

Section 41

THE ELECTION LAW

by such board shall be purchased by such board. All expenses of such board of elections shall be certified, audited and paid as are other claims against the county, or in the case of the city of New York, by such city, and all expenses connected with elections and matters preliminary relating thereto, including compensation of inspectors and clerks of election, shall be a county charge, except, at the option of the county, all or any part of the type of expenses connected with elections and matters preliminary or relating thereto that were previously incurred by towns and cities, may be apportioned pursuant to this chapter to a city or town.

2. The board of elections shall publish or post, as the case may be, all notices, lists and other materials relating to elections to which this section applies, and which are required by law to be published or posted in the county, or a political subdivision therein, except publications made by the state board of elections and village clerks.

3. Lists of persons recommended to serve as inspectors of election and poll clerks shall be filed by the chairperson of the county committees of the political parties entitled to representation on the board of elections.

{Added, L. 2005, ch 180, § 3, eff Nov 15, 2005.}

TITLE III

ELECTION PERSONNEL

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| Section | 3-300. | Board employees; appointment. |
| | 3-302. | Voting machine technicians and custodians; appointment, duties. |

§ 3-300. Board employees; appointment.

Every board of elections shall appoint, and at its pleasure remove, clerks, voting machine technicians, custodians and other employees, fix their number, prescribe their duties, fix their titles and rank and establish their salaries within the amounts appropriated therefor by the local legislative body and shall secure in the appointment of employees of the board of elections equal representation of the major political parties. Every commissioner in each board of elections except for commissioners of the board of elections of the city of New York, may approve and at pleasure remove a deputy, establish his title and prescribe his duties. In the city of New York, the board of elections shall appoint an executive director and a deputy executive director whose duties it shall be to supervise the operations of the board of elections under the supervision of such board.

Matter in *italics* is amended or added; crossed-through matter is old law to be omitted. See effective dates.

Section 42

February 17, 2011

Report: from Bonnie Hamilton, Delaware County Public Health Director
on two day survey of Public Health Programs.

This a cursory first draft report as requested by the board chairman for the 2/18/11 board meeting. A more detailed report will be sent in 1-2 weeks.

I would like to thank Cassandra Ethington for all her help and for sharing her office with me. I would also like to thank the Board of Supervisors, Board of Health and Health Oversight Committee and Budget Director for inviting me to Schoharie County.

All of the staff persons I met and interviewed were helpful, friendly, courteous and a pleasure to work with. I did not give any attention to the CHHA as the county is in the process of selling the CHHA to another home care agency.

On the second day of the survey, our business manager came with me and interviewed and assisted the Grade B supervisor with the State Aid claiming.

Current Programs and Staffing- Table 1

El/PreK	Environmental	MCH -PH	Health Ed- PH	CD-PH	Immunization- PH	Lead-PH	PHP
EIO-1 Clerk-1 Service Coordinators (2)	Director/Sanitarian- 1 Sanitarians (3) Clerk-1	Public Health Nurse -1 RN-1	RN/MsEd Educator - 1	Same personnel as MCH and Health Ed	MCH staff Clerk- 1 for all PH programs	Health Educator	Public Health Preparedness Coordinator
		Responsible for employee health	Responsible for MPHSP annual report to DOH				

In addition to the above staffing there are 2 Principal Account Clerk typists who work in the CHHA, one Administrative Assistant and one Accounting Supervisor Grade B.

The first concern identified from looking at the staffing pattern and interviewing staff from each of the program areas is what I call the "silo effect". Each program is operating independently with very little understanding or collaboration with the other programs. The 4 silos are EI/PreK; Environmental; Public Health Preparedness; and Public Health (which includes Maternal Child Health, Immunization, Lead, Health Education and Communicable Disease) A subset of this concern is lack of communication among public health employees. Staff interviews indicate that there is no paging system, no consistent use of email, no consistent use of an electronic calendar and no mailboxes for paper mail. There is also a lack of knowledge and expertise among staff members on how to use email and the Google calendar.

The Health Department overall is very small and each department is small. The silo process creates problems in establishing cross training or back up staffing in programs. It also detracts from staff working together on common goals. The following examples help clarify this:

In 2010 when the Health Dept was setting up H1N1 flu clinics, the sanitarians were not involved. Most clinics were held in the winter when this department is least busy and environmental staff could have helped with setting up, manning and folding up the portable clinics.

The sanitarians and EI service coordinators are regularly driving to all towns and communities. They could be assisting with distribution of brochures, fliers and other community information.

The Maternal Child Health nurses are making home visits to babies, moms and toddlers. They most likely visit some of the same children that are enrolled in EI. At some point if the nurses were trained in EI service coordination, they could do some of these duties at the MCH visit. Additionally, the nurses and service coordinators would each benefit from a sharing of information with parental consent.

Sanitarians implement the rabies program and are responsible for investigating all dog/cat bites. If small children are involved, there may be an opportunity to discuss concerns with the MCH nurses.

When EI service coordinators are in homes and find that children are not immunized or have not had lead testing, they need to share this with the MCH nurses.

CD staff can be cross trained in the rabies program and can handle calls if all sanitarians are out of the office or if there is an overflow of calls in summer months or if there is a complex situation where case management assistance is needed for the family.

Clerical staff persons are assigned to a program area. I would suggest that each clerical staff person be cross trained to one or more program areas. Concerns:

EI/PreK has only 1 clerical person who is responsible for a very complicated billing process in both programs. The stricter Medicaid in Education rules, physician orders, new NYEIS billing system all add to the complexity of the program. If only one clerk is trained and this clerk resigns or takes extended leave time the county will lose revenue in the short term. If the one clerk lacks competency (and I have NO reason to believe this is the case), or commits billing fraud, it will be difficult to detect and correct and can cost thousands of dollars.

The Accounting Supervisor Grade B is responsible for the Public Health revenue which is primarily State Aid. State Aid claiming is very complex and complicated as evidenced by the 3 inch notebook sent by the State Department of Health on what is claimable and how to claim. Over \$500,000.00 annual revenue comes from State Aid. It is difficult to have someone cross trained to this, however, it is still a recommendation.

The second area of immediate concern is with documentation for state aid claiming as follows: (which the Personnel Director is in the process of correcting)

1. Exact time reports are needed for state aid. Time studies are not acceptable and in an audit, monies could be recouped by the state if time reports cannot be produced. ALL staff in the health department from clerical staff to the program directors to the Director of Public Health MUST complete these reports. There can be NO EXCEPTIONS unless you want to risk revenue loss. Our business manager is working with your Acct Supervisor to address changes that need to be made in the current state aid process.

2. Staff persons are not always responsive to the requests from the Acct Supervisor and as she is not in charge, there is no way to obtain compliance with her requests. This creates problems with the state aid claiming process and can result in loss of revenue. I would suggest that all staff must comply with her requests if the county wants to maximize state aid.

The third problem identified is that program and grant coordinators are completing both the fiscal and clinical portions of the grant. They also track the revenues and expenses. I would suggest that a clerical staff person be assigned to each grant- lead, immunization, public health preparedness and any others to put in place a system of checks and balances and fiscal accountability.

The fourth problem identified is a lack of supervision in the Public Health and Preparedness Programs. By law, a nurse needs to be supervised by a nursing supervisor. If the new Public Health Director is also a Public Health Nurse, this person could supervise the nursing personnel; otherwise a nursing supervisor is required. A subset of this concern is that the Public Health Programs are understaffed with only two nurses implementing Maternal Child Health, Family Health and assisting with CD and immunization programs. These two nurses are also working in the CHHA and I would recommend that this practice be stopped as soon as possible. In order to see CHHA patients, MCH patients are not being identified and seen. The Health Educator is working in CD, lead and immunization and then trying to fit health education/chronic disease into the workday. You have a fledgling public health staff and are just beginning to develop the public health programs. The Preparedness Program also lacks supervision and oversight. There is one employee in this program with little or no interaction with other public health staff on a day to day basis.

The fifth problem identified is that some functions that were probably performed by the Public Health Director are currently not being done. There is no one looking at the Community Health Assessment and Municipal Public Health Services Plan, policies and procedures, quality assurance reviews and reports for appropriateness and completeness. In order to bill Medicaid, the agency must have a Compliance Officer, must have annual compliance training and must certify on the Office of the Medicaid Inspector General (OMIG) website that the agency is compliant. Currently

the agency does not have a compliance officer and I do not know if the agency certified with OMIG. The annual employee education form indicates that corporate compliance is reviewed annually. In order to be HIPAA compliant, a privacy officer is required and no one interviewed could identify a privacy officer. In the area of family health, there is no identified injury prevention and control program which is a required component. I discussed obtaining the child car seat grant as one possible way to address this.

The sixth problem identified is a lack of coordination and collaboration with other community agencies and partners. I would suggest that someone from MCH and EI be on the WIC and Head Start Advisory Boards. The CD staff needs to meet and collaborate with the infection control staff at the local hospital and with the health unit staff at the local college. The Health Educator needs to be attending any meetings of RHEN-DOMS and other grant based coalitions. You do not have an injury control program, but the staff assigned to this may want to partner with your traffic safety board. These are just examples, but there are many more possibilities for collaboration. In addition to increasing the efficiency and effectiveness of your health department, this coordination and collaboration will allow you to meet many of the requirements of the municipal public health services plan.

One of the questions asked by the Board of Health, Health Oversight Committee, Budget Director, Personnel Officer and Chairman of the Board is, "does the agency require a full time Public Health Director?" By law, you need a Public Health Director. This person can be the director for up to 3 counties according to Public Health Law. That said, you still need someone on sight to oversee day to day operations and in a shared director situation, you would most likely need to hire a Deputy Director. In a small agency, it is critical that the Public Health Director be an active "hands on" director who is equally concerned with all divisions and programs within the health department. This person needs to work at least a 35 hour week and must be on site daily. This person must listen to all of the staff both clinical and clerical. The Director needs to be responsible for his/her own email, be computer proficient and set an example for the staff. This person must be friendly and have an open door policy while being firm, fair and consistent in dealing with the staff. It may be necessary for a new director to issue counseling memos to staff persons who elect to be insubordinate. There is always the concern that an engineer will not be proactive in implementing important public health programs, a nurse may not be interested in environmental health programs, a therapist may be most interested in Early Intervention/Preschool programs etc. It is important that whether the county recruits or hires from within, that a focused interview process be used to assure that a candidate is very aware of these requirements and has a commitment to all program areas. I would also suggest a complete background check. The Public Health Director must, at the very least, learn the basics in every program area. This person needs to be knowledgeable in both the clinical and fiscal elements of the programs and must be actively involved in the budget process.

Employee interviews: In general, each employee interviewed had a strong knowledge base in the assigned program area and appeared to be conscientious in assuring that program work was completed. The two nurses in the Maternal Child Health Program need to create a maternal child health program from the ground up and will require supervision and guidance with this process. At some point the agency will need to create an injury prevention program.

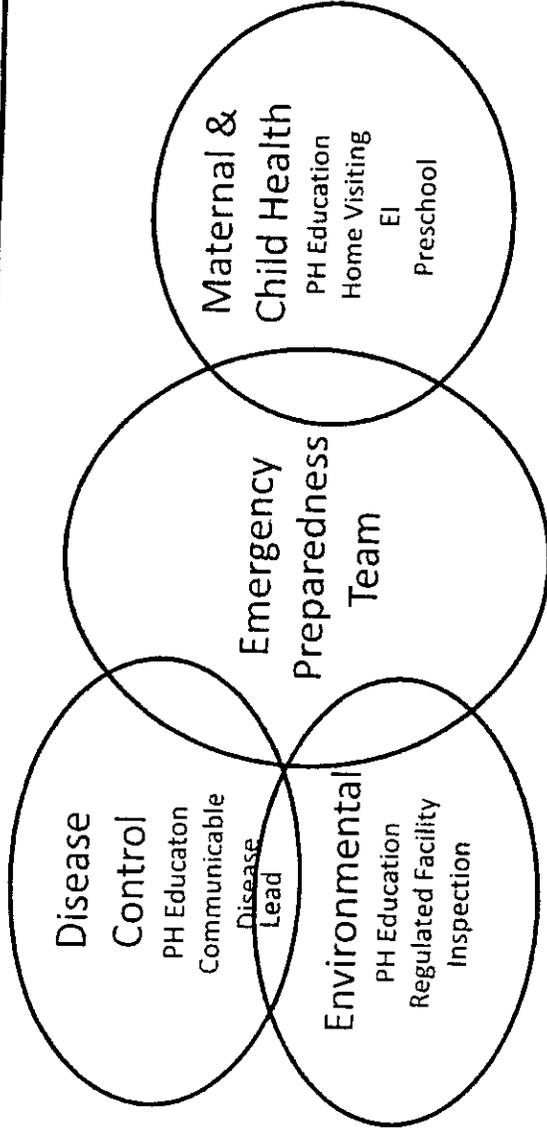
Specific Interviews: this section to be completed and sent in at a later date.

This first draft is respectfully submitted by:

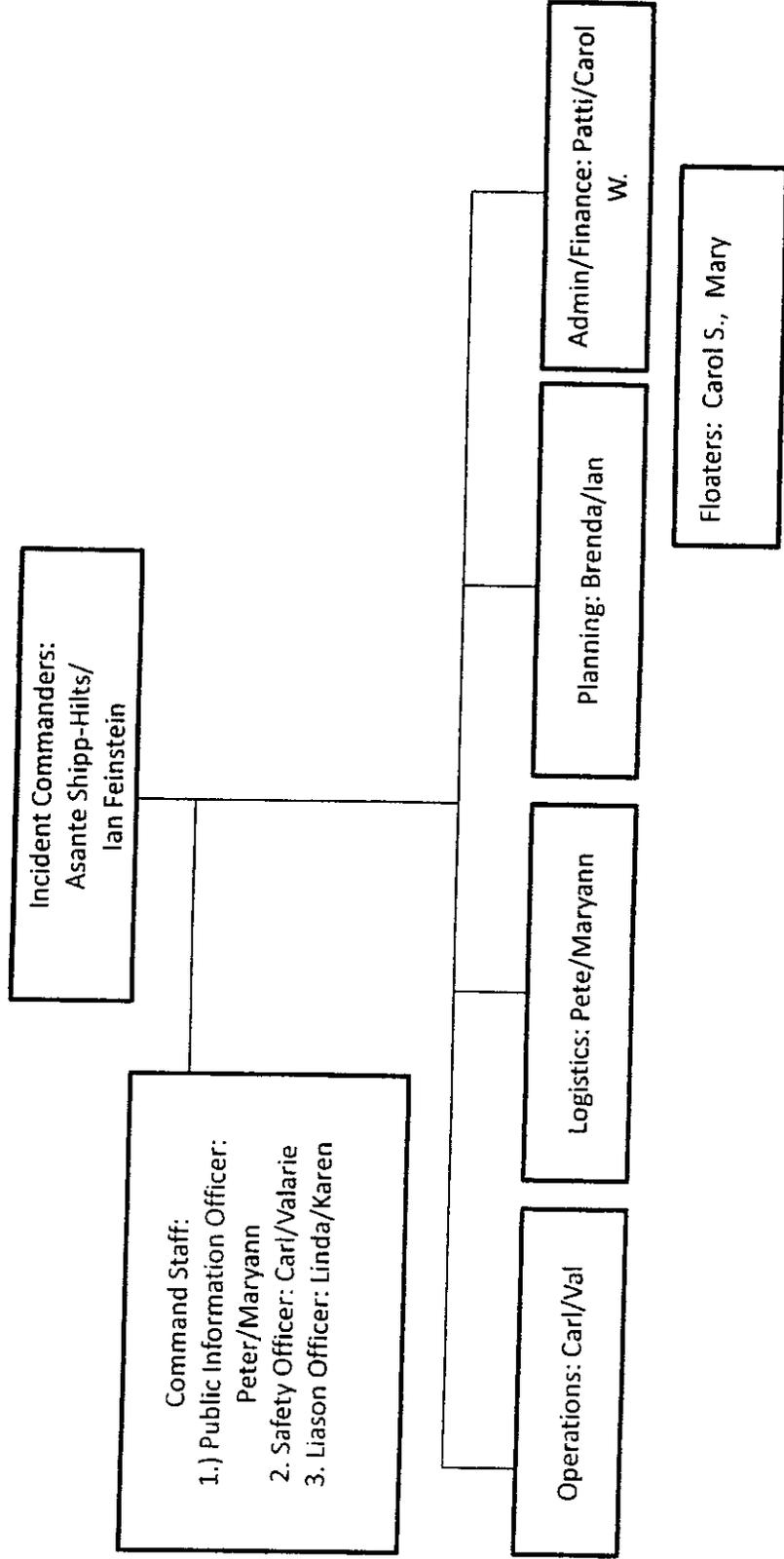
Bonnie Hamilton

Bonnie Hamilton
Delaware County Public Health Director

Collaborative Approach



Emergency Preparedness Role Designation



Section 43

Report to Cassandra Ethington, Personnel Director
Schoharie County

Re: Assessment of Public Health Programs 2011

Interviews from February 14th and February 15th 2011

Linda Stiles- EI/PreK. Linda has an excellent knowledge base for the programs. She answered all questions in a manner that showed knowledge of regulations and understanding of the fiscal implications of the program. These programs appear to be well run. Linda states that the billing is on track and I did not have time to verify. I did not check the policies and procedures however Linda worked for IPRO and understands the EI regulations very well. Linda is a speech language pathologist which is very helpful in understanding the children's evaluations and attending CPSE meetings. She has used her skills to the benefit of the county to assure that only children who qualify for services receive services. According to Linda Stiles, the previous Public Health Director directed her to provide services to children regardless of qualification status. If this occurred, it is a violation of regulations and Medicaid dollars could be recouped in an audit.

You may want a fiscal person to review the EI billing to assure compliance. Again, you are currently billing Medicaid without a compliance officer and I am not sure if you have a compliance program in place. I would suggest another clerical person be cross trained to the EI/PreK billing. At one time there were 2 clerical staff members in this program. When this was reduced to one, Linda took on the clerical duties of data entry and service authorization notification. This is fine, however, you are paying her a higher salary to do clerical work which may detract from updating policies and procedures, assisting other departments, participating in regional CEIPAC meetings.

Linda has focused mainly on the EI and PreK programs which seem to be somewhat separate from the other children's programs. At some point, you may want to consider Maternal Child Health and the Lead Poisoning Prevention program staff meeting with EI/PreK staff. There is a lot of room for collaboration among all the programs and they may actually have some of the same clients. This also gives the Early Intervention Official a broader view of Public Health.

Mike Cole – Environmental Director- Mike has been with the agency for thirty plus years. He is very knowledgeable in all areas of the environmental program. He is a trained sanitarian and could do any of the required inspections. Mike produced all the reports I requested including the January 2011 field staff activities report. I do not have a time and effort report showing actual time for each activity so it is difficult to determine how much time the sanitarians spent in field work. In a small county health department, supervisors or directors usually take on some of the work load. It appears that 3 sanitarians are in the field and the director is in the office. I would need a lengthier interview to determine if Mike is in the field to assure competence and to evaluate staff. I did ask for the rabies policies and procedures and was given a book which included outdated policies that were no longer used. Mike stated that they followed the DOH guidelines, not the policy book. I would recommend that the agency have current up to date policies for all of the environmental programs that identify what is expected in each area and reference the appropriate laws and forms. If someone

had to address a rabies call or dog bite, they should be able to open the P&P book and follow the procedure. As part of the quality assurance program, the actual inspections, rabies calls and follow up checks would have quarterly reviews comparing actual work against the policies. Any problems identified would then be corrected. It did not appear that a formal quality assurance program was in place, however, Mike meets quarterly with the State Department of Health and states there are no problems. He has identified all the inspections that need to be completed in a calendar year and assures that these occur. The 2011 inspection assignments have not yet been completed and we used the 2010 assignments for the interview. The staff have been active in the field, but I would suggest that the 2011 list be completed the end of 2010 or very early in January.

In looking at the assignments, it seemed that certain sanitarians always did water, some always did the complex restaurants, etc. Mike made a good point that it can take several years to get to know the mobile home park operators and establish a trust relationship. That said, I would recommend a more generic approach and move sanitarians around. This would assure a well trained staff that can cover a variety of tasks and assignments.

Eva Gigandet- Eva is responsible for BT Coordination. She is very dedicated to the job and is knowledgeable about grant deliverables. Eva has attended training at the national level which was covered by grant funding, however, the county needs to evaluate whether this is important training for the county or whether it would be a better use of time to work on the grant deliverables. The Delaware County Epidemiologist responsible for BT met with her and has submitted a more in depth report.

Penny Grimes- Penny discussed the health education program, communicable disease program and maternal child health program. I also met with the MCH nurse Valerie briefly. She is still working in the CHHA some of the time. According to the data available, the MCH program made 24 home visits in 2010 and there were 242 births. This is a program that now has an opportunity to expand. I would recommend that every birth certificate be reviewed and as time permits a home visit be offered to the families. This would be especially important for first time parents, very young parents and parents with drug/alcohol concerns. Many families will benefit from at least two visits and some may need to be visited over several months. It would be reasonable to expect at least 100 MCH visits per year.

There did not seem to be an injury control program. Penny was not sure if the county had a car seat grant through the Governor's Traffic Safety Board. She was not sure if there was a bike helmet program or smoke detector program. The Health Department does not need to be the lead on these initiatives, but could partner with the appropriate agencies. If there is not a car seat program, the Health Department may want to consider that grant as it is a great way to assure that income eligible families have car seats and that all interested families can learn to install a seat correctly. In a car seat event, car seats can be replaced at no cost to families regardless of income. Grants for the 10/1/11 grant year are due this spring.

The Health Department can meet many of the Municipal Public Health Services Plan requirements by networking and collaborating with other agencies. Examples would include being on the WIC and Head Start advisory boards.

Penny Grimes and the two maternal health nurses Valerie and Maryanne are a team and do work collaboratively. They each need specific job duties and also need to be cross trained to assure compliance with all regulations. Policies and Procedures have been developed according to the CAP reviews, however, they need to be reviewed and updated. I would advise developing a standardized format that includes referencing the regulations in each policy. This assures that anyone reading the policy can find the regulatory language guiding the policy and also assures that policies were written based on regulations.

I had a question regarding physician orders for lead testing as there were no standing orders or child specific orders. Penny was going to check on requirements for this. Delaware County does not do the CLIA lab waived lead testing at this time. Schoharie started the testing to address a problem with children not getting lead tests. The physician offices in the county do not have lead testing equipment according to Penny and refer the children to the hospital lab for a venipuncture. Parents are sometimes reluctant to subject their infants and toddlers to this procedure and did not always follow through. The county testing is done via fingerstick with only elevated levels needing retesting by venipuncture. This is more acceptable to families. Counties were sent an email from Linda Freligh at the Capital District Regional Office on 4/11/11 stating that standing orders are necessary. I have included a copy of the email below, in case you did not receive it. I would recommend that Schoharie County develop standing orders signed by the Medical Director and also develop a policy regarding lead screening which includes the need for standing medical orders and the requirement that the primary care provider be notified of the results. Additionally the policy needs to address what the county procedure is when the lead results are elevated. At some point the county may want to consider billing for the service.

Hi Linda (Freligh),

The LHDs policy and procedures should include standing orders to screen individuals using a point-of-care device if a health care (HCP) provider is not present at the time of the screening to order the test, who will be tested, and for obtaining legal consent for testing those less than 18 years of age. The HCP may be the medical director, county commissioner of health or the "laboratory director." If the LHD is not acting as the child's primary care provider (PCP), results of the screening should be sent to the child's PCP (parent will need to sign a release of information). Other procedures include informing parents of the results, how follow-up will occur for those results of 8 mcg/dL or greater, and billing,

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Kim Euler- Liz Bowie met with Kim to discuss State Aid and assists her via phone as needed.

Anne Maccuish Administrative Support I- Anne has many job duties which she has well documented in a 6 page document outlining administrative support tasks for the Public Health Director. Anne is the go to person in the health department for IT issues and concerns. She is responsible for the record retention and management program which is very important to the agency. Anne also updates the PH website, tracks time off requests, payroll, calendars. Anne also does the ad designs and designs and updates the brochures. I would recommend that a duties statement be completed for this position with possible change in title. I would also recommend cross training to this position when feasible.

Consolidated Monitoring- Every three years the Capital District Regional Office completes a 2-3 day monitoring of Public Health programs. This includes Maternal Child Health (very limited review); Immunization Program including observation of an immunization clinic; Children with Special Health Care Needs; Lead Poisoning Prevention; Communicable Disease; Rabies; Public Health Preparedness (Bioterrorism –BT).

A Consolidate Monitoring Review was held August 2 and August 3, 2006. As a result of that review, the county was required to submit a corrective action plan (CAP). Problems identified included:

1. The 11/04 Community Health Assessment document was not submitted. (required in order to receive State Aid.) This also drives the Municipal Services Plan and helps determine what projects can receive state aid funding.
2. The Municipal Public Health Services Plan for 2006-2007 was not submitted.
3. An educational outreach to the medical community on an annual basis to discuss TB, STD and CD was not completed.
4. Patient rights information is required to be given to parents during the first lead visit and consents and release forms are needed to share information. This was cited as a concern on the 2003 audit.
5. There were no policies on STD contract management. In general P&P were not reviewed annually.
6. Immunization practices indicated improper storage and management of vaccines.
7. The Medical Director file needed updated health information.
8. There was no Quality Assurance chart review for MCH and Lead records. This was cited as a concern on the 2003 audit and was not addressed.

There were other areas indicating a need for improvement but a written CAP was not required.

On 10/27/06 the Health Department submitted the CAP. In the report it indicates that a higher level fiscal support position tentatively called Business Manager II will be responsible for state aid

vouchers and contract management. I am not sure who is maintaining contract files but it may be that the Accounting Supervisor Grade B is responsible for both State Aid and contracts. On 11/29/06 the NYS Department of Health requested that the CAP add language to assure that vaccine is inventoried at least monthly.

On 3/19/07 NYSDOH performed a site visit to assess progress toward the CAP. The visit showed that progress was being made. The Community Health Assessment was completed and sent in to NYSDOH. A letter was sent to primary care providers regarding immunization, CD and TB. The Lead charts included informed consent and release of information forms. There was improvement in vaccine management including purchase of a dedicated refrigerator not yet installed. (This is required) The agency was in the process of collecting P&P from other agencies in order to develop Schoharie County policies. However, the county had a significant vaccine loss and a plan of correction was required for this loss. The NYSDOH requested that CD reports be included in the Quality Assurance reviews

Another survey validation visit occurred on 7/16/07. At this time the Municipal Public Health Services Plan had been received. The 2007 State Aid application had been submitted. The STD letter to medical providers was sent out. CD and lead policies and procedures were developed. A contract was signed with Planned Parenthood for STD services. The vaccine refrigerator was still not installed. A generator backup for the county building was installed. This would prevent the need to move vaccine in a power failure. The plan of correction requested in March for the vaccine storage was NOT sent to NYSDOH vaccines for children program.

A third validation visit occurred on 12/20/2007. The documentation given to me did not include the validation visit results, therefore I am not sure if the CAP was completed. It seems somewhat unusual to me that a county would have a consolidated monitoring and then need three additional site visits to verify compliance.

The next 3 year Consolidated Monitoring Visit was held on July 29, 20 and August 11, 2009. The visit was originally scheduled for May 2009 but rescheduled due to H1N1 outbreak response activities. It was noted that significant efforts were made to improve procedures and overall systems since the 2006 Consolidated Monitoring visit. The following areas needing improvement or needing a corrective action plan were noted:

Areas Needing Improvement

1. If Leadweb is used for environmental investigations below the threshold of 15u/dl, then it needs to be used consistently for all environmental investigations conducted.
2. The Children with Special Health Care Needs Policies and Procedures need to be updated and need to more formally include updated information and workplan deliverables.
3. The Communicable Disease (CD) policies need to reflect more communication and collaboration with the Environmental Health (EH) staff. This is a concern I noted on the site visit. I referred to it as the silo effect where each department is working on programs without collaboration with other departments. The CD and EH departments overlap in many areas and need to have staff meetings

together and develop strategies to work together in food borne illnesses and outbreaks as an example.

4. The Children with Special Health Care Needs charts need to be included in the sample for QA committee reviews.

Areas Needing a Corrective Action Plan

1. The STD contract has to be corrected to ensure that services are provided at no cost to Schoharie County residents. The PH Director made the wording corrections and sent the contract to the County Attorney for review.

2. The Medical Director's personnel file needs to include evidence of re credentialing every two years.

3. 6 of 9 Personnel files reviewed did not sure evidence of immunization against rubella.

4. The Medical Director's personnel file did not show evidence of annual fire safety training or child abuse identification, assessment, reporting and referral.

A Corrective Action Plan was submitted 9/30/09. I do not have a copy of the CAP and also do not know if any revists for validation occurred. The 2009 review is much improved over the 2006 review. If you look at 1-4 above for need improvement and 1-4 needs a CAP and assure completion, this will complete the CAP for 2009. It is my suggestion that someone be assigned to find the CAP or request a copy from NYSDOH and assure that the corrections were implemented. The Public Health Department will be scheduled for another review in 2012.

A Community Health Assessment was due 9/09 and I think it was submitted but I do not have a copy. The Municipal Public Health Service Plan was due in 9/09 and then is updated annually as needed. You may want to locate both documents and keep them in a reference area. They may be saved electronically. The State Aid application is due now for the 2011 calendar year. Liz assisted Kim with the corrections for the 2010 application. The performance report for the health education grid is due annually in February and Penny Grimes has most likely sent this in to NYSDOH.

Policies and Procedures for all programs need to be reviewed annually and updated as needed. As noted in the 2006 monitoring report the policies need to indicate what the policy is, what the purpose of the policy is and what the expected standard of practice is. Polices need to reflect the Federal and State regulations that apply to each program. You may want to consider a consultant for this purpose.

NYSDOH has annual training requirements for local health department employees and contracted staff. There does not appear to be any concerns noted in the 2009 monitoring, however, I would recommend that a staff person assure that the annual training is still conducted and documented. This would include but not be limited to: child and adult abuse reporting law, complaint process, fire safety, infection control, workplace safety, identify theft protection, standards of conduct and

compliance program and confidentiality. This is not meant to be an all inclusive list for all program areas. Fire drills need to be documented as part of QA activities.

Respectfully submitted by:

Bonnie Hamilton

Bonnie Hamilton
Delaware County Public Health Director

March 24, 2011

Visit Date: March 18, 2011

Report: from Amanda Walsh, MPH, Epidemiologist

As the epidemiologist I am responsible for day to day over site of disease control programs both communicable and chronic. These programs include rabies, immunization, communicable disease, TB and STD/HIV and chronic disease grants or projects. I am the lead program coordinator and the public health preparedness coordinator for Delaware County.

Public Health Preparedness

The Public Health Preparedness Grant provides funding to counties with the agreement that NYSDOH and CDC based deliverables are completed and documented with New York State. Schoharie County is a Cities Readiness Initiative (CRI) county due to being in so close to Albany. There are 3 types of deliverable required for every county in New York State; new local health department (LHD) deliverables, maintenance deliverables and PHER deliverables (due to roll over funds from H1N1 funding 2009-2010). CRI counties must also complete a set of CRI deliverables. One of the CRI deliverables includes a regional drill but I am told NYSDOH will be writing the main after action report for the drill and local health departments are only responsible for writing up the POD portion of the exercise.

Most of my time was spent with the Public Health Preparedness Coordinator, Eva Gigdanget. Eva is a very smart, thorough individual. She is a visual thinker who prefers tasks which are hands on i.e. setting up Immunization PODs (Points of Distribution), hauling the mobile clinic trailer, participating in drills and exercises, developing visual models and flow charts, ordering, building and setting up equipment. Eva is not confident in her ability to develop preparedness plans and is intimidated by the NYSDOH/CDC plan review tools called TARs (Technical Assistance Review). She is currently completing the 20 page HSEEP template for after action reports which is required for drills and exercises. Eva has inherited most of the current public health plans from previous preparedness coordinators and has not had to develop any plans since she was hired. There are two major plans that must be updated and or re-developed by the end of the grant period, August 9, 2011. These include the Strategic National Stockpile Plan (SNS) and the Schoharie County Public Health Preparedness and Response Plan. Schoharie County may have scored high enough on their SNS plan last year that they will not have to resubmit this year. The base Public Health Preparedness Plan is required to be submitted. This is the main health department plan with all its annexes (i.e. Pandemic Flu, Smallpox, Communications, Continuity of Operations, Environmental Health, etc.). The base plan is required and annexes should be reviewed but it is understood by NYSDOH that not all annexes can be updated in this timeframe. As long as there is a narrative on the review tool explaining anticipated plans for completion this will be acceptable. I understand a consultant will assist Eva with updating and submitting the Schoharie County Public Health Preparedness Plan and TAR.

Eva has been assuring that some public health staff participate in the mandatory NYSDOH preparedness trainings (required as part of deliverables for grant). Without a supervisor or public health director it is difficult for program staff to require all necessary staff participate in mandatory trainings.

Eva is also submitting the budget portion of the preparedness grant to NYSDOH. The preparedness budget is more complicated than some of the other NYSDOH grants. This grant requires monthly voucher reports sent to NYSDOH and budget modifications. My suggestion would be to allow the preparedness coordinator to oversee the budget and instruct about what to modify but delegate the actual entering of submitting of financial information to a clerical person. The clerical person can also assist with the ordering of equipment.

With a consultant assisting Eva with the large plan, the deliverables are definitely manageable. In most cases some deliverables may be cross referenced with other deliverables and many maintenance deliverables are carried out by other public health staff as part of daily job requirements.

24/7 coverage for rabies lead and communicable disease (CD)

When I asked CD staff how weekend and after hours CD and lead reports were handled the answer was that there was no protocol. The on call SPHN for the CHHA used to cover these reports. Communicable disease, lead and rabies are programs that require 24/7 coverage under public health law. High risk lead and CD reports after normal business hours do not occur often but for certain diseases waiting until Monday morning or after a holiday weekend is too late to ensure appropriate treatment i.e. prophylaxis of contacts to a bacterial meningitis case should be given within 24 hours. There are also some high lead levels that require immediate removal of a child from the home and medical attention such as chelation therapy. The on call sanitarian handles all rabies reports but it was not clear if they were alerted about CD or lead reports. While reports may be rare there should be a system in place for coverage 24/7 should a report occur. Schoharie County houses SUNY Cobleskill College which may increase the potential to have a CD report like bacterial meningitis, pertussis or hepatitis A.

Policies

In reviewing the rabies policy binder, there appeared to be no actual policy and procedures written for staff. The binder contains guidance documents, memos and sample information from the CDC and NYSDOH which are good resources, but policies and procedures should be developed for over site of the program and to cross train staff. The use of policies and procedure will also save time as guidance and laws will be included in the policy instead of having to sort through memos and find the correct documents.

The communicable disease (CD) section contains some instructions and a diagram but no actual policy or procedure citing why and when procedures should be done. There are

many immunization policies, a maternal child health policy, lead program policies and an STD over site policy. I did not ask about lead program environmental policies.

It is recommended that the Bloodborne Pathogens protocol be in a separate binder and labeled so it is easy to locate.

Other Policies

There was 1 HIPAA policy in the public health policy binder. I did not see any policies for corporate compliance. The requirement for corporate compliance falls under title 18 NYCRR 521 Regulation. A corporate compliance program is a system which is designed to detect and prevent violations of law by the agents, employees, officers and directors of a business. There are eight elements to an effective corporate compliance; development of policies and procedures, designation of a compliance officer, development of an annual in-service training program, establish anonymous and confidential reporting hotline, written expectations for reporting and resolving issues of non-compliance, a self evaluation system to catch problems, correction process for improvement and a written policy for non-intimidation and non-retaliation. Article 28 D&T Agencies are required to designate a HIPAA privacy officer, complaint officer and compliance officer. The NYSDOH Article 28 patient complaint number must be available to all patients in Article 28 programs. The HIPAA privacy officer, complaint officer and compliance officer could be the same person.

QA Reports

Some of the Utilization Review (UR) meetings for Public Health Programs indicated that Early Intervention and Child Find chart issues were discussed and addressed but a representative from Early Intervention did not appear to be present. It is suggested that someone from Early Intervention be present at the UR Meetings. In some cases the UR Meeting minutes are very detailed as far as listed which staff member's chart and what that particular staff member did to correct the chart. Chart review and QA information should generally explain the problem and how it was corrected but it should single out individuals. Instead the minutes could say "An elevated lead chart was misplaced, lead program staff recovered the chart and a tracking system was put in place to prevent future incidents".

Section

44

Subject:

From: "Bonnie Hamilton" <bonnie.hamilton@co.delaware.ny.us>

Date: 4/11/2011 4:20 PM

To: "Cassandra Ethington" <cethington@co.schoharie.ny.us>

Hi Cassandra: Here is the final piece of the report from our assessment of Public Health programs in Schoharie County. You should have received an initial report from me, a report from Amanda Walsh and this final report on interviews and consolidated monitoring. If you have any questions or need more information, please let me know. It has been a pleasure working with you. I will ask Liz Bowie to send an invoice to you for our time.

Bonnie Hamilton

Delaware County Public Health Director

phone 607-832-5200 fax 607-832-5201

www.delawarecountypublichealth.com



Attachments:

Consolidated Monitoring and Interviews.doc

61.5 KB

Section 45

FILE COPY

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHOHARIE

**In the Matter of the Application of
PENNY GRIMES,**
Petitioner,

-against-

**THE COUNTY OF SCHOHARIE,
a Municipal Corporation, and CASSANDRA
ETHINGTON, Personnel Office**

Respondent.

**AFFIDAVIT IN
FURTHER
SUPPORT OF
PETITION AND
IN REPLY TO
RESPONDENTS
OPPOSITION TO
PETITION
INDEX NO. 2012-213
RJI NO. 47-7668-12
Judge Devine**

for Judgment pursuant to CPLR Article 78

STATE OF NEW YORK)

COUNTY OF ALBANY) ss.:

PENNY GRIMES, being duly sworn, deposes and says:

1. I am the petitioner in this action. I make this affidavit in further support of my petition and in response to the reply papers served on behalf of the County of Schoharie. These reply papers consist of affidavits from Cassandra Ethington, Asante Shipp-Hilts, and Betsy Bernocco.
2. First I would like to address Ms. Ethington's statements regarding her role as Acting or Interim Director of the Public Health Department. As I understand the County's position at this point it is that Ms. Ethington and Ms. Bernocco were acting as co-interim directors from December 31 to March 31. The County does not address who was running the Health Department between March 31, 2011 and May 2011 when Asante Shipp-Hilts was hired as Epidemiology Coordinator for the Department. However the County and Ms. Ethington allege that after Ms.

Shipp-Hilts was appointed Epidemiology Coordinator, she became the "de facto" Director of the Health Department.

3. As an employee of the Health Department I was initially advised that Ms. Ethington and Mr. Bernocco would be acting as co-directors of the Health Department. However in actuality Ms. Bernocco had very little involvement. She came to the Health Department one or two days a week and during two of the three meetings I was summoned to by Ms. Ethington, Ms. Bernocco said very little. The period of time in which Ms. Bernocco had any oversight of the Health Department is shorter than that indicated in her affidavit and she was on vacation for some of the time she alleges she was acting as co-interim director.
4. During the entire period of time after Ms. Strack left, Ms. Ethington consistently represented both to me and to other employees of the Health Department that she was serving as the acting or interim director. This continued after Ms. Shipp-Hilts was hired as Epidemiology Coordinator. Ms. Shipp-Hilts consistently represented to me and other employees of the Health Department that she was serving "only" as the Epidemiology Coordinator up until the time that Ms. Shipp-Hilts was appointed director in the spring of 2012. That was after I was terminated. It was consistently represented to all staff of the Health Department that Ms. Ethington was interim or acting Public Health Director.
5. In support of this assertion, I attach the following documents:
 - a. A copy of my identification tag for the year 2011, which is my official identification tag as an employee of Schoharie County. As the court can see it is signed by Cassandra Ethington as "Interim Department Head" (Exhibit "A".)

- b. A copy of a memorandum dated June 14, 2011 from Cassandra Ethington to Eva Gigandet in which Cassandra Ethington identifies herself as "Interim Director, Public Health Department" At Ms. Gigandet's request I have blocked out certain personal portions of this memo (Exhibit "B")
- c. A "Report of Personnel Change and Supplementary Payroll Certification" dated 2-4-11 appointing Ms. Ethington as Interim Public Health Director signed by Ms. Bernocco. Someone has handwritten on this form "for transfer of CHAA." However, as shown by other documents, Ms. Ethington never represented to the employees of the Health Department that her appointment was limited in this fashion. (Exhibit "C").
- d. An e-mail with attached memo regarding time policies signed by Cassandra Ethington and Betsy Bernocco setting forth time usage and travel guidelines for all Health Department employees. This is inconsistent with Ms. Ethington's claim that she was only involved in the sale of the CHAA (Exhibit "D").
- e. A communication dated January 12, 2011 regarding travel and indicating that the department heads are Betsy Bernocco and Cassandra Ethington and that both parties are to be carbon copied on e-mails and correspondence and a second e-mail dated March 4, 2011 indicating that at that point all e-mail and correspondence is to go to Cassandra Ethington only who will then forward it to Betsy Bernocco if necessary (Exhibit "E".) This e-mail marked the end of any role for Ms. Bernocco's as co-director of the Health Department.

- f. An e-mail from Cassandra Ethington to various employees of the Health Department dated May 19, 2011 indicating "as per the Board of Supervisors I am still in charge on a daily administrative basis of the Health Department and the CHAA until its closure." (Emphasis added; Exhibit "F").
- g. An e-mail from Asante Shipp-Hilts to Cassandra Ethington dated June 24, 2011 indicating that she will have emergency preparedness material from the State on hand for Ms. Ethington's review. Emergency preparedness material is not something that would be reviewed by the personnel officer unless she were running the Health Department (Exhibit "G");
- h. An e-mail dated July 9, 2011 from Asante Shipp-Hilts to Eva Gigandet in which Ms. Shipp-Hilts describes herself as "Epidemiology Coordinator" rather than as acting or interim director (Exhibit "H"). This e-mail is typical of how Ms. Shipp-Hilts represented herself both verbally and in writing to the staff of the Health Department.
- i. An e-mail from Ms. Ethington dated June 29, 2011 in which she gives instructions to all health Department staff how to reach her while she is on vacation. This is during the time that Ms. Shipp-Hilts was serving as Epidemiology Coordinator and allegedly serving as "de facto" director (Exhibit "I").
- j. An e-mail from Cassandra Ethington to Eva Gigandet dated September 9, 2011 in which Ms. Ethington describes herself as "Interim Public Health Director" and demands reports for a meeting with the State (Exhibit "J").

- k. A memo from July 2011 from Ms. Ethington to the Health Department staff showing that she was involved in much more than the sale of the CHAA (Exhibit "K").
6. It is clear that Ms. Ethington represented herself verbally and in writing to the Health Department staff as being the person in charge, both before and after the time that Ms. Shipp-Hilts was hired as Epidemiology Coordinator. Because I have alleged in my petition that it was Ms. Ethington who wished to eliminate my position, the County has now tried to shift the responsibility to Ms. Shipp-Hilts so as to isolate Ms. Ethington from any decision making. However this was not the case and all decisions regarding personnel in the Health Department were made by Ms. Ethington. I, along with many of my former colleagues, repeatedly asked about Ms. Ethington's continued management of the Health Department and the response by Ms. Shipp-Hilts was always the same, "I am not in charge".
7. The last staff meeting of the Health Department that I attended was on October 12, 2011, which was after the floods caused by Hurricane Irene. Ms. Bernocco was also in attendance at this meeting. Ms. Shipp-Hilts began the meeting but Cassandra Ethington came in later and immediately took over the meeting. She went into a tirade about the Health Department staff and threatened to "write up" certain members of the Health Department. She reiterated that "she was still in charge of the health department" because some people were questioning this. Ms. Karker refers to this meeting in her affidavit. After the meeting Ms. Shipp-Hilts apologized for Ms. Ethington's outburst, but reiterated, as she had many times in the past, that she was "only" the Epidemiology Coordinator.

8. Ms. Ethington has attached to her affidavit a report authored by Bonnie Hamilton, Delaware County, Director of Public Health. My former colleague, Valarie Manchester and I were interviewed together by Ms. Hamilton when she met with the staff as part of her report. I recall explicitly Ms. Hamilton's admonishment to me that "my name was attached to way too many programs and committees" as I explained to Ms. Hamilton my various job functions. As I believe the court can see from the report, and as discussed in my attorney's affirmation, Ms. Hamilton did not find that I was underworked but rather found that I was overworked in attempting to do more tasks than were comfortable. That was an accurate description. During the time that Kathleen Strack was director, I was asked to take over numerous additional duties, previously performed by two individuals, the supervising public health nurse and the public health nurse, which I willingly did.
9. Ms. Ethington indicates that employees of the Department of Health were asked to do time studies of what each employee did on a daily basis. However it should be noted that not all employees did the time studies or completed them for the required three month time frame as the County claims. I believe it is relevant to my position and their claim of inefficiency that in fact one of those employees who did not do this was Valarie Manchester, with whom I shared many job duties. Nor were all of the clerical support staff required to complete time records. I did complete the time studies on a daily basis and I kept meticulous time records of my activities when I was asked to do so. It is absolutely untrue that I resisted doing the time study or indicated that I felt that they were demeaning. I kept

copies of these time studies but, like the records kept by the County, they were also destroyed in the August 2011 flood.

10. I would also point out that the two nurses referred to in the responding papers have not assumed any significant responsibility for public health education in the County, which the county admits is required by the New York State Health Department.
11. With respect to discussions I had with Cassandra Ethington, she confirms in her affidavit that she did not consider me to be qualified for the position of Director of Public Health. The witnesses giving affidavits on behalf of the County generally state that I was not considered for that position because I did not apply for it. She seems to state that if I had submitted an application it would have been forwarded to the Department of Health for their approval or disapproval.
12. I believe this is an incorrect statement of the process. Although the State Department of Health has to approve the appointment of a Public Health Director, it is the County Board of Supervisors in the first instance that selects the person for that position. At the meeting I had with Ms. Ethington in early December 2010 she stated to me in unequivocal terms that she did not consider me to be qualified for the position of Director of Public Health. Furthermore, she told me that the Board of Supervisors was looking for someone from outside of the department, and it would not consider appointing anyone from inside the department. Since Ms. Ethington was the Personnel Director for the County, and she makes recommendations for hiring and firing of employees within the County, I took her at her word and felt that it would be totally pointless for me to apply for the position of Director. I did not believe then and I do not believe now

if there is any way that the New York State Department of Health could appoint me as Director of Schoharie County Health Department if, in fact, the Board of Supervisors would not consider my application.

13. The claim that Ms. Bernocco also had several conversations with me about this are unequivocally not true. The only person to ever ask me if I were interested was a long standing member of the Board of Health, Ms. Esther Downey who knew me from her attendance at the Professional Advisory Committee meetings which I chaired.
14. Ms. Ethington's statement in paragraph 72 of her affidavit that at no time did she discourage me from applying for the position of Director is absolutely untrue. She told me in no uncertain terms that I would not be considered for that position because in her view I was not qualified for the position and also because the Board of Supervisors had decided that they would not hire anyone from within the department.
15. Ms. Ethington also indicates that I never applied for the position of acting or interim director. However she states that such a position was never posted so there was never an opportunity for me to apply for that position. I certainly would have been qualified for that position as I would have been qualified for the position of Director of the Public Health Department. I believe that Ms. Ethington's affidavit is correct that there was no solicitation of applications for a position of acting or interim director and there was no opportunity for me to actually apply for such a position. It should also be noted that Ms. Ethington already knew she was going to be appointed to this role and was to be compensated above and beyond her salary as Personnel Officer for filling that

role. She therefore benefited financially by not having other applicants for the position. Attached hereto as Exhibit "L" are records of Ms. Ethington's earnings in this position.

16. In terms of Ms. Ethington's relationship with me I had discussed in my affidavit three meetings that I had with Ms. Ethington. The first one occurred on the day she announced Ms. Strack's departure. During this meeting she certainly discounted me professionally and spoke to me in such a way that I believe then and now was meant to be intimidating. The second and third meetings took place in the Health Department conference room with the door shut and Ms. Ethington's rage toward me was demeaning and abusive. Ms. Ethington does not discuss the first of these two meetings nor does she dispute what I said in my original affidavit with respect to these first two meetings. She discusses, as does Ms. Bernocco, only a third meeting that occurred in January of 2012 which I discuss at paragraph 14 of my original affidavit.
17. As I noted in my original affidavit the meeting of December 28 was so stressful for me that at a regularly scheduled doctors appoint the next day I was prescribed an antidepressant. I have attached hereto as Exhibit "M" a copy of my medical record for that visit.
18. Ms. Ethington and Ms. Bernocco both say that at this third meeting I begin by apologizing for my conduct at a previous meeting. As detailed in my original affidavit, at the first meeting in Ms. Ethington's office, she told me that I was not qualified to be director and would not be considered for director. The second meeting was one at which she screamed at me and verbally abused me, called me a liar, criticized me for asking if I should have union representation at the earlier

meeting, and told me that if I did not like the way things were done at Schoharie County I should move on. I certainly did not apologize for anything that happened at either of these meetings because the first meeting was for Ms. Ethington to tell me I could not be director and the second meeting consisted entirely of Ms. Ethington screaming at me. I had nothing to apologize for. I did not raise my voice or complain at that third meeting or any of the earlier meetings or indeed at any time about having to keep time records which I did in a diligent fashion after being asked to do so by the County.

19. I was able to take some sick time when my mother was ill, as referenced in Ms. Ethington's affidavit. However I was not given any special treatment in this regard.
20. Ms. Ethington also claims that she "defended" me to the former director of Carl Stefanik. This is not accurate. When Mr. Stefanik was director I did feel that he was not using me to the fullest capacity. I did ask to be more involved with some of the community programs but did not get any satisfaction from my conversation with him. I did speak to Ms. Ethington about this topic, especially as it seemed that I should be collaborating more with the public health nurse. To the best of my knowledge, she took no other action on my behalf and after I had spoken to her, Mr. Stefanik did not in any way change the assignment of duties given to me.
21. It was not until Ms. Strack was appointed Director of Department of Health that my duties with the Schoharie County Department of Health were significantly expanded to include the public health nurse responsibilities and coordination of various public health programs.

22. It is also now the position of the respondents that Ms. Ethington had nothing to do with the elimination of my position. Essentially it appears to be the respondents' position that this was done as a result of the aforementioned time studies which were allegedly reviewed by Asante Shipp-Hilts. At the time I was terminated Asante Shipp-Hilts was in her first months as Epidemiology Coordinator. Based on the affidavits and documentation we have submitted it was Cassandra Ethington who was acting (illegally) as interim Public Health Director at the time I was terminated. The respondents' claim that Ms. Ethington supported the elimination of my position but did not initiate the elimination of my position is not credible.

23. This is also directly contrary to what I had been told by Asante Shipp-Hilts while I was still employed by the county. First, she never indicated to me in any form or fashion that she thought that I was not sufficiently busy. She never indicated to me there was any consideration of eliminating my position for considerations of efficiency. Instead, she had proposed new ideas to me for securing more grant funded opportunities and I had begun exploring these. As the person who was most involved and knowledgeable about many of the NYSDOH required reports, Ms. Shipp-Hilts sought my assistance on a regular basis.

24. In November, Ms. Shipp-Hilts urged me to seek the position of Nurse Manager, (also referred to as Supervising Public Health Nurse). I was very qualified to do this and it would have been a logical and cost effective move as I was already in the required grade. As set out in my original affidavit I met with the Board of Health and they approved me to be the Nurse Manager. After I had met with the Board of Health I waited three days during which time I placed several calls to

Ms. Shipp-Hilts over the following weekend to ask her if I had been approved for that position. Ms. Shipp-Hilts informed me that she had contacted Ms. Ethington because she could not tell me whether I had been approved for that position until she spoke to Ms. Ethington. As set out in my original affidavit it is my understanding, and this is not contradicted by the respondents' papers, that Ms. Ethington disapproved me for that position, despite the fact that the Board of Health voted to give me the position of nurse manager.

25. Prior to the appeal I made for the position of nurse manager in November, I had specifically asked Ms. Shipp-Hilts in September if I was on a lay off list and she stated she did not know of any plan to lay me off. Months later I did have a conversation with the Director of the Emergency Management Office, Ms. Judith Warner, who told me that she had spoken to Cassandra Ethington in early August 2011 and was told by Cassandra that she planned to "pink slip" both myself and another colleague, Eva Gigandet.
26. It strains credibility to think that a newly hired Epidemiology Coordinator, with little or no administrative experience, would have made the decision to eliminate positions in the Health Department completely on her own, particularly in light of the fact that Ms. Ethington was serving as acting Director and had demonstrated very hands-on approach to the management of the Health Department. Cassandra Ethington was effectively managing the Department of Health for a year or more prior to the time that my position was eliminated. It is clear that Ms. Ethington and the County now wish to distance Ms. Ethington from the determination to eliminate my position and lay me off without the possibility of other employment

with the County. This self-serving position may be advantageous for the County but it is simply not true.

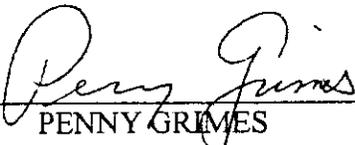
27. I would also like to address the position put forth by Ms. Shipp-Hilts that my only function with the health department was "handing out literature such as lead and immunization pamphlets at fairs and local community activities." This is completely inaccurate.
28. I'm attaching as Exhibit "N" a copy of my job description. First I would like to note that the County in their papers seems to imply that grant management was outside of my job responsibilities. In my job description it can be seen that obtaining and administering grants is clearly set out as part of the job responsibilities of the Public Health Educator. Developing policies and procedures was also part of my job description.
29. In the fall of 2012, Ms. Ethington took some of this responsibility away from me and assigned the fiscal portion of all the grants to an employee from another department. In the spring of 2012, Ms. Ethington hired a consultant, Ms. B. Pecka to write policies and procedures and to assume the responsibilities I had as the chairperson for the health department's Quality Assurance program which I had been in charge of for years. Although these duties were performed by me, budgets and fiscal monitoring of all the grants was specifically part of my written job description as was writing policies and procedures for the various public health programs I directed. I have attached as Exhibit "O" records I obtained from the County showing payments to the outside consultant's business, under the name of Health Care Compliance. These show payments of over \$20,000 to this consultant in 2011 and payments of over \$20,000 up through June 8, 2012.

30. With respect to the allegation that my job was limited to handing out brochures, I have also attached a June 2011 description of my duties (Exhibit "P") that I prepared which shows that I was involved in the administration of the Planned Parenthood contract, supporting the RHENDOMS nutrition and physical activity and oral health education initiatives, supporting cancer services program, compiling and writing the annual health education grid for submission to New York State, writing and developing an annual letter to providers regarding communicable diseases, writing and developing annual letters to providers regarding lead testing, serving as chairperson for the Quality Assurance and Professional Advisory Committees, coordinating the immunization and lead grants, coordinating the car seat grant, coordinating the step-by-step coalition, coordinating the step-by-step certificate reward program with Cornell Cooperative extension, and serving as a backup for communicable diseases in the absence of Valerie or Mary Ann.
31. I am also attaching an October 2008 description of my accomplishments for that period of time. (Exhibit "Q") I am attaching a document prepared in April 2008 regarding programmatic changes in the immunization and lead program, which represents my efforts to improve those programs. I am attaching as Exhibit "R" some supporting statements regarding programs I was involved in.
32. In addition handing out informational material to the public is part of Health Education. Attached as Exhibit "S" is a copy of a recent email from Deputy Director Feinstein to the DOH staff suggesting that they hand out written materials at the Schoharie County Sunshine Fair.

33. In their responding papers the County has provided a list of employees of Schoharie County whose employment was terminated. They have offered this, at least in part, to counter my argument that my age was a factor in my termination from the Health Department. This list is deceptive.
34. There are three people on the list who are under the age of 40. However Michelle Strobeck, who is on the list, was not terminated. She went on maternity leave and did not return. Sean Jordan, whose age is listed as 28, was terminated but he has his own lawsuit against the county arising from the termination. Cassandra Putnam held a temporary position and the funding for that position was in doubt. Based on discussions I have had with Patrick Shiland, he has not returned as an employee of the County but is working as an independent consultant. It is my understanding that Jeri Murray was not laid off. Therefore, with the exception of Mr. Jordan everyone terminated was over the age of 40, with some people significantly over that age. There is a clear pattern on Ms. Ethington's part of terminating older employees and hiring younger employees (e.g. Ship-Hilts and Feinstein). Ms. Ethington was also instrumental in forcing Katie Strack out of her position as Director. Ms. Strack, who is in her 50's, was replaced with a 28 year old woman with no public health or administrative experience. I would also note that of the persons on the list four of the seven that were actually laid off were from the Department of Health.
35. The claim that it was Ms. Shipp-Hilts who determined to eliminate my position is inconsistent with Ms. Ethington's operating style. As pointed out in Ms. Strack's affidavit, it was Ms. Ethington, rather than Ms. Strack, who had the final say as to who would be laid off even though Ms. Strack was an experienced Public Health

Director. Attached as Exhibit "T" is an email from Ms. Ethington to Ms. Strack in October 2010 showing that it is Ms. Ethington who is calling the shots regarding layoffs.

36. Therefore, I respectfully request that my petition be granted and that I be reinstated to my position as Public Health Educator II and that I receive lost salary, benefits, and seniority from December 16, 2011.



PENNY GRIMES

Sworn to before me this

28th day of June, 2012.



Notary Public

KENNETH G. VARLEY
Notary Public, State of New York
No. 4954359
Qualified in Saratoga County
Commission Expires Aug. 7, 2013

Section 46



ANDREW M. CUOMO
GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF CIVIL SERVICE
ALFRED E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12239
www.cs.ny.gov

February 21, 2012

Cassandra Ethington
Personnel Officer
Schoharie County Personnel Department
284 Main Street
P.O. Box 675
Schoharie, New York 12157

Dear Ms. Ethington:

This is in response to your request for an opinion of whether the past actions by the Schoharie County Board of Supervisors to appoint you as Personnel Officer and assign you to perform the functions relative to the County's Public Health Director and provide you with a stipend to exercise those duties are a violation of Civil Service Law section 27. Please be advised that though this Department provides technical advice and assistance pursuant to the provisions of Civil Service Law section 23, such advice is not legally binding and you may have to contact the Office of the Attorney General for a more definitive answer to your questions.

In addition to your request for technical assistance in this matter, we have received inquiries from members of the public on the same subject, stating their concern that you served as both the Personnel Officer and Public Health Director for a limited period of time during 2011 – 2012.

As you are aware, Civil Service Law, section 27(1) states:

1. *"A member of a municipal civil service commission or personnel officer, appointed on or after the effective date of this act, shall not hold any other public office or employment under the political subdivisions or subdivision over which such commission or personnel officer exercises jurisdiction, for which he shall receive compensation other than necessary travel and other expenses incurred in the performance of the duties of such office or employment."*

As the Personnel Officer, you were appointed by the County Board to serve for a six-year term. A Personnel Officer is a public officer charged with the enforcement of Civil Service Law within Schoharie County. Service in that role while simultaneously functioning as Public Health Director, another, separately appointed public officer, charged with the enforcement of Public Health Law, appears to run contrary to Civil Service Law, section 27(1). The receipt of additional compensation appears to support the fact that significant duties as Public Health Director were exercised.

There is an Attorney General's Opinion (No. 82-10), in which the Attorney General concluded that a county personnel officer may take on the additional duty of preparing payroll. The Attorney General characterized the payroll function as a separate ministerial act involving minimal exercise of discretion that is not inconsistent or subordinate to the Personnel Director position. When approving this arrangement, the Attorney General specifically noted the close relationship between payroll certification and civil service enforcement (see CSL section 100).

The additional duties of Public Health Director do not appear closely related to the duties of a Personnel Officer. Furthermore, appointment to the position of Public Health Director, whether on a temporary or permanent basis, is subject to statutorily established minimum qualifications and approval by the New York State Commissioner of Health.

It is hard not to characterize the arrangement described as two separate jobs, notwithstanding the reimbursement by stipend of the additional duties performed. In reality, there appear to be two separate salaries for two distinct functions.

The Attorney General's Opinion (No. 82-10) also references the well-established common law doctrine of "incompatibility" when two or more incompatible or subordinate public offices are held by the same person. We discussed this concept briefly as related to the hybrid classification of Deputy Public Health Director/Director of Weights and Measures. In Schoharie County, the Public Health Department is a department with classified service positions subject to the jurisdiction of County civil service. By having responsibility as Public Health Director and Personnel Officer you would have the full range of responsibilities for appointments, terminations, disciplinary actions at the Public Health Department and also be responsible for reviewing, approving/denying and hearing appeals from the same decisions as Personnel Officer. This is an obvious structural conflict.

This does not mean that a Personnel Officer could not be appointed to administer County-wide merit system functions and also perform some additional duties as well. In some counties, the Personnel Officer also has responsibility for purchasing duties for the county. The key component, however, is that the Personnel Officer must have only one County job that does not include duties that conflict with merit system duties required by law and the individual appointed must meet any required minimum qualifications.

Based upon the information provided, the Schoharie County arrangement does not appear to comply with the clear language and intent of Civil Service Law, section 27. We therefore recommend that the County Attorney seek an opinion from the Attorney General regarding whether the Public Health Director is merely an additional duty of the Personnel Officer or if constitutes a separate employment.

Should you have any further questions, please contact this office at (518) 473-5139.

Sincerely,


Nancy B. Kiyonaga
Director, Commission Operations
& Municipal Assistance

Section

47

**STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHOHARIE**

**In the Matter of the Application of
SEAN JORDAN,
Petitioner,**

PETITION

-against-

INDEX NO. ~~88~~ 2012-233

**THE COUNTY OF SCHOHARIE,
A Municipal Corporation**

RJI NO. ~~780~~

Respondents.

For Judgment pursuant to CPLR Article 78

Petitioner Sean Jordan ("Petitioner") appearing herein per se, alleges as follows:

THE PARTIES

1. Petitioner is, and at all times relevant to this proceeding has been, a resident of the Town of Jefferson, State of New York.
- ✓ 2. Upon information and belief, the respondent, the County of Schoharie, is a municipal corporation vested with all of the municipal powers set forth in the laws of the State of New York.
- ✓ 3. The petitioner was formerly employed by the respondent County of Schoharie in the position of Economic Development Assistant.
- ✓ 4. Petitioner was an employee in the competitive class and was protected under the collective bargaining agreement negotiated between Civil Service Employees Association, Schoharie County Local #848, and the County of Schoharie.
- ✓ 5. Pursuant to Article XII of the collective bargaining agreement, petitioner could only be subject to discipline, including termination, for just cause.
- ✓ 6. Plaintiff's position was eliminated and he was laid off from employment with the respondent County effective December 23, 2011.

7. The Court has jurisdiction over this proceeding pursuant to CPLR Article 78 and the venue is properly within this Court pursuant to CPLR 504(T).
8. This Article 78 proceeding is timely since it is brought within four months of the termination of petitioner's employment on December 23, 2011.
9. Petitioner seeks to be reinstated to his position as Economic Development Assistant and also seeks lost salary, benefits and seniority from December 23, 2011.

AS AND FOR A FIRST CLAIM PURSUANT TO CPLR ARTICLE 78

10. Petitioner repeats and realleges paragraphs marked "1" through "9" above as if fully set forth in full herein.

11. On June 11, 2007, petitioner was appointed to the position of Economic Development Assistant. Petitioner served in that position until December 23, 2011.

Wrong

12. In December 2010, upon dismissal of former Director of Economic Development Director Jody Zakrevsky, Director of Planning Alicia Terry assumed the role of Director of Economic Development and became petitioner's direct supervisor.

* 13. No notice was given to the petitioner of this change in supervisory roles, and upon the repeated request of the petitioner to the Personnel Director, Casandra Ethington, no proof of any formal action regarding this change in supervisory roles was ever produced to the petitioner other than a verbal message from Ms. Terry when she stated to the petitioner, "I'm taking over."

* 14. Further requests made by the petitioner to the Personnel Director, Cassandra Ethington, with regards to showing proof of or any sort of record containing formal action of this change in supervisory roles was answered verbally by Ms. Ethington when she stated to the petitioner, "There doesn't need to be any formal action taken."

Wrong

* 15. The petitioner saw little to no change regarding his duties in his role as Economic Development Assistant. However, this is mainly due to the fact that the petitioner, since the start of his appointment to this position, had been working out of title, above and beyond the duties of Economic Development Assistant in many capacities.

* 16. The main change in his duties after the assumption of Ms. Terry as Director of Economic Development, was that the petitioner saw an increase in the amount of his duties and responsibilities in economic development, even though said

duties further instituted his working out of title in a significant manner and included many duties and responsibilities above and beyond that which is found in the job description of Economic Development Assistant, as defined by Schoharie County Personnel.

17. These newly acquired duties and responsibilities were those duties and responsibilities that were previously handled by the prior Director of Economic Development, Mr. Zakrevsky.
18. It had been Mr. Zakrevsky's wish, upon his departure, to set up two co-equal positions, which would serve to continue the operation of Economic Development. This is evidenced in the tentative Economic Development budget for 2011.
19. At the request of former Director Jody Zakrevsky, one of those two co-equal positions was to be held by the petitioner.
20. After Mr. Zakrevsky's departure, Ms. Terry, acting as Budget Officer for Schoharie County (another position that she held at that time), altered those plans without any further consultation with the petitioner.
21. Ms. Terry, altering Mr. Zakrevsky's plans to upgrade the position of the petitioner from a Grade 12 to a Grade 16 position, instead kept the petitioner's position at a Grade 12.
22. However, pursuant to the arguments posed by Ms. Terry at a Personnel Committee meeting, the to be created and originally intended to be co-equal Grade 16 position that was to be filled by someone other than the petitioner was upgraded to a Grade 19 position.
23. When the petitioner approached Ms. Terry about this, Ms. Terry responded that the petitioner's upgrade was considered to be "a typo" and was therefore left at a Grade 12.
24. The petitioner then asked if that could be amended to include the upgrade, but it was further explained to him by Ms. Terry that he needed to understand that if there was to be the creation of a Grade 19 position, then there would not be enough funding in the budget to also support an upgrade to the petitioner's position.
25. Petitioner communicated several times with both his immediate supervisor, Ms. Terry, and the Personnel Director, Cassandra Ethington, regarding receiving an upgrade to his position.
26. Both Ms. Terry and Ms. Ethington, though they continually referred the petitioner back and forth to one another, were very reassuring to the petitioner

that he would receive an upgrade in his position long before the creation of the new Grade 19 position was to take place, assuring that the petitioner would be recognized for all of the duties and responsibilities that the petitioner had been handling for so long.

27. A Desk Audit, a device that would evaluate the day to day duties of the petitioner in a way that would ensure that due credit would be given to the petitioner for completion of all tasks and duties, even those above and beyond that which is listed in the Economic Development Assistant job description, was recommended to the petitioner by both his immediate supervisor, Ms. Terry, and the Personnel Director, Cassandra Ethington, as the most effective way to ensure that the petitioner would be recognized and duly compensated for all of the actual duties and responsibilities that fall under his jurisdiction.

28. After receipt of this advice, and upon the repeated requests of the petitioner to the Personnel Department regarding a Desk Audit, a Desk Audit was never performed.

29. The petitioner began to grow concerned, due to the amount of time that had been allowed to pass since the performance of a Desk Audit was first suggested to him, that said Desk Audit would not occur in a timely manner in order to ensure that he would be duly recognized and compensated for all of his tasks and duties.

30. The petitioner's immediate supervisor repeatedly reassured him that there was nothing to worry about in this regard, and that he would receive his desk audit and be compensated in a timely manner before the new position in Economic Development would be created, as promised.

31. The petitioner's main concern was that if his Desk Audit was not performed before the creation of this new position, and the hiring of a new employee in Economic Development occurred, he would not be duly recognized and compensated for any of his actual duties and responsibilities.

32. A new position was created by both the petitioner's immediate supervisor, Ms. Terry, and the Personnel Director, Cassandra Ethington, before the petitioner's Desk Audit was performed.

33. The petitioner's Desk Audit was never performed.

34. The petitioner's was not informed that a new position had been created in Economic Development.

35. Upon learning that a new position had been created in Economic Development, the petitioner asked to view the job description for said new position.

36. There was no job description to view at this time, which made the petitioner wonder, since there was no job description for the newly created position, if the position had been arbitrarily increased from a Grade 16 to a Grade 19, because none of the duties for this new position had yet been defined.

37. A job description was eventually produced and viewed by the petitioner.

38. The job description was produced after the position had been upgrade from a Grade 16 to a Grade 19 position.

39. The job description contained many duties and responsibilities that were currently being performed by the petitioner.

40. The job description contained many items that the petitioner had written himself and distributed to the Personnel Director, as he was instructed to do by the Personnel Director several times over the course of his employment.

41. The Personnel Director had requested this of the petitioner in an effort to record his actual duties and responsibilities, especially those above and beyond what was listed in the job description for Economic Development Assistant.

42. The petitioner was led to believe by the Personnel Director that these items that he was producing for the Personnel Director would be used to assist him in being duly recognized and compensated for all of his actual duties and responsibilities.

43. Statements made by the Personnel Director to the petitioner, such as, "The more you do, the more money you make", in reference to the Personnel Director's request of the petitioner to revise his job description helped to lead this belief that the documents that he produced for the Personnel Director at her request would be used to assist him in being duly recognized and compensated for all of this actual duties and responsibilities.

44. The petitioner was unaware at the time he was producing the documents that said documents would in fact be used by the Personnel Director to assist in the creation of a job description for a new position in Economic Development instead of used in the manner that was originally and repeatedly presented to the petitioner and described above.

45. The Personnel Director informed the petitioner that he did not meet the qualifications to apply for the new position that was created in Economic Development due to, according to the Personnel Director, a "lack of experience".

46. The petitioner questioned the Personnel Director regarding said qualifications, and upon further review, the Personnel Director determined that the petitioner would indeed be allowed the opportunity to apply for the newly created position.

47. The newly created position was officially "posted", and the County began to receive and review applications.

✓ 48. The petitioner was never informed that the newly created position had ever been formally posted.

✓ 49. The petitioner worked just a few feet away from his immediate supervisor's office, and in the same building as the Personnel Director, the two individuals responsible for the creation and posting of this position, and even though the petitioner requested to be kept up to date on information regarding the new position, and even though it was known by both his immediate supervisor and the Personnel Director that he wished to apply for this position, he was never informed by either individual that the position had indeed been posted.

✓ 50. The petitioner would check the County's Personnel website containing all current job openings on a daily basis.

✓ 51. The job was never posted to the website, even after many requests made by the petitioner and others. The Personnel Department answered each request by indicating that they would let the petitioner know when the job would be formally posted for application.

✓ 52. The petitioner kept a regularly printed record of the County Personnel website, showing that there were no current job openings at the County throughout this entire process. These printed records were removed from the petitioner's desk by someone other than the petitioner and without knowledge or permission of the petitioner.

✓ 53. The Personnel Department never informed the petitioner that this position was formally posted for application, even though it had been already accepting applications for it and even though he had requested several times for them to inform him when the position would be made available for application.

✓ 54. On the last day that applications were to be accepted for this position, the petitioner found out that applications were being accepted for this position and immediately submitted a completed application, resume and cover letter, in person, to the Personnel Department.

55. An interview for this position was granted to the petitioner and was conducted by his immediate supervisor, Ms. Terry as well as the Senior Planner, Shane Nickle.

*Sign up
on the website*

Abstract

56. The petitioner's immediate supervisor informed him that he did not receive this position.

57. A new person was hired and filled the newly created position in Economic Development in August, 2011.

58. The petitioner saw no change in his actual duties or responsibilities, even after the creation of the new position and the hiring of someone to fill that position, and even though many of those duties and responsibilities were located in the job description of the newly created position and not that of the petitioner.

59. The formal title of the newly created position was Economic Development Marketing Coordinator.

60. The petitioner was informed by both his immediate supervisor, as well as the Cobleskill Town Supervisor, Thomas Murray, that they were looking for someone with many years of experience to fill this position and to fill the shoes of former Director of Economic Development Jody Zakrevsky. On several occasions, "twenty-five years of experience" was referenced as something that the County was looking for in a person to fill the new position.

61. On several occasions, the Cobleskill Town Supervisor, Mr. Murray, made reference to the petitioner regarding the petitioner's age, specifically that he felt the petitioner was too young and inexperienced to fill the newly created position.

62. The position was filled by a twenty-eight year old person.

63. The petitioner was twenty-seven at the time the position was filled.

✓64. The petitioner had over four years of experience in economic development in Schoharie County at the time the new position was filled.

65. During the first day of employment for the person that filled the new position, Ms. Sarah Blood, it was admitted to the petitioner by Ms. Blood that she had "no experience in marketing or economic development" and began to inquire about the sorts of duties and responsibilities that the petitioner experienced during his tenure at the County.

66. It was made known to the petitioner several times by both his immediate supervisor and some members of the Schoharie County Board of Supervisors, namely Town of Cobleskill Supervisor Thomas Murray, that they were planning to hire someone with "many years" of experience, someone that the petitioner would be able to learn from.

10th Needs to Comment

Sarah Blood

67. It was, in fact, very evident from the very first day of Ms. Blood's employment as Economic Development Marketing Coordinator, that the petitioner would be tasked with teaching her the ins and outs of economic development. This was the exact opposite of what was originally proposed to him with regards to his ability to learn from someone with many years of experience.

68. The petitioner overheard a conversation between Ms. Blood and the petitioner's immediate supervisor, Ms. Terry, in which Ms. Blood admitted to Ms. Terry that she had no experience in marketing.

✓ 69. The petitioner's lack of experience in marketing, as referenced to him by his immediate supervisor, Ms. Terry, was one of the main reasons that he did not receive the newly created Economic Development Marketing Coordinator position.

✓ 70. On Monday, November 14, 2011, the petitioner was informed by his immediate supervisor that his immediate supervisor, Ms. Terry, acting in her role as Budget Officer, had cut his position due to some "concerns" that she had with the petitioner.

✓ 71. These "concerns" were of a personal nature.

✓ 72. Upon completion of these concerns, the petitioner's immediate supervisor stated, "Therefore, as Budget Officer, I have decided to eliminate your position."

✓ 73. Even though the reasons for laying off the petitioner's position were presented by the petitioner's immediate supervisor as entirely personal and supervisory in nature, the Department Head request, as referenced in the 2012 tentative Schoharie County budget, was to fund the petitioner's position.

✓ 74. The petitioner asked his immediate supervisor if this decision was final or if there was a chance that it could be reversed. Ms. Terry informed him that the elimination of his position was currently represented in the Schoharie County 2012 temporary budget, and that the final decision would be made when then Board of Supervisors voted on the budget.

✓ 75. The petitioner began to contact members of the Board of Supervisors, as well as members of the community, including business owners with whom he had worked with in various capacities throughout his tenure as Economic Development Assistant in an effort to make everyone aware of his current situation regarding the elimination of his position in the tentative 2012 Schoharie County budget, and to garner support for inclusion of this position in the final 2012 budget.

Mark

Being 1690 that increase

✓ 76. The petitioner's efforts in this regard were immediately met with both a written and verbal request made by the petitioner's immediate supervisor to immediately suspend any and all "personal lobbying efforts", especially those efforts that could potentially be conducted during work time and/or with the aide of County property.

✓ 77. The Board of Supervisors held a public hearing regarding the tentative 2012 Schoharie County budget, during which they informed the public that this process was just at the very beginning stages and that these tentative decisions were far from final. The Board of Supervisors instructed the head of each department to come up with creative solutions to cut costs in ways other than the elimination of positions.

✓ 78. A creative solution, as referenced above, was never presented on behalf of the petitioner by the petitioner's immediate supervisor, nor was any alternative to the elimination of the petitioner's position whatsoever ever discussed at a public meeting or hearing on this subject throughout this entire process.

✓ 79. The petitioner placed first on his Civil Service examination and was a permanently placed employee in his position with full rights as dictated by Civil Service law.

✓ 80. The newly created position, though it was seven pay grades higher than that of the petitioner's, was never once considered for elimination or reduction in an effort to save money for the County.

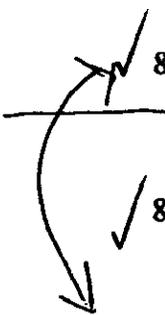
81. The person occupying this position, Ms. Blood, at no fault of her own, had not yet taken a Civil Service examination for her position, and therefore was not yet afforded the same Civil Service rights as the petitioner with regards to permanency. She was not yet even in a probationary phase. She was, at the time of this budget process, a provisional employee with little to no rights under Civil Service law relating to job security and the requirement for just cause for elimination.

✓ 82. The petitioner noticed that his immediate supervisor and the newly hired Economic Development Marketing Coordinator were beginning to leave him out of certain economic development meetings and discussions.

✓ 83. The employees of the Planning & Development Agency, the agency where the petitioner assumed his position, as instructed by the Director of that Agency, the petitioner's immediate supervisor, Ms. Terry, shared their calendars and schedules with one another in an electronic format in order to be able to coordinate scheduling and serve the public in a more effective manner.

✓ 84. The Economic Development Marketing Specialist, Ms. Blood, did not share her calendar with the petitioner, even after the repeated requests for her to do

Budget Meeting APR



so by the petitioner both directly to her and to the petitioner's immediate supervisor.

✓ 85. The petitioner cited needing the ability to coordinate scheduling and serve the public in a more effective manner as the main reason behind wishing to see the calendar of the Economic Development Marketing Coordinator, but the calendar was never shared.

✓ 86. Throughout this entire process, petitioner saw no change in his actual duties or responsibilities, even those duties and responsibilities that were located in the job description of Economic Development Marketing Coordinator and not that of the petitioner.

✓ 87. The petitioner always performed any and all duties, even those not in the formal job description of Economic Development Assistant, to the best of his ability without question. The petitioner knew that he was in his position to serve the public as best he could in any way that he could, and that if he did not complete any and all tasks, even those not in the formal job description of Economic Development Assistant, he knew that they would not be completed by anyone else in his department and that not only would he be reprimanded for not completing tasks, regardless of whether or not they were indeed located in his or in someone's else's job description, but the public would not be served, and the petitioner did not want either of those situations to occur.

✓ 88. The petitioner was never subject to any sort of formal review by his newly appointed immediate supervisor, Alicia Terry, nor were any of the concerns used as grounds for the elimination of his position ever once previously mentioned to the petitioner in any disciplinary capacity, formal or otherwise.

— 89. All employee evaluations for the petitioner were conducted by the petitioner's former immediate supervisor, Jody Zakrevsky. None of said evaluations revealed any potential concerns with the petitioner his quality of work or his ability to carry out his duties and responsibilities.

TM 90. On November 14, 2011, during a telephone conversation between the petitioner and the Cobleskill Town Supervisor, Thomas Murray, Mr. Murray stated the following to the petitioner in reference to the elimination of the petitioner's position: "You're young. You don't have a family or kids to support. We had to take that into consideration when we chose to eliminate your position." When the petitioner responded by saying that he had relevant financial responsibilities of his own, Mr. Murray offered nothing more on the topic.

✓ 91. The petitioner was able to garner much support for him and his position from various outlets, including local business owners and community members, local and regional economic development agencies and other community

groups and boards, and elected officials including New York State Senators and Assemblymen.

- File List*
- ✓ 92. The petitioner collected letters of support from many of those mentioned above.
 - ✓ 93. The petitioner also composed a listing of most projects that he had been responsible for during his tenure as Economic Development Assistant, and how they monetarily benefited the County, its residents and its businesses.
 - ✓ 94. The petitioner hand delivered a copy of each letter of support and the listing of projects mentioned above to each member of the Board of Supervisors, the body that would make the final decision in determining whether or not the petitioner's petition was eliminated or not.
 - ✓ 95. The petitioner attended each meeting and public hearing where the potential elimination and/or reinstatement of positions was to be discussed, including the meeting between the petitioner's immediate supervisor and the Finance Committee of the Board of Supervisors.
 - ✓ 96. This meeting between the petitioner's immediate supervisor and the Finance Committee of the Board of Supervisors was specifically designed for the petitioner's immediate supervisor to present a creative alternative to the elimination of the petitioner's positions.
 - ✓ 97. During this meeting between the petitioner's immediate supervisor and the Finance Committee of the Board of Supervisors, the petitioner's immediate supervisor did not once present any alternative to the elimination of the petitioner's position.
 - ✓ 98. Nothing that the petitioner prepared for and distributed to the Board of Supervisors, including the letters of support and the listing of projects benefiting Schoharie County, was ever discussed at any meeting or hearing throughout this entire process.
 - ✓ 99. On December 9, 2011 at the public hearing on the Schoharie County 2012 budget was brought to a close after several hours of public input and opposition was brought to the Board of Supervisors attention.
 - ✓ 100. It was during this meeting that, upon the approval of the petitioner's Union, CSEA, approval sought by the petitioner, that the petitioner read a statement before the public, the Board of Supervisors, and all others present outlining the situation described in "1" through "99" above.
 - 101. After the petitioner, and several other members of the public spoke up against the passing of the budget as it was currently configured, the Board of

Supervisors voted to close the public hearing, to pass the budget as is, and to adjourn the meeting.

- ✓ 102. There were no members of the public who spoke in favor of passing the budget.
- ✓ 103. Before the final vote took place, one member of the Board of Supervisors, the Supervisor for the Town of Esperance, Earl Van Wormer, spoke in defense of the petitioner and proposed reconsideration of the elimination of his and others' positions.
- ✓ 104. The petitioner believes there to be a serious conflict of interest regarding his immediate supervisor also holding the position of Budget Officer.
- ✓ 105. The Personnel Director released a County wide email stating that there was only one list of positions being circulated around the County, the one disseminated at the public hearing, and that there was no other list whatsoever.
- ✓ 106. This was a direct lie, as the petitioner's Union, CSEA, was in possession of another list and made it clear to the petitioner that they also understood what was going on regarding the potential specific targeting of certain employees under the guise of the development of a much larger list of names that were actually under consideration for potential layoffs.
- ✓ 107. A list of positions that were potentially to be cut from the 2012 budget was created and disseminated throughout the County.
- ✓ 108. This list was far greater than the actual number of employees that were under consideration to be laid off.
- ✓ 109. The petitioner feels that this was done in an attempt to create an atmosphere of fear and intimidation throughout the County, and that the actual list of names being considered for layoffs was actually much shorter.
- ✓ 110. The tentative budget showed that the Department Head Request was to fund the petitioner's position for 2012.
- ✓ 111. The tentative budget showed that the Budget Officer's request was not to fund the petitioner's position.
- ✓ 112. Therefore, even though the reasons given to the petitioner by his immediate supervisor were of a supervisory, disciplinary nature, Ms. Terry, in her supervisory role, requested to fund the position. It was in her role as budget officer that she requested to not fund the petition, even though none of the reasons stated to the petitioner regarding the reasoning behind the

elimination of this petition were anything resembling items that would fall under the jurisdiction of the duties of Budget Officer.

- ✓ 113. The only formal, written notification of the elimination of the petitioner's position was received by the petitioner on Thanksgiving Eve, 2011 at 5:37pm in the form of an unsigned email attachment from the Personnel Director.
- ✓ 114. The petitioner's immediate supervisor recommended that the petitioner's position be eliminated as a means of terminating his employment illegally and without affording the petitioner the protections of the Civil Service Law and the collective bargaining agreement between the County of Schoharie and the Civil Service Employees Association.
- ✓ 115. The county did not realize any net cost savings by eliminating the petitioner's position, as the newly created position that was not eliminated stands at seven pay grades higher than that of the petitioner's and fulfills the exact same duties that were performed by the petitioner in his Grade 12 position, even though many of those duties were not in the petitioner's official job description.
- ✓ 116. The Schoharie County Treasurer produced his own tentative budget, which included funding the petitioner's position in 2012, and indicated at the public hearing that the elimination of the petitioner's position was unnecessary.
- ✓ 117. The elimination of the petitioner's position by the Board of Supervisors was done in bad faith and in an attempt to circumvent the Civil Service Law and/or the provisions of the collective bargaining agreement.
- ✓ 118. The petitioner's immediate supervisor utilized the Budget Officer position in an attempt to rework the County finances as she saw fit and to circumvent all Civil Service Law and the provisions of the collective bargaining agreement by defunding the positions held by those with whom she had a personal conflict with.
- ✓ 119. The petitioner's immediate supervisor has a long history of conducting business in bad faith with regards to personnel issues.
- ✓ 120. The petitioner's immediate supervisor's dislike and mistreatment of the petitioner is evident to those other employees working with and around the petitioner in the same and in other County agencies and departments.
- ✓ 121. Both the petitioner's immediate supervisor and the Personnel Director have at times in the past, when they deem necessary, acted in bad faith regarding proper and ethical hiring practices by having previously unofficially emended job descriptions and qualifications to fit specific individuals and

having created positions with people specifically in mind and gone through the proper interview process as more of a technicality than an actual fair and open competition for individuals to obtain a positioning in a open-competitive civil service position.

- ✓ 122. The petitioner's immediate supervisor, on more than one occasion during this layoff process, made it known to others that the petitioner was luck to be receiving unemployment and that the petitioner should be fired based upon the twelve personal reasons outlined above.
- ✓ 123. The petitioner would like to point out that the Grade 19 Economic Development Marketing Coordinator position is misrepresented in the County budget as being a Grade 16 position. If the reasoning given to the petitioner by his immediate supervisor regarding the fact that his position upgrade was considered to be a "typo" in the County budget because the salary was that of a Grade 16, but the position title still read Grade 12, utilizing the same reasoning, how is it that the Economic Development Marketing Coordinator position can show a salary for a Grade 19 in the County budget but also show a Grade 16 next to the title? Since the petitioner's salary was automatically reverted back to that of a Grade 12 in order to match what showed in the budget, should not the same occur with regard to the Economic Development Marketing Coordinator position? The salary for that position should also be considered a "typo" and automatically revert back to that of a Grade 16, matching what is showing in the County budget.
- ✓ 124. The petitioner's immediate supervisor instructed the petitioner not to come into work after December 20, 2011, even though it clearly states in his layoff notice that his last date of employment was to be December 23, 2011.
- ✓ 125. The petitioner was a grievance against his immediate supervisor on this matter, where her actions were found to be an "egregious violation of the collective bargaining rights" of the petitioner.
- ✓ 126. The petitioner's immediate supervisor also had the petitioner's computer disconnected one week prior to December 23, 2011, with specific instruction to the County Data Processing Department not to hook it back up. The petitioner requested to have his computer hooked back up so that he could complete his work. The petitioner's immediate supervisor denied the petitioner's request.

WHEREFORE, the Petitioner hereby seeks relief as aforesaid pursuant to CPLR Article 78, including reinstatement to his position as Economic Development Assistant, with reimbursement of lost salary from December 23, 2011, fringe benefits and seniority, and for such other and further relief as

may seem just and proper, together with the costs and disbursements of this proceeding.

Dated: April 23, 2012

A handwritten signature in cursive script, appearing to read "Sean Jordan", is written above a horizontal line.

Sean Jordan
191 Merchant Road
Jefferson, NY 12093

VERIFICATION

STATE OF NEW YORK)
COUNTY OF Schoharie) ss.:

Sean Jordan, being duly sworn, deposes and says that I am the petitioner in the above entitled proceeding; that I have read the foregoing Petition and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true.


SEAN JORDAN

Sworn to before me this 23

Day of April, 2012.



Notary Public-State of New York
CAROLYN S. FOLAND
Notary Public, State of New York
No. 04FO6139820
Qualified in Schoharie County
My Commission Expires Jan. 9, 20 14

Section 48

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SCHOHARIE

In the Matter of the Application of

SEAN JORDAN,

Petitioner,

AFFIDAVIT IN OPPOSITION
TO PETITION

-against-

THE COUNTY OF SCHOHARIE,

INDEX NO.: 2012-233

a municipal corporation,

Respondent,

For Judgment Pursuant to CPLR Article 78.

STATE OF NEW YORK }
 }ss.
COUNTY OF SCHOHARIE }

ALICIA TERRY, being duly sworn does depose and say as follows:

INTRODUCTION

1. I currently hold the official title of Director of Planning for the County and have held this position since on or about June 1, 1995.

2. A copy of the official job specification for this position is annexed hereto and made a part hereof as Exhibit "A".

3. Prior to becoming Director, I was a Planner for approximately five years.

4. I have been employed by the County, in various titles, since 1983.

5. Jody Zakrevsky was employed by the County, on a long-term basis, in the title of Director of Economic Development. A copy of the job description for that position is annexed hereto and made a part hereof as Exhibit "B".

6. In December 2010, Mr. Zakrevsky retired.

7. Contrary to the assertion in the petition, Mr. Zakrevsky was not "dismissed."

8. At the time of Mr. Zakrevsky's retirement, there was only one other person in the Department of Economic Development, namely petitioner, who held the title of Economic Development Assistant.

9. A copy of petitioner's official job specification is annexed to the petition as part of Exhibit "A".

10. Upon Mr. Zakrevsky's retirement, the County Board of Supervisors asked me to take on the additional responsibility of overseeing the Economic Development Department.

11. The Board of Supervisors wished to obtain fiscal savings by not hiring another full time person to replace Mr. Zakrevsky.

12. Since it was such a small department, I agreed to do so.

13. I was awarded a small annual salary increase of \$4,511 in recognition of my additional responsibilities.

14. I thus, as the petition alleges, became petitioner's immediate supervisor.

15. Until May 2009, the County Treasurer acted as the Budget Director.

16. For a variety of reasons, the County Treasurer no longer wished to serve as Budget Director for the County.

17. In or about June 2009, the Board of Supervisors asked Paul Brady, Commissioner of Social Services and I to act as Co-Budget Directors, which we agreed to do.

18. In these various capacities, I am fully familiar with virtually all of the allegations contained in the petition.

19. I make this affidavit in opposition to the same.

20. Although there is technically only one stated cause of action in the petition, there seems to be a multitude of complaints, which I will attempt to address on an individual basis.

NOTIFICATION OF MY STATUS AS PETITIONER'S "BOSS"

21. Mr. Zakrevsky retired in December 2010.

22. Prior to his retirement, he and I met with petitioner on November 15, 2010 at 2:00 p.m. at which time we explained that Mr. Zakrevsky was retiring and that I would be functioning as department head. At this time we also discussed the status of petitioner's various projects.

23. On November 22, 2010, Mr. Zakrevsky and I met again with petitioner in an effort to transition myself into the position of head of the Department of Economic Development and petitioner's new "Boss." Again, the status of petitioner's various projects was discussed.

24. A similar meeting occurred on December 2, 2010 and December 9, 2010, during which petitioner had no questions, of me or Mr. Zakrevsky, as to who would be petitioner's new boss/supervisor.

25. On December 15, 2010, I met alone with petitioner to discuss his goals for the impending new year and to discuss our mutual expectations for the position.

26. Again, petitioner did not seem to question my status as his new supervisor.

27. Notwithstanding what seemed clear to everyone else, Cassandra Ethington, the County's Personnel Officer, reported to me that petitioner was demanding formal proof that I was, in fact, validly acting as Director of Economic Development and as petitioner's new boss.

28. Ms. Ethington reported to me that she responded to petitioner, in words or substance, that there doesn't have to be any formal action, Alicia is your boss.

29. I became petitioner's supervisor in or about mid-December 2010.

30. Upon information and belief, a perceived failure by the County to provide petitioner with documentation to his satisfaction that I was, for all intents and purposes, the Director of Economic Development and hence his new "boss" is not a legally recognizable cause of action.

31. Further, upon information and belief, to the extent, if any, this is a legally recognizable cause of action, petitioner's complaints regarding the same are grossly untimely under CPLR Article 78, in that I assumed these responsibilities some sixteen months or more prior to the filing of the within petition.

PETITIONER'S OUT OF TITLE CLAIMS

32. In various enumerated paragraphs of the petition, it is alleged that petitioner was "...working out of title, above and beyond the duties of Economic Development Assistant in many capacities." (Petition, Para. 15)

33. The petition does not give one single concrete example of any such out of title work.

34. For that reason alone, the petition should be dismissed for this gross lack of specificity.

35. A copy of petitioner's official job description is annexed to the petition as part of Exhibit "A".

36. For the approximate one year period that I supervised petitioner, I regularly reviewed his then current projects and assignments.

37. I am unaware of any project or assignment that did not fall well within his official job specification.

38. To the best of my knowledge, information and belief, petitioner's day-to-day duties did not change or increase when I assumed the role of his Director.

39. To some extent, petitioner seems to infer that he was performing the duties of Director of the Economic Development Department.

40. This simply is not true.

41. Petitioner performed no budget related duties. Nor did he perform any supervisory duties, since he was the sole subordinate employee in the Economic Development Department. Nor did petitioner meet with other department heads or with any Oversight Committees or the Board of Supervisors, which is the type of work typically associated with work on the department head level.

42. As the job specification for the position for Director of Economic Development indicates, that was a position which required having close consultation with the Board of Supervisors and any Oversight Committees created by the Board. (Exhibit "B" hereto.)

43. To the best of my knowledge, information and belief, petitioner never once met with the Board of Supervisors or any Oversight Committees.

44. At least no such meetings or responsibilities are cited in the petition.

45. When I met with the former Director and petitioner on multiple occasions in December 2010, as I was transitioning to take over the Economic Development Department, neither the former Director nor petitioner mentioned anything which remotely suggested that petitioner was working out of title.

46. To the best of my knowledge, petitioner worked on the projects that were assigned to him, either by the former Director or me.

47. He never had any overall responsibility for the Economic development Department, and to the extent petitioner suggests otherwise, I firmly believe this to be untrue.

48. Petitioner was first hired in his position on June 11, 2007.

49. The petition alleges that he was working out of title "since the start of his appointment." (Petition, Para. 15)

50. It is respectfully submitted that not only are petitioner's claims of out of title work lacking in merit and specificity, they are grossly untimely under CPLR Article 78.

51. I would further point out that petitioner is represented by a union, namely the Civil Service Employees Association ("CSEA").

52. The County and CSEA are parties to a collective bargaining agreement which would have allowed petitioner to file a grievance if he was, in fact, working out of title, which grievance could have been processed to binding arbitration, had CSEA deemed it to be a meritorious grievance.

53. To the best of my knowledge, information and belief, petitioner never sought to file an out of title grievance and has thus failed to exhaust administrative remedies which were available to him.

FORMER DIRECTOR'S IDEA OF TWO CO-EQUAL POSITIONS

54. In or about December 2010, I met with Mr. Zakrevsky alone, on multiple occasions, in an effort to transition into my new role.

55. At no time did Mr. Zakrevsky ever mention a plan or desire to create two co-equal positions, which would have, as petitioner suggests, made him basically Co-Director of the Department of Economic Development.

56. In any event, upon information and belief, if Mr. Zakrevsky had any such intention, his failure to bring that idea to fruition does not create any legally recognizable cause of action or legal entitlement.

57. Further, even if it did, Mr. Zakrevsky retired in December 2010 and therefore any claim related to this "complaint" would be grossly untimely under CPLR Article 78.

58. The first time I heard of any such idea, was when I first reviewed the within petition.

PETITIONER'S DESIRE TO UPGRADE HIS POSITION

59. Petitioner also alleges or infers, in several portions of the petition, that I supported upgrading his position from a grade 12 to a grade 16.

60. I never supported upgrading petitioner's position to a grade 16 and I never assured him that the upgrade would happen, as alleged in the petition.

61. In one draft budget, there was a typo which seemingly showed petitioner's position as a Grade 16, but on the same budget line the salary shown is that of a grade 12.

62. It is not unusual for a draft budget to misstate a title, a grade level or a salary, but these errors are usually caught before the budget is formally adopted by the Board of Supervisors.

63. There were a variety of reasons that I did not support upgrading petitioner's position.

64. First and foremost, I was new to petitioner's Department and needed time to access all operations.

65. Frankly, I wanted time to access petitioner's contribution to the Department.

66. Further, in taking over the Economic Development Department, it soon became apparent to me that between Planning and Economic Development, we were weak in the marketing area.

67. I therefore worked with the Personnel Officer and with the Board of Supervisors to create a Marketing Coordinator position, which I felt needed to be a Grade 19 if we were going to get qualified applicants, although it was initially set at a grade 16.

68. Having worked with the Board of Supervisors for years as Director of Planning, I anticipated that the Board would not approve the creation of a new Marketing Coordinator position as well as an upgrade of petitioner's position to grade 16.

69. I felt it was far more important to obtain approval of a new Marketing Coordinator position and proceeded accordingly.

70. It is true that petitioner frequently "lobbied" me to have his position upgraded.

71. I referred petitioner to the Personnel Officer who is responsible to handle such matters.

72. Upon information and belief, the Personnel Officer explained to petitioner the steps he needed to take in order to even have an upgrade of his position considered.

73. On or about May 31, 2011, the Personnel Officer gave me what she represented was the paper work petitioner had completed to further his desire to have his position upgraded.

74. What was given to me is the last document included as part of Exhibit "F" to the petition.

75. I did briefly review this document soon after it was given to me.

76. My initial impression was that one of frustration in that it was not in the format which I understood was required and it seemed to overstate or exaggerate petitioner's duties.

77. I put the document aside with every intention to review it over the summer, but I was directing two Departments, functioning as Co-Budget Officer and the summer flew by without me focusing on the matter.

78. On August 28, 2011, a flood of historic and epic proportions occurred.

79. Both the offices of the Department of Economic Development and the Planning Department were destroyed in the flood.

80. After that, I was only able to attend to essential matters and I did not consider petitioner's wish to have his position upgraded one of those matters.

81. Upon information and belief, petitioner has no legal entitlement to have his position upgraded.

82. Upon information and belief, petitioner's complaint that I failed to arrange to have his position upgraded by the Board of Supervisors is grossly untimely under CPLR Article 78.

THE NEW MARKETING COORDINATOR POSITION

83. As Director of Planning, I had often felt a deficit in the area of marketing.

84. In or about the late Fall of 2010, I began working with the Personnel Officer to develop a job specification for such a position.

85. The creation of a new Marketing Coordinator position, at a Grade 16, was authorized in the County's 2011 budget, to my knowledge, well before petitioner asked for a desk audit.

86. When I took over as Director of Economic Development in December 2010, I saw that a Marketing Coordinator position could benefit both Planning and Economic Development in the County.

87. I did not use any of the documents which petitioner gave me in the combined efforts to create the official job specification for the Marketing Coordinator position.

88. As the job specification for the Marketing position indicates, it was created in December, 2010. Petitioner did not give me his "job classification questionnaire" until May 31,

2011 and I did not get the paperwork petitioner had prepared in furtherance of having his position upgraded until May 31, 2011. (See the last document in Exhibit "F" to the petition.)

89. In this document, petitioner purports to describe the day-to-day tasks he performs and the amount of time given to each group of tasks.

90. A comparison of this document with the official job specification for the Marketing Coordinator position (Petition, Exhibit "A") makes clear that I did not use any of petitioner's material in the effort to create the job specification for the Marketing Coordinator position.

91. For example, the document given to me by petitioner recites that he spends 60% of his time performing fairly mundane tasks such as assisting businesses in personal financial statements, tax returns, balance sheets, cash flow analysis, business plans, financial projections and the like.

92. In contrast, the job specification for the Marketing Coordinator position (Petition, Exhibit "A") makes clear that this position does not involve routine/mundane tasks but involves strategic and discretionary actions to attract and retain business and employment in the County.

93. As to petitioner's complaint that he was not advised when the Marketing Coordinator position was posted, it is true that I did not tell petitioner that the job was posted.

94. As a practice I do not tell employees of such posting as I fear if I did so, it might be interpreted as a showing favoritism of one candidate over another.

95. The position was posted on the County's website and advertised in three weekly newspapers. The position was also posted on various bulletin boards in the County Office Buildings where such matters are customarily posted.

96. I have no idea how petitioner could have, as he claims, missed this posting.

97. I also have no knowledge of anyone removing supposed printings of the County's website regarding posting from petitioner's desk, as alleged in Paragraph "52" of the petition.

98. In the end, petitioner did get a timely application in for the marketing position and was interviewed for the position.

99. A total of eight people applied for the Marketing Coordinator position.

100. The interviews were conducted by myself and Shane Nickle, a long-term Senior Planner in the Planning Department, using a standard list of questions for each applicant.

101. Mr. Nickle and I agreed that two applicants were on the low side of consideration, four were in the middle and two we both considered outstanding candidates, based upon a combination of education, experience and the interview.

102. The names of the two individuals we considered highly qualified were submitted for consideration by the Oversight Committee.

103. The Oversight Committee interviewed both candidates and ultimately split on which candidate should be selected.

104. The Oversight Committee therefore left the selection to me and I selected Sarah Blood Szentmiklosy.

105. The selected candidate is submitting an Affidavit in this proceeding in which she details her qualifications for the marketing position, which will not be repeated here.

106. I believe her resume and experience make it apparent that she is much more qualified for the position, petitioner's unsupported protestations to the contrary notwithstanding.

107. As soon as a firm decision was made, I informed petitioner that he had not been selected for the position.

108. That conversation took place on or about June 13, 2011.

109. I never told petitioner that I was looking for someone with 20-25 years of experience.

110. As the job specification for the Marketing Coordinator position makes clear, dependent upon educational background, the level of experience sought ranges between one and four years.

111. Contrary to the assertion in the petition, I did not "arbitrarily" seek to advertise the Marketing Coordinator position at Grade 19. Rather I felt the salary level associated with a Grade 19 was necessary to attract qualified candidates.

112. Upon information and belief, to the extent petitioner complains of his non-selection for the marketing position, his complaint is grossly untimely under CPLR Article 78 as the marketing position was filled on August 22, 2011 and the within petition was not filed until April 2012.

DECISION TO LAYOFF PETITIONER

113. As Director of Planning, I have routinely performed annual performance reviews with departmental employees.

114. As of November 2011, I had supervised petitioner for almost a year.

115. I thought it prudent to sit down with him and review his performance, which I did.

116. Petitioner and I met on November 14, 2011 for that purpose.

117. I did discuss most of the concerns reflected in Exhibit "T" to the petition, however not in the tone which petitioner suggests.

118. My greatest source of frustration was that petitioner was late for work on a too frequent basis, he sometimes missed meetings without sufficient reason, he constantly tried to

explain away not responding to my emails by saying they "must have gone into his spam folder" and failed to follow-up on questions or concerns expressed by members of the Board of Supervisors regarding which I received numerous complaints.

119. All this was occurring when he was spending an inordinate amount of time apparently promoting a personal business on eBay at work, as indicated by a review of his office computer.

120. When I brought these matters to petitioner's attention, I intended them to be a frank, but friendly, indication that petitioner needed to "up his game."

121. Insofar as I could determine, petitioner was not at all receptive to recognizing that there were areas where he needed to improve his performance.

122. I had no intention of disciplining petitioner and was fully prepared to work with him in improving his work performance, as I have done over the years with many employees.

123. As department head, it was my strong preference to preserve petitioner's position as I know all too well once a position is eliminated it is very difficult to get it back.

124. Thus, petitioner is correct, in stating that when I submitted a proposed budget for both Planning and Economic Development, his position was funded.

125. However, at the same time, I was also acting as Co-Budget Director.

126. On or about October 28, 2011 and November 2, 2011 Mr. Brady and I, as Co-Budget Directors, met with Robert Mann, Chairman of the Finance Committee to discuss the tentative budget.

127. On or about November 9, 2011, Paul Brady and I, as Co-Budget Directors, presented a draft County budget to the Finance Committee of the Board of Supervisors.

128. Robert Mann, is Chairman of the Finance Committee.

129. After analysis by the Chairman of the Finance Committee, it was determined that the draft budget would result in an approximate 16+% tax increase in the County, which was understandably found to be unacceptable, especially given the current statutory tax cap.

130. Mr. Brady and I were told by Robert Mann , in no uncertain terms, to go back to the drawing board for further cuts and to return with a budget which would be in the single digits.

131. Mr. Brady and I did as we were directed.

132. As Director of Planning and Economic Development, I scrutinized all positions for elimination, my own position being the only exception.

133. My two Departments, I felt, were in a particularly vulnerable position because the Finance Committee Chairman's directive, in part, was to give close scrutiny to all non-mandated programs and positions.

134. Neither Planning nor Economic Development are mandated programs and thus there are no mandated positions.

135. In the two Departments, I had ten positions.

136. As department head, I would have liked to hold onto all of these positions, including petitioner's position.

137. However, as Co-Budget Director, I felt I needed to set an example for other department heads who were being asked to come up with positions in their departments to be eliminated.

138. One of these ten positions (Agricultural Marketing Specialist, Grade 18) was vacant and I determined to leave it vacant, at an approximate fiscal savings of \$52,983.

139. After careful analysis of the missions of both Departments, I determined that as department head I would also recommend elimination of two other positions from the 2012 budget.

140. These positions were petitioner's position and the Planner Assistant grade 9 position.

141. In selecting petitioner's position and the Planner Assistant position for elimination from the 2012 budget, I had to determine which positions were non-essential to the mission of the two Departments.

142. It was not an easy decision, but I felt the remaining positions, namely my own position, a Senior Planner position, a Planner position, a part-time Planner position, the GIS Specialist position and Office Manager position were more essential than petitioner's position and the Planner Assistant position.

143. The fiscal savings by the elimination of petitioner's position was \$40,566, which does not account for the cost of his fringe benefits, which typically are approximately 51% of base salary.

144. The fiscal savings by the elimination of the Planner Assistant position was \$25,819, which does not account for the cost of fringe benefits, which typically are approximately 51% of base salary.

145. There really was no "creative" way to realize the needed fiscal savings to the two Departments without impacting personnel.

146. In the Economic Development Department, personnel costs account for approximately 87% of the overall departmental budget.

147. In the Planning Department, personnel costs account for approximately 91% of the overall departmental budget.

148. The elimination of petitioner's position was reflected in the tentative budget presented the Finance Committee on or about November 9, 2011.

149. To the best of my knowledge 37 County positions were recommended for elimination in the 2012 tentative budget.

150. Approximately 15 of those 37 of those were Correction Officer positions. As a result of the August 28, 2011 flood, the County jail was destroyed, which meant that inmates could not be housed there . However, a FEMA grant allowed the County/Sheriff to avoid the layoff of 15 Corrections Officer until on or about June 30, 2012. In the interim, many Correction Officers have resigned and as of June 30, 2012, it is anticipated that the loss of this FEMA grant will only require the layoff of approximately 5 remaining Correction Officers, on or about June 30, 2012.

151. The remaining 22 County positions which were slated for layoff in the tentative budget were whittled down so that, upon information and belief, the 2012 budget as finally adopted by the Board of Supervisors, resulted in the layoff of 10 full time employees.

152. On or about November 14, 2011 I personally advised petitioner that while as department head I would have liked to hold onto his position, as Co-Budget Officer I had no choice but to recommend elimination of his position, along with the others as indicated above.

153. Petitioner was well aware that the final decision as to what positions would be eliminated from the 2012 budget was up to the Board of Supervisors.

154. Thus, petitioner began a campaign to save his position by lobbying many members of Board of Supervisors and members of the business community.

155. Unfortunately, petitioner chose to do this on County time and I received many complaints about his doing so.

156. I therefore had to caution petitioner not to use County time for this purpose.

MISCELLANEOUS ALLEGATIONS

157. Upon information and belief, petitioner also consulted with CSEA for the purpose of saving his position from elimination.

158. Upon information and belief, petitioner was told by CSEA that there was no lawful basis to challenge the elimination of his position for reasons of economy.

159. CSEA did not file a grievance over the elimination of petitioner's position and the time to do so has long ago lapsed.

160. As to Petition, Exh. "M", petitioner greatly exaggerates his supposed involvement in the projects listed therein.

161. In preparation for the submission of this affidavit, I used office files to research petitioner's actual role, if any, in these various projects.

162. I can say with certainty, that petitioner had virtually no involvement, that is to say no meaningful involvement, in the following projects: Sharron Springs Wastewater System (\$1,000,000), Adult Workforce Training Center (\$143,663), Rt. 7 water/wastewater (\$4,100,00).

163. My research also indicated that petitioner's representations notwithstanding, the former Director of Economic Development, Jody Zakresky, was the person responsible for the following projects, with petitioner having little or any input regarding the same: Blenheim Pharmacal (\$50,000), MESA Technical Associates (\$100,000), Schoharie Business Park (\$250,000), Schoharie County Microenterprise Loan Program (\$267,000), Maranatha Family Center (\$650,000) and Pavilion Cottages (\$500,000).

164. At a public budget meeting held on or about December 9, 2011, petitioner and others did read statements in support of saving various jobs slated for elimination in the 2012 budget.

165. I was present for such meeting, which was attended by possibly 100 County employees.

166. As I recall, no member of the public spoke in favor of the proposed 2012 budget, but my own sense was that any member of the public who wished to do so was likely intimidated from doing so given the chaotic/tense atmosphere at the meeting.

167. I have been a department head for 17 years and have never before been accused of conducting personnel matters in bad faith.

168. After the August 28, 2011 flood, our offices were not able to relocate back to the County office building until on or about December 19, 2011.

169. In that petitioner's layoff was effective only a few days later, I did not have his computer hooked up, as I had many other higher priorities in trying to resettle into our offices.

170. I also told petitioner not to come to work from December 20, 2011 to December 23, 2011, the effective date of his layoff, since there was literally no work for him to do.

171. When I was told by the County labor counsel that I could not make petitioner use his compensatory time for such days, I readily agreed to restore his payroll status for these three days.

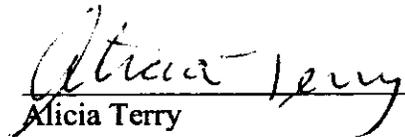
CONCLUSIONS

172. Layoffs of public employees are never pleasant and I certainly took no pleasure in recommending petitioner's position for elimination in the County's 2012 budget.

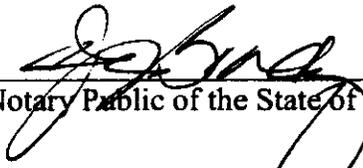
173. If I, like all other department heads, were not constrained by the fiscal realities which the flood and the resultant crushing of the County's tax base caused, I would have been only too happy to have petitioner continue in his position and would have worked with him to help him mature and grow in that position.

174. I recommended the elimination of petitioner's position, along with two others in the Departments, because of the need to keep the County 2012 tax increase below the 2% statutory cap.

175. For all of the above reasons, it is respectfully requested that the petition be dismissed in it's entirety.


Alicia Terry

Sworn to before me this
31st day of May 2012.


Notary Public of the State of New York

PAUL J. BRADY
Notary Public, State of New York
No. 4841076
Residing in Schoharie County
My Commission Expires Feb. 28, 2014

Section 49

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SCHOHARIE

In the Matter of the Application of

SEAN JORDAN,

Petitioner,

AFFIDAVIT IN OPPOSITION
TO PETITION

-against-

THE COUNTY OF SCHOHARIE,

INDEX NO.: 2012-233

a municipal corporation,

Respondent,

For Judgment Pursuant to CPLR Article 78.

STATE OF NEW YORK }
 } ss.:
COUNTY OF SCHOHARIE }

CASSANDRA ETHINGTON, being duly sworn does depose and say as follows:

INTRODUCTION

1. I am the duly appointed Personnel Officer for Respondent Schoharie County and have held this position since on or about January 25, 2006.
2. The term of most my recent statutory six year appointment will expire on January 24, 2018.
3. As Personnel Officer, I am responsible to advise the County Board of Supervisors and department heads with respect to compliance with the New York State Civil Service Law, as well as related laws and regulations.
4. Pursuant to the Civil Service Law, I am responsible for all matters involving the appointment of civil service employees in a variety of classifications.

5. I also play a significant role in the collective bargaining with the union which represents petitioner and most other County employees, and the administration of the resultant collective bargaining agreement.

6. I am fully familiar with many of the allegations contained within petition and make this affidavit in opposition to the same.

7. Although there is technically only one stated cause of action in the petition, there seems to be a multitude of complaints, which I will attempt to address on an individual basis.

NOTIFICATION OF ALICIA TERRY'S STATUS AS PETITIONER'S "BOSS"

8. In or about December 2010, Jody Zakrevsky retired as the long term Schoharie County Director of Economic Development.

9. As a cost savings measure, the County Board of Supervisors determined not to replace Mr. Zakrevsky and instead asked Alicia Terry, who was the long term County Director of Planning, to take over responsibility for the Economic Development department.

10. In recognition of these additional responsibilities, the Board of Supervisors conferred on Ms. Terry an annual monetary stipend of \$4,511.

11. Notwithstanding what seemed clear to everyone else, petitioner repeatedly asked me, or sometimes my Personnel Assistant, for formal proof that Ms. Terry was, in fact, validly acting as Director of Economic Development and as petitioner's new boss.

12. I or my assistant repeatedly assured petitioner, in words or substance, that we didn't have to take any formal action, Ms. Terry was his boss.

13. I did not mean to be curt with petitioner, but no matter how many times I told him Ms. Terry was now his boss, he either failed or refused to accept this as fact.

14. Upon information and belief, a perceived failure by me or the County to provide petitioner with documentation to his satisfaction that Ms. Terry was, for all intents and purposes,

the Director of Economic Development and hence his new "boss" is not a legally recognizable cause of action.

15. Further, upon information and belief, to the extent, if any, this is a legally recognizable cause of action, petitioner's complaints regarding the same are grossly untimely under CPLR Article 78, in that Ms. Terry assumed these responsibilities in December 2010 some sixteen months or more prior to the filing of the within petition.

PETITIONER'S OUT OF TITLE CLAIMS AND RELATED CLAIMS

16. In various enumerated paragraphs of the petition, it is alleged that petitioner was "...working out of title, above and beyond the duties of Economic Development Assistant in many capacities." (Petition, para. 15)

17. The petition does not give one single concrete example of any such out of title work.

18. I have some general knowledge of what petitioner actually did by virtue of his job specification, which originated in my office and is annexed to the petition as part of Exhibit "A".

19. To the best of my knowledge, petitioner worked on discrete projects that were assigned to him, either by the former director or Ms. Terry, which projects were within his job description.

20. As Personnel Officer, out of title work complaints are required to be brought to my attention, or they may be grieved by CSEA in accordance with the collective bargaining agreement.

21. The first time petitioner indicated to me that he thought he was working out of title was on or about February 21, 2011.

22. Petitioner complained to me on several occasions thereafter that he believed he was working out of title, but he never shared any specifics of this claim.

23. On each such occasion, I told petitioner that if he believed he was working out of title, he needed to contact his union, CSEA, which was in a position to file a contractual grievance if it concurred that petitioner was working out of title and/or fill out a job classification questionnaire in accordance with the CSEA contract.

24. I never received any such grievance from CSEA.

25. At or about the same time, petitioner indicated to me that he also believed his title should be reallocated from his current grade level of 12 to a higher pay grade.

26. I explained to petitioner, on more than one occasion, that if he wanted his position to be reclassified to some higher level position with a different title, he needed to do what is commonly called a "job classification questionnaire" and gave him the paperwork which needed to be completed for that purpose.

27. I emphasized to petitioner that once he completed the "job classification questionnaire" he needed to have it reviewed and approved by his department head, which was Alicia Terry.

28. I further explained to petitioner, on more than one occasion, that if he believed that his current title was correct, but believed those responsibilities justified a higher pay grade, those matters were, pursuant to the collective bargaining agreement between the County and CSEA only considered in May of each year and that he needed to have his request for the upgrade submitted to me by CSEA.

29. I never received a request from CSEA or the petitioner to reallocate petitioner's position.

30. Nor did CSEA ever grieve that petitioner was working out of title, although I receive such grievances from CSEA on a somewhat regular basis.

31. With respect to the "job classification questionnaire," petitioner never submitted the questionnaire. Instead, in May 2011 petitioner submitted a written document in which he

sought to describe his duties. However, this document had not been reviewed by or completed by Ms. Terry, petitioner's department head, as I told petitioner was required. This is the last document attached to the petition as Exhibit "F".

32. I also noted that the paperwork was not on the form I had provided petitioner, but still encouraged Ms. Terry to look it over.

33. To the best of my knowledge, information and belief, the summer passed without further consideration of the reclassification of petitioner's position.

34. A historic flood occurred on August 28, 2011 which dealt such a cruel blow to the County and all departments therein, that other more essential matters required my attention and that of Ms. Terry.

35. To the best of my knowledge, information and belief, petitioner has no legal right to have his position upgraded or reclassified unless he or CSEA take the burden of proving actual and specific out of title work, which did not happen in this case.

36. I never assured petitioner that his position would be reallocated or upgraded, as it is not within my power to do so. I can only guide him through the process, which I tried to do.

37. Upon information and belief, he has thus failed to state a cause of action for which relief may be granted.

38. When department heads are considering a reclassification of a position, they normally consult with me as Personnel Officer.

39. Jody Zarevsky never consulted with me about the idea of creating two co-equal positions.

40. The first time I heard of any such idea, was when I first reviewed the within petition.

41. The petition alleges that he was working out of title "since the start of his appointment." (Petition, para. 15)

42. It is respectfully submitted that not only are petitioner's claims of out of title work lacking in specificity and merit, they are grossly untimely under CPLR Article 78.

**PETITIONER'S NON-SELECTION FOR THE NEW MARKETING
COORDINATOR POSITION**

43. In or about November 2010, Ms. Terry sought my assistance in the creation of a Marketing Coordinator position to serve both the Planning and Economic Development departments.

44. The final job specification was adopted in December 2010 (see Petition, Exhibit "A").

45. The Board of Supervisors had funded the position in the 2011 County budget, at a grade 16, but did not give clearance to actually fill the position until sometime in February or March 2011.

46. By the time the Board of Supervisors gave approval to actually fill the position; Ms. Terry had also obtained approval to advertise the position as a grade 19, which she felt was necessary to attract quality candidates due to the high level of administrative responsibilities associated with the position. I concurred in this decision.

47. As to petitioner's complaint that he was not advised when the Marketing Coordinator position was posted, it is true that I did not tell petitioner that the job was posted.

48. As a practice I do not tell employees of such postings as I fear if I did so, it might be interpreted as a showing favoritism of one candidate over another and as Personnel Officer, I must remain strictly neutral on such matters.

49. The Marketing Coordinator position was posted on the County's website and advertised in three newspapers. The position was also posted on various bulletin boards in County offices where such matters are customarily posted in accordance with the CSEA contract.

50. I have no idea how petitioner could have, as he claims, missed this posting.

51. I also have no knowledge of anyone removing supposed printings of the County's website regarding postings from petitioner's desk, as alleged in paragraph "52" of the petition.

52. In the end, petitioner did get a timely application in for the Marketing Coordinator position and was interviewed for the position.

53. A total of eight people applied for the marketing position.

54. I never told petitioner that he did not meet the minimum qualifications for the Marketing Coordinator position. If I had felt he did not meet the minimum qualifications for the position, I would not have passed his application on for further consideration, which it is uncontested that I did.

55. I passed those applications on to Ms. Terry, as department head.

56. Absent unusual circumstances, I do not participate in such interviews and did not participate in the interviews of the applicants for the new Marketing Coordinator position.

57. Ms. Terry never stated to me that she was looking for someone with 20-25 years of experience.

58. In fact, that level of experience would be contrary to the minimum qualifications for the Marketing Coordinator position, which, dependent upon educational background, requires only one to four years of relevant experience. (Petition, Exhibit "A")

59. Petitioner also seems to suggest that the provisional Marketing Coordinator position should have been eliminated from the 2012 budget before his position. Under the Civil Service Law, that would only be required if the two positions were in the same title, which they were not.

DECISION TO LAYOFF PETITIONER

60. As a department head, I was well aware of the mandate from the Finance Committee to review all non-essential programs and positions for possible elimination in the 2012 budget.

61. I was also well aware that the first tentative budget presented by the Co-Budget Officers to department heads indicated a 16+% tax increase unless positions were eliminated.

62. For the most part, to my knowledge, department heads and/or the co-Budget Directors or the Chair of the Finance Committee determined the titles to be proposed to be unfunded in the 2012 budget.

63. Those titles went on a list, which was made available to CSEA and others, upon request.

64. Internally, my office had to take that list and through an analysis of seniority and attendant bumping or retreat rights, develop a separate list of what employees were likely to lose their positions as a result of these fiscal efforts.

65. That list was not made available to anyone, as I did not wish to alarm any individuals in view of the fact that, from my experience, the list of title changes as the budget process progresses.

66. Additionally, the collective bargaining agreement requires that employees, who will actually lose their positions as a result of layoff, are to receive 30 days written notice of the same.

67. As a matter of prudence, it was my intention to maintain confidential the list of employees who likely or actually would lose their positions until such time as the CSEA contract required notice.

68. That list was taken without authority from my office and unfortunately caused considerable misunderstanding and upset within the County.

69. This so called "second list" was a necessary function of my office.

70. It was not, as alleged in the petition, created to instill "fear and intimidation."

71. The Finance committee met in the week leading up to and on the afternoon of the day after Thanksgiving 2011, at which meeting a final determination was made as to which positions would be recommended to be defunded in the 2012 budget.

72. After that final determination, I was able , using this "second list", to determine what employees would actually lose their positions.

73. It was my job, as directed by the Finance Committee, in which I took no pleasure, to provide to provide the 30 days written notice to individual employees required by the CSEA contract, which was the purpose of my November 23, 2011 email to petitioner. (Petition, Exhibit "B")

74. As a result of the 2012 budget as finally adopted by the Board of Supervisors, ten County employees actually lost their full time positions. Another five Correction Officers will lose their full time positions on or about June 30, 2012 due to the lapse of FEMA funding which saved these positions for the first half of the 2012 fiscal year.

MISCELLANEOUS ALLEGATIONS

75. Upon information and belief, petitioner also consulted with CSEA for the purpose of saving his position from elimination.

76. Upon information and belief, petitioner was told by CSEA that there was no lawful basis to challenge the elimination of his position for reasons of economy.

77. CSEA did not file a grievance over the elimination of petitioner's position and the time to do so has long ago lapsed.

78. At a public budget meeting held on or about December 9, 2011, petitioner and others did read statements in support of saving various jobs slated for elimination in the 2012 budget.

79. I was present for such meeting, which was attended by possibly 100 County employees.

80. As I recall, only one member of the public spoke in favor of the proposed 2012 budget, but my own sense was that the members of the public in attendance at this meeting were likely intimidated from doing so given the chaotic/tense atmosphere at the meeting.

81. The proposed budget submitted by the County Treasurer did propose funding petitioner's position and many others slated for abolishment.

82. However, that budget was balanced by accessing reserves which would have left the County with little or no reserves for future urgencies or contingencies.

83. As well intended as the County Treasurer's proposed budget might have been, it was not adopted by the Board of Supervisors.

84. Ms. Terry conferred with me about her concern that petitioner literally had no work to do between December 20, 2011 to December 23, 2011, the effective date of his layoff.

85. I concurred with Ms. Terry that she should just have petitioner stay at home for those days and use his compensatory time to keep him in a paid status, which I believed was legal.

86. CSEA filed a grievance over this decision.

87. When I was told by the County labor counsel that this was not permitted, I readily agreed to restore his payroll status for these three days. *

88. With respect to the unsupported and unspecified allegations contained in paragraph 121 of the petitioner, to the affect that I design positions to favor particular persons, I am reluctant to even dignify that allegation with a response, but for the record vehemently deny those allegations.

CONCLUSIONS

89. Layoffs of public employees are never pleasant and an employee's resistance to the same is understandable.

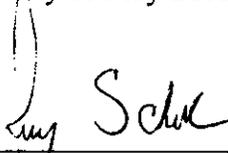
90. However, petitioner's position was eliminated from the County's 2012 budget due to reasons of economy and only reasons of economy.

91. For all of the above reasons, it is respectfully requested that the petition be dismissed in its entirety.



Cassandra Ethington

Sworn to before me this
31st day of May 2012.



Notary Public of the State of New York

RUEY SCHELL
Notary Public - State of New York
No. 4967270
Qualified in Schoharie County
My Commission Expires May 29, 2014

Section 50

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SCHOHARIE

In the Matter of the Application of

SEAN JORDAN,

Petitioner,

-against-

THE COUNTY OF SCHOHARIE,
a municipal corporation,

Respondent,

AFFIDAVIT IN OPPOSITION
TO PETITION

INDEX NO.: 2012-233

For Judgment Pursuant to CPLR Article 78.

STATE OF NEW YORK }
 } ss.:
COUNTY OF SCHOHARIE }

SARAH BLOOD-SZENTMIKLOS, being duly sworn does depose and say as follows:

1. I was hired by Schoharie County on August 22, 2011 in the newly created position of Economic Development Marketing Coordinator ("Coordinator").
2. I hold this position on a provisional basis, until such time as a civil service test is administered for the same.
3. I am familiar with some of the many allegations contained in the petition and submit this affidavit in opposition to the same.
4. I am not familiar with petitioner's educational and experiential background and therefore cannot comment on whether he was qualified to be considered for the Coordinator position to which I was appointed.
5. However, I do consider myself well qualified for the position.
6. The official job specification and the minimum qualifications for the Coordinator position is annexed to the petition as part of Exhibit "A".

7. I hold an M.B.A. from SUNY IT, located in Utica, New York, which degree was awarded in May, 2007.
8. I hold a B.S. from SUNY Oswego, where my major was Agricultural Education.
9. I also hold three associate degrees from SUNY Morrisville in the areas of animal science, agricultural business and agricultural marketing.
10. A copy of my application for the Coordinator position, which includes references and my resume is annexed hereto and made a part hereof as Exhibit "A."
11. Over the many years to obtain my various degrees, I was employed by Wrangling Hollow Consulting, located in the Town of Cobleskill, which is in Schoharie County.
12. Dependent upon my studies, I sometimes worked full time for this firm, and sometimes on a part time basis.
13. Wrangling Hollow Consulting's primary business is marketing, business planning and business development.
14. During the years while employed by Wrangling Hollow Consulting I performed a variety of functions, many of which related to agricultural marketing.
15. From approximately March 2009 to December 2010, I worked as Committee Director for the New York State Senate Agricultural Committee where I analyzed agricultural related bills, including legislation to enhance the success of agricultural communities, such as Schoharie County.
16. From May 2006 to March 2009, I worked as a Program Manager for the NYS Department of Agriculture and Markets, where I worked on many functions, including directing all publicity and consumer awareness programs, which are largely marketing functions.

17. When I began work for the County on August 22, 2011, I shared an office with petitioner at the County office building.

18. The historic flood occurred on August 28, 2011. Several weeks afterward, my office was moved to a building in Cobleskill and I continued to share office space with petitioner.

19. During the beginning of my employment, I did ask petitioner about his areas of responsibilities and day to day tasks.

20. Contrary to petitioner's assertion, these were innocent questions asked in an effort to get to know the organization, which was obviously new to me.

21. Further contrary to the assertions in paragraph "65" of the petition, at no time did I tell petitioner that I had "no experience in marketing or economic development". Such a conversation never took place.

22. It is also untrue that petitioner, at any time, was "tasked with teaching [me] the ins and outs of economic development" as alleged in paragraph "67" of the petition.

23. In fact, when I attempted, in what I believed was a very friendly and professional manner, to find out about what petitioner actually did, I found him defensive and evasive.

24. Contrary to the assertions in paragraph "69" of the petition, I never had any conversation with Alicia Terry, the department head "in which [I] admitted to Ms. Terry that [I] had no experience in marketing."

25. I had just been hired as the Economic Development Marketing Coordinator and ask the Court to consider how likely is it, that a newly hired person in such a position, would admit to the boss that they had no marketing experience.

26. In any event, as the annexed resume and letters of recommendation make clear, as a factual matter, I do have considerable experience in the area of marketing, especially in the agricultural field.

27. As the Court may be aware, agriculture is a large part of the County's business and culture.

28. In paragraphs "84" and "85" of the petition, it is suggested that I refused to share my calendar with petitioner for some nefarious reason.

29. Most of us in the office used the "google " shared calendar system.

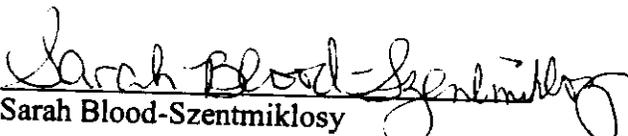
30. Petitioner was able to access my work calendar, as is evident from Exhibit "G" to the petition.

31. From that shared calendar, petitioner was able to see when I was otherwise engaged.

32. I did not see any reason or need for petitioner to know the specifics of why I was busy at any particular time.

33. In any event, upon information and belief, my privacy settings on a shared electronic work calendar do not create any legally recognized cause of action.

34. I respectfully request that the Court consider this information in a determination to dismiss the petition.


Sarah Blood-Szentmiklosy

Sworn to before me this
31 day of May 2012.


Notary Public

KAREN A. MILLER
Notary Public - State of New York
Appointed in Schoharie County
Registration No. 01M16167796
My Commission Expires June 4, 2015