MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

November 16, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

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

File Name:	*Brooks, Stephen v. Officer Flowers and Chief Love (ECCF)*
Document Received:	Summons and Complaint
Name of Claimant:	Stephen Brooks #126108 Erie County Holding Center 40 Delaware Avenue Buffalo, New York 14202
Claimant's attorney:	Claimant is *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

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

MMP:dld

Enclosure

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

RECEIVED
ERIE COUNTY SHERIFF'S
ADMINISTRATIVE OFFICE
2012 NOV -5 PM 4:37

Stephen Brooks *Plaintiff* v. Officer Flowers *Defendant*	)))))))	Civil Action No. 12-cv-283

SUMMONS IN A CIVIL ACTION

US MARSHALS SERVICES
WESTERN NEW YORK
2012 OCT 26 AM 11:07

To: *(Defendant's name and address)* Officer Flowers,
Correctional Officer
Erie County Correctional Facility
11581 Walden Avenue
Alden, NY 14004

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Stephen Brooks
#126108
Erie County Holding Center
40 Delaware Avenue
Buffalo, NY 14202

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

CLERK OF COURT

Date: 10/24/2012

Michael J. Roemer

Signature of Clerk or Deputy Clerk

Civil Action No. 12-cv-283

PROOF OF SERVICE

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

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

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

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____ , a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

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

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

Date: _____

_____
Server's signature

_____
Printed name and title

Richard J. Fiore

_____
Server's address

Additional information regarding attempted service, etc:

ECF DOCUMENT
-PS-O-
copy attest and certify that this is a full
copy of a document which was electronicall
filed with the United States District Court fo
the Western District of New York
Date Filed: 10-15-12
Michael J. Roemer, Clerk
Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

STEPHEN BROOKS, 126108,

Plaintiff,

-v-

THOMAS DIINA, 1st Deputy Superintendent,
T. LOVE, Chief Administrative Officer,
SERGEANT LATES, Grievance Coordinator,
OFFICER FLOWERS, Correctional Officer,

Defendants.

DECISION AND ORDER
12-CV-0283S

UNITED STATES DISTRICT COURT
FILED
OCT 15 2012
MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

INTRODUCTION

Plaintiff, Stephen Brooks, currently an inmate of the Erie County Holding Center, has brought this action *pro se* against four employees of the Erie County Correctional Facility (ECCF), at which he was incarcerated at the time of the events alleged in the complaint, and has requested permission to proceed in forma pauperis. Plaintiff's request to proceed as a poor person is granted, and for the reasons set forth below, his claims against two of the defendants will be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

STANDARD OF REVIEW

Section 1915(e)(2)(B) of 28 U.S.C. provides that the Court shall dismiss a case in which *in forma pauperis* status has been granted if the Court determines that the action (i) is frivolous or malicious; (ii) fails to state a claim upon which relief

may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. In addition, 28 U.S.C. § 1915A(a) requires the Court to conduct an initial screening of "a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," *id.*, regardless of whether or not the inmate has sought *in forma pauperis* status under 28 U.S.C. § 1915. In evaluating the complaint, the Court must accept as true all of the factual allegations and must draw all inferences in plaintiff's favor. *See Larkin v. Savage*, 318 F.3d 138, 139 (2d Cir. 2003) (per curiam); *King v. Simpson*, 189 F.3d 284, 287 (2d Cir. 1999). "Specific facts are not necessary," and the plaintiff "need only 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.' " *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks and citation omitted); see also *Boykin v. Keycorp*, 521 F.3d 202, 213 (2d Cir. 2008) (discussing pleading standard in *pro se* cases after *Twombly*). "A document filed *pro se* is to be liberally construed, ..., and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erikson*, 551 U.S. at 94 (internal quotation marks and citations omitted). Generally, the Court will afford a *pro se* plaintiff an opportunity to amend or to be heard prior to dismissal " 'unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim.' " *Abbas*, 480 F.3d at 639 (quoting *Gomez v. USAA Federal Savings Bank*, 171 F.3d 794, 796 (2d Cir. 1999) (per curiam)).

Plaintiff brings this action pursuant to 42 U.S.C. § 1983. "To state a valid claim under 42 U.S.C. § 1983, the plaintiff must allege that the challenged conduct (1) was attributable to a person acting under color of state law, and (2) deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States." *Whalen v. County of Fulton*, 126 F.3d 400, 405 (2d. Cir. 1997) (citing *Eagleston v. Guido*, 41 F.3d 865, 875-76 (2d Cir.1994)).

DISCUSSION

Plaintiff asserts that while incarcerated at the Erie County Correctional Facility in December of 2011, he received direction from the Appellate Division 4th Department to send ten copies of his petition, complete with exhibits, to the court, as well as to send one copy to each of the respondents. Plaintiff explains that he was appealing to the Appellate Division from a parole violation determination. Plaintiff then conveyed the Appellate Division's instructions to defendant Officer Flowers, the facility law library officer, who denied his request to have the necessary number of copies made. A similar request to Administrative Chief T. Love was likewise denied. Plaintiff's subsequently filed grievance with respect to this issue was denied on January 3, 2012 by defendant Sergeant Lates, the facility grievance coordinator. The denial of his grievance was sustained by the Chief Administrative Officer, defendant Diina, on January 5, 2012. Plaintiff alleges that the denials of his requests prevented him from perfecting his appeal, and thereby securing his release.

The complaint presents a cognizable denial of access claim, and it may proceed as to defendants T. Love and Officer Flowers. However, for the reasons set forth below, the claims against defendants Sergeant Lates and Deputy Superintendent Diina must be dismissed.

Sergeant Lates

Plaintiff alleges that Sergeant Lates denied his grievance, and asserts that she erred in doing so under relevant provisions of the facility handbook and the applicable section of the New York Code of Rules and Regulations (9 NYCRR§ 7031) which provides that prisoners are entitled to services for the purposes of legal preparation with respect to civil and criminal proceedings. However, liability is not conferred upon a supervisory official based upon his mere receipt of a prisoner's letter or his denial of a grievance. *See Warren v. Goord*, 476 F. Supp.2d 407, 413 (S.D.N.Y. 2007) ("In the complaint, plaintiff alleges only that Eagen denied his grievance. However, plaintiff does not explain how a denial of a grievance violates plaintiff's constitutional or federal rights so as to state a claim under § 1983. Because plaintiff has failed to allege any relevant facts that would give rise to a failure to protect claim, and because he has not alleged that Eagen violated any of his other rights, the Court dismisses the claim against Eagen.") (internal citation to record omitted). Accordingly, plaintiff's allegations against defendant Lates, which stem solely from her denial of his grievance, fail to state a claim.

Deputy Superintendent Diina

Section 1983 liability cannot be premised upon a theory of *respondeat superior*. *See generally Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Where, as here, monetary damages are sought pursuant to Section 1983, supervisory officials may only be held liable for constitutional violations where they were personally involved in unconstitutional conduct. *See Wright v. Smith*, 21 F.3d 496, 501 (2d Cir. 1994); *Moffitt v. Town of Brookfield*, 950 F.2d 880, 885 (2d Cir. 1991). Personal involvement may be shown where the supervisor: (1) directly participated in the violation; (2) failed to remedy the violation after it was brought to his attention; (3) created or fostered a policy or custom wherein such violations occurred; (4) was grossly negligent in supervising subordinates who committed the violation; or (5) showed deliberate indifference to the rights of others by failing to act on information that constitutional violations were occurring. *See Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995); *Wright*, 21 F.3d 496 at 501.

Plaintiff's only apparent reference to Deputy Superintendent Diina in his complaint occurs when he notes that he appealed from Sergeant Lates' denial of his grievance to the "Chief Administrative Officer", who upheld Sergeant Lates' determination. While plaintiff does not identify the Chief Administrator by name, the copy of the Grievance Form attached to the complaint appears to bear the signature of defendant Diina as the Chief Administrative Officer. To the extent that Diina, in the course of his official duties, denied or affirmed the denial of the

grievance filed by the plaintiff, "the denial of [a] plaintiff's grievance -- [where that] is all that is alleged against him -- is insufficient to establish personal involvement [in a constitutional violation]" by a prison superintendent. *Joyner v. Greiner*, 195 F. Supp. 2d 500, 506 (S.D.N.Y. 2002). *See also Smith v. Fischer*, 2009 U.S. Dist. LEXIS 122752 at *30-*31 (N.D.N.Y. 2009); *Hidalgo v. Kikendall*, 2009 U.S. Dist. LEXIS 66020 at *10 (S.D.N.Y. 2009); *Ramsey v. Goord*, 2005 U.S. Dist. LEXIS 42953 at *28 (W.D.N.Y. 2005). *Cf. McKenna v. Wright*, 386 F.3d 432, 437-38 (2d Cir. 2004) (although "it is questionable whether an adjudicator's rejection of an administrative grievance would make him liable for the conduct complained of," where a deputy superintendent accused of improperly rejecting an inmate's denial-of-treatment grievances was also responsible for the prison's medical program, those facts taken together comprise sufficient personal involvement with withstand dismissal of the inmate's Section 1983 claim against the deputy superintendent).

Inasmuch as plaintiff's allegations against Diina stem only from Diina's affirmance of the denial of his grievance, the complaint fails to state a claim against him.

CONCLUSION

Because plaintiff has met the statutory requirements of 28 U.S.C. § 1915(a) and filed an Authorization with respect to the filing fee, his request to proceed *in forma pauperis* is hereby granted. For the reasons discussed above, plaintiff's

claims against Thomas Diina and Sergeant Lates are dismissed with prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A, and the U.S. Marshal is directed to serve the summons and complaint on T. Love and Officer Flowers

ORDER

IT HEREBY IS ORDERED, that plaintiff's request to proceed *in forma pauperis* is granted;

FURTHER, that plaintiff's claims against Thomas Diina and Sergeant Lates are dismissed with prejudice;

FURTHER, that the Clerk of the Court is directed to terminate defendants Diina and Lates as parties to this action;

FURTHER, that the Clerk of the Court is directed to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Complaint, and this Order upon T. Love, Chief Administrative Officer and Correctional Officer Flowers without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor;

FURTHER, that pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to respond to the complaint.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
DISTRICT JUDGE
UNITED STATES DISTRICT COURT

Dated: 6th, 2012

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Stephen Brooks Pro se #126108
Plaintiff,

Vs.

Thomas Diina, Its Deputy Superintendent;
T. Love, Chief Administrative Officer;
Sergeant Lates, Grievance Coordinator;
Officer Flowers, Correctional Officer;
Defendants.

12 CV 0[illegible] F

COMPLIANT
CIVIL RIGHTS ACT,
42 U.S.C.§ 1983

UNITED STATES DISTRICT COURT
FILED
APR 5 2012
MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

STATEMENT OF JURISDICTION

This is a civil action seeking relief and / or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 (3) and (4), and 2201.

PARTIES TO THIS ACTION

Plaintiff: Stephen Brooks Pro se # 126108
Erie County correctional Facility
11581 Walden Avenue
Alden, New York, 14004

Defendants: Thomas Diina, Its Deputy Superintendent;
T. Love, Chief Administrative Officer;
Sergeant Lates, Grievance Coordinator;
Officer Flowers, Correctional Officer;

DEFENDANT'S INFORMATION

Thomas Diina, Its Deputy Superintendent;
Erie County correctional Facility
11581 Walden Avenue
Alden, New York, 14004
:Defendant is sued in his individual and his Official Capacity

T. Love, Chief Administrative Officer;
Erie County correctional Facility
11581 Walden Avenue
Alden, New York, 14004
:Defendant is sued in his individual and his Official Capacity

Sergeant Lates, Grievance Coordinator;
Erie County correctional Facility
11581 Walden Avenue
Alden, New York, 14004
:Defendant is sued in her individual and her Official Capacity

Officer Flowers, Correctional Officer;
Erie County correctional Facility
11581 Walden Avenue
Alden, New York, 14004
:Defendant is sued in his individual and his Official Capacity

PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. No other lawsuits in **state or federal court** dealing with **the same facts involved in this action.**

B. No, I have not begun **any other lawsuits** in **federal court** which **relate to my imprisonment.**

STATEMENT OF CLAIM

On December 27th 2001, Tuesday evening, the petitioner received legal mail from the Appellate Division 4th Department, requesting ten (10) copies of the petitioner's Brief, and Exhibits, plus one copy served to each of the respondents. The petitioner immediately made a request to the facility law library, as well as to the Administrative Chief: Chief, T. Love, to have these said copies made, and to have postage furnished. The petitioner's request was denied.
On December 28th, and December 29th 2011, the petitioner had spoken to Officer Flowers, the law library officer, explaining to him that the petitioner's request was court mandated, and that the petitioner is indigent and without a lawyer, also that the petitioner's Appeal Brief consisted of exhibits, court stamps, signatures, and dated notary that had to be photocopied. Officer Flowers stated that, "You (the petitioner) are abusing the system." And that, 'He', was not going to pay for me (the petitioner) to 'sue' the jail." [Note: Although, the facility superintendent is named in the heading of the petitioner's Appeal Brief, the petitioner's actual appeal issue is with parole.]

During which time, the petitioner wrote to the Administrative Chief: Chief T. Love, explaining to him his dilemma. The petitioner's request was again denied. This in turn setting president, where as, no officer was willing to disobey the Chief's orders. The petitioner could not have his Appeal Brief copied, or have postage paid. This prevented the petitioner from furthering his appeal. The rules of the court dictate that it will not accept any submission without the correct amount of copies having been furnished. Thus, preventing the petitioner access to the court; preventing the petitioner from vindicating himself from his parole violation and having granted his immediate release allowing him to pursue damages.
After the petitioner made known to the defendant his need to have his Appeal Brief copied and postage paid, through written request as well as through the facility grievance process, the defendant still found reason to deny the petitioner's sound and reasonable request. Even with laws in place (**N.Y.C.R.R. Minimum Standards §7031**) preventing the defendant from doing so regardless if the petitioner is indigent or not. The petitioner was still denied. The petitioner should have been protected under the same law as other prisoner's throughout the State of New York. The defendant has made it policy to change policy when it came to the petitioner's request.

The Constitutional basis for this claim under **42 U.S.C. §1983** is:

The defendant's denial of the petitioner's **Due Process**.

The defendant's denial of the petitioner's Equal Protection.
The defendant's denial of the petitioner's Access to the Courts.

The relief that the petitioner is seeking for this claim is for **PECUNIARY**, and **PUNITIVE DAMAGES**, due to injuries suffered, extending from the defendant's actions/inactions which prevented the petitioner from filing his appeal challenging his parole violation. Which if won, would have rendered the petitioner his immediate release. Vindicating the petitioner's parole violation, and allowing the petitioner to secure damages for his being deprived of his liberty.

EXHAUSTION OF ADMINISTRATIVE REMIDIES

Exhaustion of the petitioner's administrative remedies for this claim:
After the petitioner wrote to the Administrative Chief: Chief, T. Love, on December 28th 2011, and being denied. The petitioner filed a grievance on December 29th 2011.] [Grievance #11-G-667] Stating, **"On Dec. 27th 2011, Tuesday evening I (the petitioner) received Legal mail from the Appellate Division 4th Dept. requesting 10(ten) copies of my Brief and Exhibits. I've made a request to the law library, as well to Chief Love, to have these copies as well as postage. My request was refused. I am unable to fulfill my obligations to the court. I've been denied my Due Process to access to the courts. I am indigent and can not afford copies and postage. My brief, as is, can not be retyped due to exhibits, signatures and dated notary. Nor is it timely possible."**
This grievance was denied on January 3rd 2012, by Sergeant Lates, the facility grievance coordinator. Stating **"Grievance denied, you have had money dropped off and should have brought the necessary copies and postage. As stated in the handbook having funds and spending these funds prior to indigent correspondence procedures will not qualify an inmate as indigent for the purpose of receiving the free correspondence or hygiene items."** [The petitioner having never been interviewed, nor has the petitioner's account ever been checked. The grievance coordinator erred in her decision. The petitioner last received and spent funds in November 2011. However, the petitioner's request for copies and postage was made a month later, (December 27th 2011). The grievance coordinator, misread/misquoted the handbook which reads, " *Having funds on account or having replenished* ***during the week*** *and spending all these funds prior to indigent correspondence procedures will not qualify an inmate as "indigent" for the purpose of receiving the free correspondence or hygiene.*" Further, the **N.Y.C.R.R. Title 9 Minimum Standards §7031**, has made it plain that each prisoner indigent and non-indigent has

right to access to the court. **Note:** this issue was argued in a grievance submitted by the petitioner and logged in the Echo housing unit log-book on January 9th 2012. This grievance was never answered. On January 19th 2012, the petitioner sent a request slip to Chief, T. Love, inquiring about said grievance. Chief, T. Love never replied. On January 26th 2012, the petitioner submitted another grievance concerning the non-reply to the petitioner's grievance, (a copy was sent to the **State of New York Department of correctional services**, and to the **Department of justice**.) ironically, this grievance too received no reply.]

On January 4th 2012, the petitioner appealed the grievance coordinator's decision to grievance #11-G-667, this decision to the Chief Administrative Officer. On January 5th 2012, it was denied. On January 6th 2012, the petitioner submitted his appeal to the **Citizens Policy and Complaint Review Council**. The petitioner received no receipt, and no answer. On February 21st 2012, the petitioner wrote to the **State Commission of Correction (C/O: Michael Donegan/ counsel)**, in which the petitioner inquired about the fore mentioned grievance, explaining that the required 45 days for response has expired and that the petitioner was willing to extend an extra 10 days for response, in at which time, the petitioner would consider his Administrative Remedies exhausted. On March 7th 2012, the petitioner received a reply from **Brian M. Callahan/Office of Counsel, of the State Commission of Correction**, dated March 5th 2012, stating that he has acknowledge the petitioner's '**Freedom Of Information Request**' concerning **grievance #11-G-667**. The petitioner responded stating that he did not make a **F.I.O.L.** request, but was seeking an answer to his appeal, and was un-aware that It was necessary to make a **F.I.O.L.** request to do so. The petitioner made it clear that he sought to fully exhaust his administrative remedies. The petitioner has yet to receive a reply.

RELIEF SOUGHT

The relief that the petitioner seeks is for PECUNIARY, and PUNITIVE DAMAGES, due to the injuries suffered extending from the defendant's actions/inactions which prevented the petitioner from filing his appeal challenging his parole violation. Which if had been won, would have granted the petitioner his immediate release, and vindicating him of his parole violation. Also securing damages for depriving the petitioner of his liberty. Seeking the amount of $300 for each day that the petitioner served for his parole violation. The petitioner seeks these damages, and full vindication of his parole violation. Just as well as if the petitioner had won his appeal. And whatever relief the court finds just and proper.

The petitioner wishes to have a non-jury trial.

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

Dated: 4/3/12

Stephen Brooks Pro se

Sworn to Before me
this 3rd day of April 2012
Carol L. Calire
Carol L. Calire

Notary Public State Of NY
Qualified in Erie County
My Commission Expires 3/30/14

New York State Commission of Correction

Grievance Form - Part II

Facility: Erie County Penitentiary **Grievance #:** 11-667

Name of Inmate: Stephen Brooks 126108 D-121 **Date Part I was received:** 12/29/2011

Decision of the Grievance Coordinator: **Number of Additional Sheets Attached ( )**

(Including specific facts and reasons underlying the decision)

Grievance denied, you have had money dropped off and should have bought the necessary copies and postage. As stated in the handbook having funds and spending these funds prior to indigent correspondence procedures will not qualify an inmate as indigent for the purpose of receiving the free correspondence or hygiene items.

Signature of Grievance Coordinator **Date:** 1/3/12

=ERE: ECCF inmate code of conduct. Having funds on account or having funds replenished during the week and spending all these funds prior to indigent correspondence procedures did not qualify an inmate as indigent for purpose of receiving free correspondence.

( ) I have read the above decision of the Grievance Coodinator

( ) I agree to accept the decision

(✓) I wish to appeal to the Chief Administrative Officer **Date:** 1-4-12

Grievant Signature: **Date:** 1-4-12

=Last funds received Nov 2011. [redacted] makes me indigent.

Decision of the Chief Administrative Officer **Number of Additional Sheets Attached ( )**

(including specific facts and reasons underlying the decision)

AFTER REVIEWING THE INVESTIGATION CONDUCTED BY THE GRIEVANCE COORDINATOR, I CONCUR WITH HIS DECISION. GRIEVANCE DENIED, ACTION REQUESTED DENIED.

Signature of the Chief Administrative Officer: **Date:** 1/3/12

Note: Having funds on account at having funds replenished during the week and spending all these funds thus the indigent correspondence procedures will not qualify an inmate as indigent for the purpose of receiving free stationery, correspondence or hygiene items.

All other inmate's will have to purchase stationary, envelopes and postage via the Commissary.

There is no restriction on the amount of correspondence sent out at inmate's expense.

You will be responsible for putting your name and facility return address on each piece of correspondence. This will enable the facility to return any undeliverable mail to you if it is returned to the facility.
All mail should be deposited in the Housing Area Mail Box, the mail will be picked up daily and posted daily.

Inmates are able to write to any person of their choice.

All in-coming mail, which is not considered legal or privileged correspondence, will be inspected for contraband. This procedure consists of opening the correspondence and an inspection, mail will not be read or censored, if contraband and/or unauthorized items are found in correspondence, the item(s) will be placed in your property, you will be notified if this occurs.

Dangerous contraband discovered in any in-coming correspondence will be turned over to the proper authority for further action. Moneys received in correspondence will be credited to your account and you will receive a receipt for the funds received.

NOTE: The facility will not accept any cash, personal checks or social service checks for credit to an inmate's account.

NOTE: Nude personal photographs are not acceptable. They will be returned to the sender.

NOTE: If you leave a JMD facility, we will not forward your mail. It will be returned to the sender.

PRIVILEGED CORRESPONDANCE (LEGAL MAIL)

Defined:

LEGAL PRIVILEGED CORRESPONDENCE - Correspondence to or from attorneys and individuals under the direct supervision of attorneys, legal assistance agencies and individuals under the direct supervision of legal assistance agencies and courts

GENERAL PRIVILEGED CORRESPONDENCE - Correspondence to and from the State Commission of Correction and other Correctional Officials, Local and State and Federal law enforcement agencies, and the media

Privileged correspondence will not be withheld or inspected. This type of correspondence will be opened by a staff member in your presence. This is only to ensure that there is no contraband or unauthorized item(s) contained in the correspondence.

Mail and correspondence will not be withheld from any inmate unless there is prior notification and explanation from the Superintendent. Any such seizure of mail and/or correspondence is subject to regulations established by law.

THE FOLLOWING ITEMS WILL NOT BE ACCEPTED AT THE FACILITY OR THROUGH THE MAIL: *Personal checks, nude personal photographs, musical greeting cards, oversized greeting cards, plastic-type cards, telephone calling cards, personal identification cards, sonograms (plastic x-ray type), Polaroid's (whole or altered), more than ten (10) photo-graphs, medicine, personal hygiene items such as deodorant, hair products, combs, brushes, toothpaste, tooth- brush, shampoo, soap, washcloths, towels, cosmetics, metal or wooden crosses, chains, neck-laces, medallions, rings, watches, brace- lets, stamps, writing paper, envelopes, pens, pencils, crayons, colored pencils, pantyhose, metal objects, plastic objects, glue substances, decals, stickers, artwork beaded, painted, glued, stringed, etc., belts, food items, candy, cologne or perfume, cassette tapes, electrical items such as radios, tape players, televisions, lottery tickets, hair, tobacco products.*

Inmate Grievance Form

Grievance # H - G - 6162

Facility: ERIE COUNTY HOLDING CENTER

Name of Inmate: Stephen Brooks **ICN #** 126108 **H/U #** Delta 121

Brief Description of the Grievance (Completed by the grievant): **Number of Additional Sheets Attached ( )**

On Dec. 27, 2011 Tues evening I recieved legal mail from the Appellate Division 1st Dept. Requesting 10 (ten) copies of my Brief and exhibits. I've made a request to the Law library as well as to Chief Love to have these copies as well as postage. My request was refused. I am unable to fullfill my obligations to the court. I've been denied my Due Process to access to the Courts. I am indigent & can not afford copies & postage. my Brief as is, can not be retyped. Due to exhibits. Signature & dated notarys. Nor is it time possible

Action requested by the grievant (Completed by the grievant): **Number of Additional Sheets Attached ( )**

would like my copies and postage, along with a letter to the court stating why my brief has been delayed. I would also like compensation for any damages accured.

Grievant Signature: [signature] **Date /Time Submitted:** 12-29-11

Receiving Staff Signature: CO Thomas #115 **Date/Time Received:** 12/29/11

Summary of facility staff attempts to resolve **Number of Additional Sheets Attached ( )**
(Attach relevant documentation)

THIS MATTER IS OUT OF MY HANDS. THERE IS NOTHING FURTHER I CAN DO TO RESOLVE THE ISSUE. FORWARDED TO SUPERVISION.

RECEIVED ERIE CITY CORRECTIONAL FACILITY ALDEN, NEW YORK 2011 DEC 29 PM 2:

Officer/ Supervisor Signature CO Thomas #115 12/29/11

_____ **I accept this resolution** _____ **I do not accept this resolution and wish to file a formal grievance**

Signature of INMATE: _____ **Date:** _____ **Time:** _____

Forwarded to Grievance Coordinator

Officer/Supervisor Signature: _____ **Date:** _____ **Time:** _____

Received by Grievant Coordinator

Signature of Grievance Coordinator: [signature] **Date:** 12/29/11 **Time:** _____

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

Stephen Brooks
Erie County Corr. Fac.
11581 Walden Ave..

January 9, 2012

State Commission of Correction
(Executive Department)
80 Wolf Rd. 4th Floor
Albany New York 12205-2670
c/o: Phyllis Harrison-Ross, M.D./
Commissioner

Dear Phyllis Harrison-Ross,

I am in hopes in soliciting your help in having a citation corrected here at this facility. I am indigent and have been so most of my time here. I have been denied having my legal work copied and postage paid for so that I can be in compliance with the courts requirements.

I am being denied due to the fact that I had money in my account in mid-November and spent it. These actions are against Minimum Standards. And are more so the results of the Superintendent of this facility being a defendant in the legal action that I am trying to move forward.

I have been unsuccessful with the grievance process here and am past my due date to comply with the court. Can you please help me.

Respectfully,

Cc: file

Stephen Brooks # 126108
Erie County Corr. Fac.
Alden, New York, 14004

February 21, 2012

State Commission of Correction
(Executive Department)
80 Wolf Road. 4th Floor,
Albany New York, 12205-2670
C/O: Michael Donegan / Counsel

RE: Erie County Correctional Facility Grievance # 11-G- 667

Dear Mr. Donegan,

On January 3rd 2012, I submitted the above caption grievance to the Citizens' Policy and Complaint Review Counsel. I have not received receipt of such. It has been over 45 days and I have not received a reply.

I would like to consider my administrative remedies exhausted. I am willing to allow your office an additional 10 days to respond. If I do not hear from your office by then, I will assume my remedies exhausted.

CC: file

Respectfully,

SB

STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
Alfred E. Smith State Office Building
80 S. Swan Street, 12th Floor
Albany, New York 12210
(518) 485-2346
FAX (518) 485-2467

CHAIRMAN
Thomas A. Beilein

COMMISSIONER
Phyllis Harrison-Ross, M.D.

March 5, 2012

Stephen Brooks
126108
Erie County Correctional Facility
11581 Walden Ave
Alden, NY 14004

RE: FOIL 12-F-24

Dear Mr. Brooks:

This is to acknowledge receipt of your Freedom of Information Law request received by mail on March 1, 2012 requesting:

The decision of Erie County Correctional Facility grievance number 11-G-667.

We are currently searching our files for the requested documents and will advise you within twenty (20) business days of the availability and reproduction costs of any such documents.

Sincerely,

Brian M. Callahan
Office of Counsel

Stephen Brooks #126108
Erie County Corr. Fac.
11581 Walden Ave.
Alden N.Y. 14004

New York State Commissioner Of Corr.
Alfred E. Smith State Office Building
80 S. Swan Street, 12th. Floor
Albany N.Y. 12210
C/O: Brian M.Callahan,
Office of Counsel

March 12, 2012

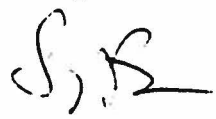
RE: FOIL 12-F-24

Dear Mr. Callahan,

I thank you for your response. However, I was not making a FOIL request. I am in search of an answer to my appeal. I am un-aware that I would have to make a FOIL request to do so.

I apprieciate your assistance. I am looking forward to putting this matter behind me. I would like to know that my administrative remedies are completly exhausted.

Respectfully,



NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, FOURTH DEPARTMENT
M. DOLORES DENMAN COURTHOUSE
50 EAST AVENUE, SUITE 200
ROCHESTER, NEW YORK 14604
(585) 530-3100 Fax (585) 530-3247

FRANCES E. CAFARELL
CLERK OF THE COURT

ALAN L. ROSS
DEPUTY CLERK OF THE COURT

December 22, 2011

Stephen Brooks, 08-A-4002
Erie County Correctional Facility
P.O. Box X
Alden, New York 14004

Re: Matter of Brooks v Livingston
Docket No. CA11-1709

Dear Mr. Brooks:

Enclosed please find the above-referenced briefs and exhibits (two copies). To perfect your appeal, you must submit the original stipulated or settled record, 10 copies of a brief and proof of service of one copy of the record and brief.

Very truly yours,

Appellate Division Clerk

LXD/sw

cc: Attorney General - Albany
Encl.

Stephen Brooks 08-a-4002
Erie County Corr. Fac.
Alden, New York, 14004

December 30, 2011

Appellate Division
Fourth Judicial Department
M. Dolores Denman Courthouse
50 East Avenue, Suite 200
Rochester, New York 14604
C/O: Alan L. Ross/ Deputy Clerk of the Court

RE: Matter of Brooks v Donald Livingston 1st.
Deputy superintendent, et al.,
Docket No. CA11-1709

Dear Mr. Ross:

Upon receipt of the December 22, 2011 communication from your office, I find that I am unable to comply. I am indigent and can not pay to have my brief copied, nor pay for postage. I have been having problems copying and sending off the copies that I've previously sent. This led to my brief being sent out much latter then scheduled. However, due to the above caption and subject matter, the facility will no longer waive the cost of copies and postage. I am being denied access to the court. How am I to proceed?

YoursRespectfully

Cc: Attorney General – Albany
file

Stephen Brooks 08-a-4002
Erie County Corr. Fac.
Alden, New York, 14004

January 10, 2012

Appellate Division
Fourth Judicial Department
M. Dolores Denman Courthouse
50 East Avenue, Suite 200
Rochester, New York 14604
C/O: Alan L. Ross/ Deputy Clerk of the Court

RE: Matter of Brooks v Donald Livingston 1st.
Deputy superintendent, et al.,
Docket No. CA11-1709

Dear Mr. Ross:

I am in receipt of your January 3, 2012 response to my letter. I appreciate your fast response. However, I am not sure if I understand your meaning. I am in the middle of exhausting my administrative remedies in order to be able to have my brief copied and sent. This facility refuses to copy and pay for postage. I have no lawyer, and am indigent. I would like the court to be aware of the issues that I am having. Please make note of it.

Respectfully,

Cc: Attorney General- Albany

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, FOURTH DEPARTMENT
M. DOLORES DENMAN COURTHOUSE
50 EAST AVENUE, SUITE 200
ROCHESTER, NEW YORK 14604
(585) 530-3100 Fax (585) 530-3247

FRANCES E. CAFARELL
CLERK OF THE COURT

ALAN L. ROSS
DEPUTY CLERK OF THE COURT

January 18, 2012

Stephen Brooks, 08-A-4002
Erie County Correctional Facility
P.O. Box X
Alden, New York 14004

Re: Matter of Brooks v Livingston
Docket No. CA11-1709

Dear Mr. Brooks:

Receipt of your letter of January 12, 2012 is acknowledged. In order to perfect an appeal, an appellant or appellant-respondent shall file 10 copies of a brief with proof of service of one copy on each opposing party to the appeal and one copy of the complete record on appeal along with the original stipulation to the record executed by all parties or their attorneys or the original order of settlement, proof of service of one copy of the record on each other party to the appeal and, when necessary, a demand for exhibits (22 NYCRR 1000.3 [b] and 1000.4 [a]). The Clerk's Office is not permitted to accept partial filings.

Very truly yours,

Appellate Division Clerk

DF/sw

cc: Attorney General - Albany

Stephen Brooks 08-a-4002
Erie County Corr. Fac.
Alden, New York, 14004

January 25, 2012

Appellate Division
Fourth Judicial Department
M. Dolores Denman Courthouse
50 East Avenue, Suite 200
Rochester, New York 14604
C/O: Alan L. Ross/ Deputy Clerk of the Court

RE: Matter of Brooks v Donald Livingston 1st.
Deputy superintendent, et al.,
Docket No. CA11-1709

Dear Mr. Ross:

I am in receipt of your letter of January 12, 2012, I thank you for you timely response. As you are aware of my situation here at the jail, my not being able to copy and send my appeal brief as required by law. At this time, I request and require judicial intervention. This facility is unlawfully preventing me from sending out my brief. I request a judge's order to demand that this facility allow me to copy and serve my appeal brief. And/ or grant me an attorney to do so for me, as well as to help me seek damages.

Yours respectfully,

Stephen Brooks Pro-se'

Cc: Attorney general - Albany

U.S. Department of Justice

National Institute of Corrections

Washington, DC 20534

February 15, 2012

Mr. Stephen Brooks
126108 - -08-A-4002
Erie County Correctional Facility
11581 Walden Avenue
Alden, NY 14004

Dear Mr. Brooks,

Your letter has been referred to my office for a response.

The National Institute of Corrections' mission is to provide information, technical assistance and other correlative services to state and local correctional agencies. NIC has no jurisdiction over state or local correctional facilities and therefore, does not provide services directly to state or local inmates, and has no authority to conduct investigations…This includes allegations of assault or abuse between inmates, or involving agency staff, contractors, or volunteers. In addition, NIC does not have any statutory authority to regulate operations within state or local facilities.

Your correspondence is being forwarded to the NY Department of Corrections and Community Supervision for a direct response.

A copy of your correspondence is being returned to you.

Sincerely,

Executive Assistant

Stephen Brooks 08-a-4002
Erie County Corr. Fac.
Alden, New York, 14004

January 26, 2012

Bureau of Prisons
320 First Street
N.W., Washington, D.C. 20534
C/O: Harley G. Lappin, Director

RE: Erie County Correctional Facility Grievance Program

Hello:

I am writing in hopes to solicit your help. I am having problems with the grievance process in this facility. More then once my grievance has gone unanswered. I now enclose a copy of my current grievance.

I appreciate any and all help in this matter.

Respectfully,

Stephen Brooks

CC: file
Albany

Inmate Grievance Form

Grievance # ___ ___ G - ___ ___ ___

Facility: **ERIE COUNTY HOLDING CENTER**

Name of Inmate: Stephen Brooks **ICN #** 126108 **H/U #** Echo 119

Brief Description of the Grievance ***(Completed by the grievant):*** **Number of Additional Sheets Attached** (1)

On january 9, 2012, I Submitted a grievance to my housing unit officer. He intern logged it into the Echo unit Log book. On january 19, 2012, I sent a request slip to Chief Love, inquiring about my grievance. Having not heard anything from the grievance coordinator Chief Love, never replied. I have never Spoke to any grievance coordinator concerning my grievance.

Action requested by the grievant ***(Completed by the grievant):*** **Number of Additional Sheets Attached** ( )

would like to have the process to be on par with minimum Standards. would like to have outside training as a requirement to ensure minimum Standards are kept. Would like my grievance in question answered

Grievant Signature: [signature] **Date /Time Submitted:** 1-26-12 1300 hrs

Receiving Staff Signature: _____ **Date/Time Received:** _____

Summary of facility staff attempts to resolve **Number of Additional Sheets Attached** ( )
(Attach relevant documentation)

Officer/ Supervisor Signature _____

_____ **I accept this resolution** _____ **I do not accept this resolution and wish to file a formal grievance**

Signature of INMATE: _____ **Date:** _____ **Time:** _____

Forwarded to Grievance Coordinator

Officer/Supervisor Signature: _____ **Date:** _____ **Time:** _____

Received by Grievant Coordinator

Signature of Grievance Coordinator: _____ **Date:** _____ **Time:** _____

(Grievance must be forwarded to Grievance Coordinator within 24 hrs of submission)

ERIE COUNTY CORRECTIONAL FACILITY

11581 Walden Avenue Alden, NY 14004

Grievance #

Stephen Brooks 126108 Echo 119

Continued: All contrary to the procedures specified in section 7032 of the NYCRR title 9 minimum standards. Even if my grievance was found invalid, I am still afforded an appeal process.

S. B