been apprised as to when such services will be made available to my person. I, therefore, must Verify the annexed documents by the method approved by the New York State Court of Appeals in People v. Sullivan, 56 N.Y.2d 372, 452 N.Y.S.2d 373 ( 1982 ); to wit:

I UNDERSTAND THAT FALSE STATEMENTS MADE IN THE ANNEXED FOREGOING DOCUMENT ARE PUNISHABLE AS A CLASS-A MISDEMEANOR PURSUANT TO SECTION 210.40 OF THE NEW YORK STATE PENAL LAW. I FURTHER UNDERSTAND THAT OFFERING OR PRESENTING THE ANNEXED DOCUMENT TO A JUDICIAL OFFICER, KNOWING OR BELIEVING IT WILL BE FILED BY THAT OFFICER AND CONTAINS FALSE STATEMENTS IS PUNISHABLE AS A CLASS-A MISDEMEANOR PURSUANT TO SECTION 175.30 OF THE NEW YORK STATE PENAL LAW.

Executed on: 2-17-15

*Antonio Jones*  
DIN No. 0545479

*[Signature]*  
Signature

Condarise Houston

Din No: 1482536

O. Bryant 08-2033

KICSM80

ICAS SYSTEM  
NYS DEPT OF CORRECTIONS  
209-INMATE BALANCE SCREEN

02/27/15  
12:44:40

NYSID: 07552047K  
DOB: 03/12/75  
FULL NAME: JONES ANTONIO  
DIN: 96B1330

PHONE: ( 607 ) 734 3901 EXT: 3308  
FAX: ( 607 ) 734 3901 EXT: 3199  
CURRENT FACILITY: ELMIRA C & RC

SPENDABLE BALANCE: 0.00

```

*****
*           ENCUMBRANCES           *
*           TOTAL:           350.00 *
*           COLLECTED:        196.43 *
*           OUTSTANDING:      153.57 *
*****

```

	SPENDABLE FOR LAST SIX MONTHS	TOTAL DEPOSITS FOR LAST SIX MONTHS
OLDEST	161.07	67.60
	216.07	442.79
	248.90	61.00
	311.90	96.00
✓	303.91	25.00
NEWEST	363.84	558.24

NEXT DIN:

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



# 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

April 9, 2015

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

Dear Ms. McCarthy:

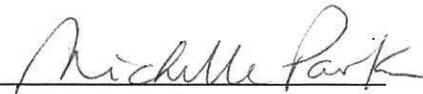
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Marrano, Vincent, Estate of, by Paul Marrano, Sr. v. County of Erie and Town of Evans</i>
Document Received:	Notice of Claim
Name of Claimant:	Paul Marrano, Sr. for the Estate of Vincent Marrano 8670 Elizabeth Parkway Eden, New York 14057
Claimant's attorney:	Michael C. Lancer, Esq. Collins & Collins Attorneys, LLC 267 North Street Buffalo, New York 14201

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By: 

Michelle Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 9D-7  
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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

In the Matter of the Claim of  
PAUL MARRANO, Sr. on behalf of the Estate of  
VINCENT MARRANO,

*Claimant,*

**NOTICE OF CLAIM**

vs.

COUNTY OF ERIE and  
TOWN OF EVANS,

*Respondents.*

---

To: County of Erie  
Michael A. Siragusa, Esq.  
95 Franklin Street, Suite 1634  
Buffalo, New York 14202

Town of Evans  
8787 Evans Road  
Angola, New York 14006

**PLEASE TAKE NOTICE** that the Claimant, **PAUL MARRANO, Sr.**, on behalf of the estate of **VINCENT MARRANO**, claims and demands against the **COUNTY OF ERIE** and **TOWN OF EVANS** and in accordance with the requirements of the New York General Municipal Law §50-e claim the following:

1. The name and post office address of the Claimant is:

PAUL MARRANO, Sr.  
8670 Elizabeth Parkway  
Eden, New York 14057

The name and post office address of Claimant's attorney is:

Michael C. Lancer, Esq.  
COLLINS & COLLINS ATTORNEYS, LLC

**Collins & Collins**  
ATTORNEYS, LLC

a. 267 North Street, Buffalo, New York 14201 □ p. 716 885 9700

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267 North Street  
Buffalo, New York 14201

2. The claim of **PAUL MARRANO** is for personal injuries sustained by his decedent through the negligence, carelessness and violations by the Respondent, their agents, employees and representatives.

3. The time when and place where this claim arose are as follows: On December 24, 2013 at approximately 1:06 p.m., on Eden-Evans Center Road in the Town of Evans, County of Erie, State of New York.

4. The Claimant's decedent, **VINCENT MARRANO**, was a motorist traveling eastbound on Eden-Evans Center Road in the Town of Evans, County of Erie and State of New York.

5. On December 24, 2013, the Claimant's decedent, **VINCENT MARRANO**, was a motorist traveling eastbound on Eden-Evans Center Road in the Town of Evans, County of Erie and State of New York when his vehicle was caused to slide in the direction of an oncoming train due to the dangerous and slippery road conditions that yielded his vehicle to come to a complete stop. These dangerous and hazardous conditions caused his vehicle to be struck by a Norfolk Southern train.

6. Upon information and belief, the Respondent is the owner of the aforesaid roadway and was responsible for the maintenance, creation, design, marking, construction and/or repair of this roadway.

7. The Claimant's decedent, **VINCENT MARRANO**, was caused to suffer serious injuries which resulted in his death.

8. The collision between the Claimant's decedent, **VINCENT MARRANO**, and the aforesaid train was directly and proximately caused by the carelessness and negligence of the

**Collins & Collins**  
ATTORNEYS, LLC

a. 267 North Street, Buffalo, New York 14201 □ p. 716 885 9700

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Respondents' employees, agents and servants in its creation, design maintenance, marketing, construction and/or reconstruction of the roadway in that they failed to provide safety measures or safety devices that would have prevented the collision between the Claimant's vehicle and the Norfolk Southern train. In addition, Respondents failure to properly maintain the roadway and failure to remove snow caused the dangerous conditions. Further, the Respondent and/or Respondents' employees, agents and servants had actual and/or constructive notice of the dangerous and/or defective condition of the intersection and failed to exercise reasonable care in removing or correcting the dangerous conditions posed by the roadway. Upon information and belief, the Respondent owns and has a duty to maintain Eden-Evans Center Road and warn of the dangerous conditions present on that road.

WHEREFORE, the Claimant, **PAUL MARRANO**, hereby claims and demands from Respondent, **COUNTY OF ERIE and TOWN OF EVANS**, compensation for the damages sustained by reason of the wrongful, unlawful, negligent and careless acts and omissions of the Respondent, its agents, servants and employees.

DATED: March 25, 2015  
Buffalo, New York



MICHAEL C. LANCER, ESQ.  
*On Behalf of Claimant,*  
**PAUL MARRANO**  
Collins & Collins Attorneys, LLC  
267 North Street  
Buffalo, New York 14201  
(716)885-9700

Subscribed and sworn to before me  
this \_\_\_ day of March, 2015

\_\_\_\_\_  
NOTARY PUBLIC

**Collins & Collins**  
ATTORNEYS, LLC

a. 267 North Street, Buffalo, New York 14201 □ P. 716 885 9700

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**VERIFICATION**

PAUL MARRANO, being duly sworn, depose and say: I am the Claimant above named; I have read the foregoing Notice of Claim against COUNTY OF ERIE and TOWN OF EVANS and know its contents; the same is true to my own knowledge, except as to those matters therein stated to be alleged on information and belief, and, as to those matters, I believe it to be true.

Paul Marrano  
PAUL MARRANO

Subscribed and sworn to before me  
this 31 day of March, 2015

Joanne Kaminski  
NOTARY PUBLIC

JOANNE KAMINSKI  
Notary Public, State of New York  
No. 01KA6193038  
Qualified in Erie County  
My Commission Expires 9-8-16

**Collins & Collins**  
ATTORNEYS, LLC

a. 267 North Street, Buffalo, New York 14201 ☐ p. 716 885 9700

Comm. 9D-7  
Page 61 of 75

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of  
PAUL MARRANO, Sr. on behalf of the Estate of  
VINCENT MARRANO,

*Claimant,*

**AFFIDAVIT OF SERVICE**

vs.

COUNTY OF ERIE and  
TOWN OF EVANS,

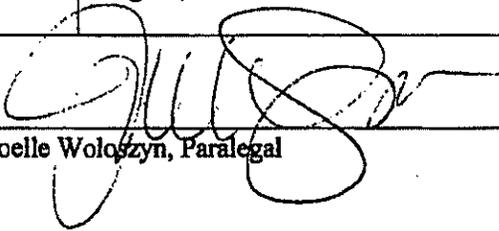
*Respondents.*

STATE OF NEW YORK        )  
COUNTY OF ERIE         )ss.:  
CITY OF BUFFALO        )

Joelle Woloszyn, being duly sworn, deposes and says:

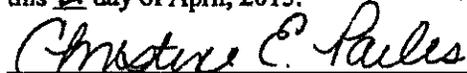
1. That I am over eighteen years of age and am not a party to this action.
2. That on the 2<sup>nd</sup> day of April, 2015, I served a copy of a Notice of Claim of PAUL MARRANO annexed hereto, on COUNTY OF ERIE and TOWN OF EVANS, the Respondents, by depositing same enclosed in a postpaid properly addressed wrapper, Certified Mail, Return Receipt Requested, in an official depository under the exclusive care and custody of the United States post office department within the State of New York, addressed as follows:

<b>CERTIFIED MAIL:</b> County of Erie Michael A. Siragusa, Esq. 95 Franklin Street, Suite 1634 Buffalo, New York 14202	<b>CERTIFIED MAIL</b> Town of Evans 8787 Evans Road Angola, New York 14006
--	---



\_\_\_\_\_  
Joelle Woloszyn, Paralegal

Subscribed and sworn to before me  
this 2 day of April, 2015.



\_\_\_\_\_  
NOTARY PUBLIC

**CHRISTINE E. PAILES**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 01PA6139641**  
**Qualified in Erie County**  
**My Commission Expires January 09, 2018**

**Collins & Collins**  
 ATTORNEYS, LLC

a. 267 North Street, Buffalo, New York 14201 □ p. 716 885 9700



# 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

April 14, 2015

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

Dear Ms. McCarthy:

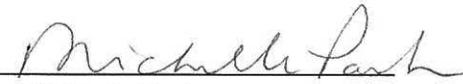
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Gray, Charles v. County of Erie -- should be ECMCC</i>
Document Received:	Notice of Claim
Name of Claimant:	Charles Gray
Claimant's attorney:	Elmer Robert Keach, III, Esq. One Pine West Plaza, Suite 109 Albany, New York 12205-5531

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By: 

Michelle Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 9D-7  
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In the Matter of the Claim of

CHARLES GRAY,

Claimant,

- against -

THE COUNTY OF ERIE,

---

**NOTICE OF CLAIM**

TO: Christopher L. Jacobs, Erie County Clerk

PLEASE TAKE NOTICE that Charles Gray hereby claims from the County of Erie damages for personal injuries and emotional distress sustained by him by reason of intentional and/or negligent acts and omissions of the County of Erie, its agents, servants, or employees, and in support thereof Claimant states as follows:

1. Claimant Charles Gray is a citizen of the United States and currently resides in Montgomery County, New York.

2. The name, post office address and telephone number of Claimant's attorneys are:

Elmer Robert Keach, III, Esquire  
Maria K. Dyson, Esquire  
LAW OFFICES OF ELMER ROBERT KEACH, III, PC  
One Pine West Plaza, Suite 109  
Albany, NY 12205  
Telephone: 518.434.1718  
Telecopier: 518.770.1558

3. Upon information and belief, the facts underlying this claim began on or about October 2, 2014 until on or about January 7, 2015.

4. Upon information and belief, the place where this claim arose was the Erie County Medical Center, 462 Grider Street, Buffalo, NY 14215.

5. Upon information and belief, the claim of Charles Gray arose in the following manner:

On or about September 28, 2014, Claimant Charles Gray, an inmate in the custody of the Department of Corrections and Community Supervision (“DOCCS”), was playing football in the main yard at Gowanda Correctional Facility. During the game, Charles Gray collided with another player, and sustained an injury at or near his left elbow. Immediately after the collision, Mr. Gray felt an intense pain, and also felt something pop, and move in his arm, near his inner left tricep muscle. Eventually, it was determined that Mr. Gray had, in fact, torn his tricep muscle. Over the next couple days, Mr. Gray’s arm became swollen, bruised and the muscle looked deformed.

On or about October 2, 2014, when Mr. Gray’s symptoms continued to worsen, DOCCS officials scheduled a telemed conference, or a conference by video, with Erie County Medical Center (“ECMC”) for Mr. Gray. During the telemed conference, Mr. Gray explained to ECMC medical providers what happened, described his symptoms, and stated that he felt that his tendon had been torn. Upon information and belief, the medical staff at ECMC determined that Mr. Gray needed immediate medical treatment, and instructed Gowanda staff to transport Mr. Gray to their facility. This is evident, given that non-emergent medical conditions that requires medical treatment outside of a DOCCS facility, usually requires numerous levels of approval from facility officials, that usually takes days, if not weeks to obtain.

At ECMC, Mr. Gray’s arm was x-rayed and briefly evaluated by a doctor. This x-ray merely confirmed that Mr. Gray had not sustained a bone fracture. During the visit, Mr. Gray repeatedly requested an MRI to determine whether his tendon had been severed. However, the physician at ECMC stated in words or substance that they could not do anything else for him that night without the consent of the Gowanda Correctional facility physician, and that he would have to take his complaints to the facility. Upon information and belief, sometime after the telemed conference and before the physician made those comments, ECMC medical staff were instructed by Correctional officials not to perform any major medical procedures without the consent of the facility. As a result, Mr. Gray was discharged back to the facility without having a meaningful evaluation, MRI, or any medical treatment.

Upon information and belief, ECMC medical staff have been trained by their superiors to defer to the decisions of correctional staff, regardless of whether: the decisions are made by trained

medical professionals at the facility; whether they agree with the decisions on a medical basis; and whether the inmates are exhibiting emergent medical symptoms. Upon information and belief, this understanding was reached between supervisory and policy making officials of ECMC and Gowanda Correctional Facility and/or the New York State Department of Corrections and Community Supervision for financial reasons. Specifically, and upon information and belief, Gowanda Correctional Facility has a policy and procedure to treat all medical conditions in-house, to save money, regardless of whether or not they are capable of providing the necessary and appropriate treatment. As a result, and upon information and belief, Gowanda correctional officials advised ECMC medical staff that they were to defer to correctional facility officials decisions regarding when, and what, procedures inmates are provided. This is evident given the ECMC physician's statements, and her refusal to provide Mr. Gray an MRI, a routine, albeit expensive, test that is commonly used to rule out severe muscle trauma, even though she had previously determined that Mr. Gray's condition was emergent on the telemed conference.

After conducting a cursory evaluation of Mr. Gray, the ECMC physician then discharged Mr. Gray, without providing him any meaningful medical treatment. Despite noting that Mr. Gray had "obvious swelling", "great tenderness" and "limited" flexibility, the ECMC physician diagnosed Mr. Gray with "bursitis" or bruising. As a result, Gowanda Correctional Facility was advised that Mr. Gray was being discharged from ECMC on a non-emergent basis.

Thereafter, and upon information and belief, Gowanda Correctional Facility officials relied upon this diagnosis and attempted to treat Mr. Gray's condition in-house, and with minimal medical care. For instance, and upon information belief, Mr. Gray was, on occasion, provided Tylenol, an ace-bandage, and ice, to treat, what DOCCS officials believed to be a non-emergent condition. Unsurprisingly, Mr. Gray's condition continued to worsen, as his arm became even more swollen and bruised, and his torn tendon became more obviously deformed. Eventually, DOCCS officials realized that Mr. Gray's condition was more serious than the diagnosis provided to them by ECMC.

As a result, Mr. Gray was transported back to ECMC on or about January 7, 2015. Mr. Gray was evaluated by Dr. Philip Stegmann, who was horrified at Mr. Gray's condition. Dr. Stegmann then looked through Mr. Gray's file and learned that he had been initially evaluated by his colleague at ECMC. Dr. Stegmann then called his colleague and began yelling at her, stating in words or substance that the treatment, or lack thereof, she provided to Mr. Gray was inexcusable,

and had likely caused Mr. Gray permanent damage. Dr. Stegmann then immediately ordered an MRI of Mr. Gray's arm, which confirmed that Mr. Gray had a torn tendon, which was now in such a deformed condition, that it was likely inoperable.

Dr. Stegmann then discussed with Mr. Gray's his options regarding surgery, and explained that his chance of a successful recovery were slim. Dr. Stegmann also told Mr. Gray that he would be happy to perform the surgery immediately, but because of the way DOCCS works, he likely would not be scheduled for surgery for several months. Mr. Gray responded that he was due to be released from custody in the next 21 days. Dr. Stegmann responded that he would try to do everything he could to get him scheduled for surgery before Mr. Gray left custody, but in all likelihood, Mr. Gray would likely have to seek treatment for his arm after he left the prison.

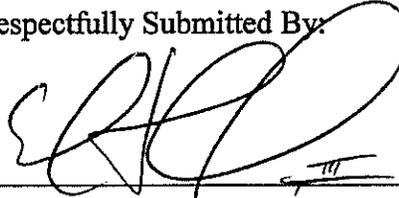
Unsurprisingly, DOCCS failed to schedule Mr. Gray for surgery prior to his leaving the facility. Again, upon information and belief, this decision was made due to financial considerations, despite Mr. Gray's obvious need for the medical procedure. As a result Mr. Gray was forced to wait until he was discharged from custody. Currently, Mr. Gray has been advised that surgical intervention would likely cause him more harm than good, as the chance for success is slim to none. Mr. Gray can no longer meaningfully use his left arm, and is permanently disabled in that limb.

Mr. Gray's injuries were caused solely by the negligence and/or intentional actions of Erie County, its agents, servants or employees, who, while acting the course of their employment, provided Mr. Gray grossly negligent, and deliberately indifferent, medical treatment. These actions on the part of Erie County employees and others substantiate claims for intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, medical negligence, medical indifference, medical malpractice, negligent retention, negligent supervision, res ipsa loquitor, and prima facie tort. These are in addition to the obvious violation of Mr. Gray's rights under the New York State Constitution and the United States Constitution.

6. Pursuant to the Continuous Treatment doctrine, this notice is made and served on behalf of Charles Gray in compliance with the provisions of Section 50-e of the New York General Municipal Law. The Claimant demands payment of \$10,000,000.00 to satisfy his claim.

PLEASE TAKE FURTHER NOTICE that Claimant demands payment of the claim, and unless the claim is paid within a reasonable time it is the intention of Claimant to commence suit against Erie County and several Erie County officials in the United States District Court for the Northern District of New York.

Respectfully Submitted By:

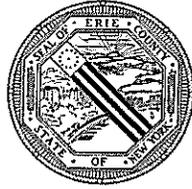


Dated: March 31, 2015

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Elmer Robert Keach, III, Esquire  
Maria K. Dyson, Esquire  
LAW OFFICES OF ELMER ROBERT  
KEACH, III, PC  
One Pine West Plaza, Suite 109  
Albany, NY 12205  
Telephone: 518.434.1718  
Telecopier: 518.770.1558  
Electronic Mail:  
bobkeach@keachlawfirm.com

**ATTORNEYS FOR CLAIMANT  
CHARLES GRAY**



# 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

April 14, 2015

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

Dear Ms. McCarthy:

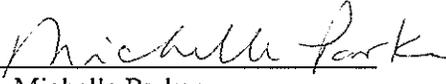
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Bojarski, Jackson by Tom Bojarski as png v. West Seneca Central School District, Rose Wright, PT, Erie 1 BOCES and County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	Tom Bojarski png of Jackson Bojarski
Claimant's attorney:	Rosanne M. Gugino, Esq. Brown Chiari, LLP 5775 Broadway Lancaster, New York 14086

Should you have any questions, please call.

Very truly yours,

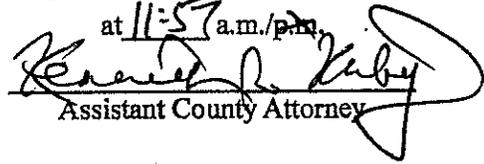
MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle Parker  
First Assistant County Attorney

MMP:dld  
Enc.

Comm. 9D-7  
Page 69 of 75

This paper received at the  
Erie County Attorney's Office  
from Jodi Williams on  
the 31<sup>st</sup> day of March, 2015  
at 11:57 a.m./p.m.

  
Assistant County Attorney

STATE OF NEW YORK  
SUPREME COURT  
COUNTY OF ERIE

TOM BOJARSKI, Individually and as Parent and Natural  
Guardian of JACKSON BOJARSKI, an Infant  
23 Thorndale Avenue  
West Seneca, New York 14224,

Plaintiffs,

vs.

**SUMMONS**  
Served with Complaint  
Index #

WEST SENECA CENTRAL SCHOOL DISTRICT  
1397 Orchard Park Road  
West Seneca, New York 14224

ROSE WRIGHT, P.T.  
c/o West Seneca Central School District  
1397 Orchard Park Road  
West Seneca, New York 14224

ERIE 1 BOCES  
355 Harlem Road  
West Seneca, New York 14224

COUNTY OF ERIE  
92 Franklin Street  
Buffalo, New York 14202,

Defendants.

**To the Above-Named Defendants:**

**YOU ARE HEREBY SUMMONED AND REQUIRED** to serve upon the attorneys, at the address stated below, a written Answer to the attached Complaint.

If this Summons is served upon you within the State of New York by personal service you must respond within **TWENTY (20)** days after service, not counting the day of service. If

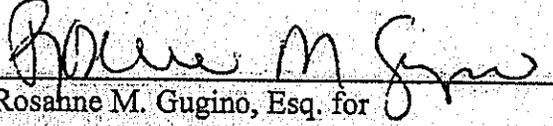
this Summons is not personally delivered to you within the State of New York you must respond within **THIRTY (30)** days after service is completed, as provided by law.

If you do not respond to the attached Complaint within the applicable time limitation stated above, a Judgment will be entered against you, by default, for the relief demanded in the Complaint, without further notice to you.

This action is brought in the County of Erie because of:

- Residence or place of business;
- Residence; or
- Designation made by Plaintiffs.

DATED: Lancaster, New York  
March 25, 2015

  
Rosanne M. Gugno, Esq. for  
**BROWN CHIARI LLP**  
**Attorneys for Plaintiffs**  
5775 Broadway  
Lancaster, New York 14086-2360  
(716) 681-7190

STATE OF NEW YORK :  
SUPREME COURT : COUNTY OF ERIE

TOM BOJARSKI, Individually and as Parent and Natural guardian of JACKSON BOJARSKI,an Infant,

Plaintiffs,

vs.

COMPLAINT

Index # \_\_\_\_\_

WEST SENECA CENTRAL SCHOOL DISTRICT,  
ROSE WRIGHT, P.T., ERIE I BOCES and  
COUNTY OF ERIE,

Defendants.

Plaintiff, TOM BOJARSKI, Individually and as Parent and Natural Guardian of JACKSON BOJARSKI, an Infant, by their attorneys, BROWN CHIARI LLP, for their Complaint in the above-entitled action, allege as follows:

1. That at all times hereinafter mentioned, Plaintiff, TOM BOJARSKI, was and still is a resident of the County of Erie and State of New York.
2. That at all times hereinafter mentioned, Plaintiff, JACKSON BOJARSKI, an Infant, was and still is a resident of the County of Erie and State of New York.
3. That on or about February 28, 2014, a Notice of Claim was served on the above-named Defendant, WEST SENECA CENTRAL SCHOOL DISTRICT. At least thirty (30) days have lapsed since the service of said Notice and adjustment and/or payment thereof has been neglected or refused.
4. That upon information and belief, ERIE I BOCES, is a municipal corporation organized and existing by virtue of the laws of the State of New York.

5. That on or about February 28, 2014, a Notice of Claim was served on the above-named Defendant, ERIE I BOCES. At least thirty (30) days have lapsed since the service of said Notice and adjustment and/or payment thereof has been neglected or refused.

6. That upon information and belief, the COUNTY OF ERIE is a municipal corporation organized and existing by virtue of the laws of the State of New York.

7. That on or about February 28, 2014, a Notice of Claim was served on the above-named Defendant, COUNTY OF ERIE. At least thirty (30) days have lapsed since the service of said Notice and adjustment and/or payment thereof has been neglected or refused.

**AS AND FOR A FIRST CASE OF ACTION,**  
**PLAINTIFFS ALLEGE AS FOLLOWS:**

8. That Plaintiffs repeat and reallege paragraphs "1" through "7," above.

9. The underlying action is for personal injuries and medical expenses sustained by reason of injury to the Infant Plaintiff, JACKSON BOJARSKI, which occurred on or about January 16, 2014.

10. Upon information and belief, the Infant Plaintiff, JACKSON BOJARSKI, was receiving in-home services from the Defendants, West Seneca CENTRAL SCHOOL DISTRICT, ERIE I BOCES and COUNTY OF ERIE. These organizations were required to provide physical therapy for the Infant Plaintiff, JACKSON BOJARSKI, who was recovering from neurosurgery.

11. The damages for which relief is hereby requested resulted from the negligence of the Defendants, WEST SENECA CENTRAL SCHOOL DISTRICT, ERIE I BOCES, and the COUNTY OF ERIE, their agents, servants, and employees, to wit: Rose Wright, Physical Therapist, who conducted the in-home physical therapy on January 16, 2014.

12. Upon information and belief, Ms. Wright failed to supervise and support the Infant Plaintiff, JACKSON BOJARSKI, after placing him upright with a new rolling walker.

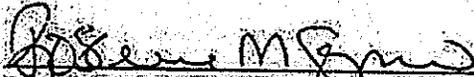
13. After the walker was placed around the Infant Plaintiff, JACKSON BOJARSKI, he fell and fractured his tibia due to the carelessness and negligence of Ms. Wright.

14. The injury severely impacted and delayed the Infant Plaintiff, JACKSON BOJARSKI's, physical, mental and neurosurgical recovery, which resulted in conscious pain and suffering.

WHEREFORE, Plaintiff, TOM BOJARSKI, Individually and as Parent and Natural Guardian of Plaintiff, JACKSON BOJARSKI, an Infant, hereby demand judgment against the Defendants, WEST SENECA SCHOOL DISTRICT, ROSE WRIGHT, P.T., ERIE I BOCES and the COUNTY OF ERIE, in an amount to be determined by a jury upon the trial of this action, plus costs and

disbursements.

DATED: Lancaster, New York  
March 25, 2015

  
\_\_\_\_\_  
Rosanne M. Gugino, Esq. for  
BROWN CHIARI LLP  
Attorneys for Plaintiff  
5775 Broadway  
Lancaster, New York 14086-2360  
(716) 681-7190

STATE OF NEW YORK :  
SUPREME COURT : COUNTY OF ERIE

---

TOM BOJARSKI, Individually and as Parent and Natural  
Guardian of JACKSON BOJARSKI, an Infant,

Plaintiffs,

vs.

Index No. 803977/2015

WEST SENECA CENTRAL SCHOOL DISTRICT,  
ROSE WRIGHT, P.T., ERIE I BOCES, and  
COUNTY OF ERIE,

Defendants.

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**NOTICE OF COMMENCEMENT OF ACTION  
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb (e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at or contact the NYSCEF Resource Center at 646-386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us).

Dated: March 26, 2015

Rosanne M. Gugino  
BROWN CHIARI LLP  
5775 Broadway  
Lancaster, NY 14086-2360  
(716) 681-7190  
(716) 681-8136  
[rgugino@brownchiari.com](mailto:rgugino@brownchiari.com)  
Attorneys for Plaintiffs