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SERVICE BY FAX NOT ACCEPTED

PETER B. McHUGH, Retired

MAX H. HERSHKOWITZ
(1933-2000)

March 18, 2015

Columbia County Clerk
560 Warren Street
Hudson, New York 12534

Re: Czajka v. Dellahunt
Index No. 5395-12

Gentlemen:

With regard to the above matter I enclose the following for filing:

1. Notice of Motion with supporting Affidavit of Peter V. Coffey;
2. Memorandum of Peter V. Coffey;
3. Affidavit of Paul Czajka;
4. Affirmation of James A. Carlucci;
5. Affidavit of Ryan Carty;
6. Affidavit of Lisa Bleau;
7. Affidavit of Michael J. Hutter;
8. Copy of Record on Appeal;
9. Copy of Brief of Petitioner-Appellant;
10. Copy of Respondent-Appellant's Brief;
11. Copy of Reply Brief ro Respondent-Respondent-Appellant;
12. Affidavit of Service by mail;
13. Check in the amount of $45.00 to cover the motion fee.

Please date stamp the copy of this letter and return same in the self-addressed, stamped envelope which is also enclosed.

Very truly yours,

PETER V. COFFEY

PVC:mm
cc: Hon. Kevin M. Dowd (courtesy copy)
David C. Rowley, Esq.

STATE OF NEW YORK
SUPREME COURT COUNTY OF COLUMBIA

In the matter of the Application of Paul Czajka, in his capacity as District Attorney, Columbia County, New York, Petitioner, for Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner.

NOTICE OF MOTION

-against-

Index #5395-12

David A. Dellehunt, as Town Justice of the Town of Kinderhook and Village Justice of the Village of Kinderhook,

Respondent.

PLEASE TAKE NOTICE, that upon the Affirmation of Nikita M. Valcik, sworn to on the 17th day of March, 2015 and Paul Czajka sworn to on the 17th day of March, 2015, the Affirmation of James A. Carlucci, sworn to on the 17th day of March, 2015, the Affidavit of Ryan Carty, sworn to on the 17th day of March, 2015, the Affidavit of Lisa Bleau, sworn to on the 17th day of March, 2015, Affidavit of Michael J. Hutter, sworn to 16th day of March, 2015, the Memorandum of Peter V. Coffey, dated the 17th day of March, 2015 and upon all the pleadings and proceedings had herein, a motion will be made at a term of this Court, to be held in and for the County of Columbia, at the Columbia County Court House, Hudson, New York, on the 15th day of April, 2015 at 10:00 a.m., or as soon thereafter as counsel can be heard, for an Order pursuant to CPLR §3212:

1. Granting the Petitioner partial Summary Judgment against the Respondent, dismissing the portion of this proceeding as directed by the Appellate Division as it pertains to the assertion that Paul Czajka was involved in the alteration of an original Order to Show Cause and that he consciously failed to appropriately inform the Court(s) of such alteration;

2. The costs of this motion, and

3. For such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b), answering affidavits, if any, must be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: March 17, 2015

PETER V. COFFEY, ESQ.
Englert, Coffey, McHugh & Fantauzzi, LLP
Attorneys for Petitioner
224 State Street
Schenectady, New York 12305
(518) 370-4645

TO: David C. Rowley, Esq.
Cooper, Erving & Savage, LLP
39 North Pearl Street, Fourth Floor
Albany, NY 12207

STATE OF NEW YORK
SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of PAUL CZAJKA, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner

-against-

David A. Dellehunt, as Town Justice of the Town of Kinderhook and Village Justice of the Village of Kinderhook,

Respondent.

----------X

ATTORNEY'S AFFIRMATION

Index No. 5395-12

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

PETER V. COFFEY, ESQ. on penalty of perjury, deposes and says:

1. I am an attorney, duly licensed to practice before the Courts of this State. I am a member of the law firm of Englert, Coffey, McHugh & Fantauzzi, LLP, attorneys for Paul Czajka, named as Petitioner herein. I am familiar with the facts and circumstances of this action.

2. I make this affirmation in support of the said Petitioner's motion for partial summary judgment, dismissing the portion of this proceeding as directed by the Appellate Division to be held as it pertains to the assertion that Paul Czajka was involved in the alteration of an original Order to Show Cause and that he consciously failed to appropriately inform the Court(s) of such alteration.

3. That as this action involved an appeal to the Appellate Division and a Decision as will be seen I submit to the Court the Record on Appeal and will set forth the pleadings hereinafter with reference to their place in the Record on Appeal.

4. This action was commenced in December of 2012, by the filing of the Order to Show Cause with the Clerk of the County of Columbia (R125A). The Order to Show Cause was based upon a Verified Petition signed by Petitioner, Paul Czajka (R125C). The Order to Show Cause was signed by Judge Doyle on Friday, December 21, 2012. Service was directed to be completed by fax and overnight mail by 4:00 p.m. on the following Monday, December 24, 2012 upon the Respondent. Opposing papers were required to be filed with the Supreme Court by 4:00 p.m. on Thursday, December 26, 2012. The signed Order to Show Cause was served on the Respondent, David A. Dellehunt, via facsimile, on Friday, December 21, 2012 – see **Exhibit "A"** attached hereto.

5. Thereafter there came into existence an Amended Order to Show Cause (R126A) which was thereafter served on the aforesaid Respondent. The Amended Order to Show Cause added the capacity of David A. Dellehunt as "and Village Justice" in addition to his previously designated capacity as Town Justice. This Amended Order to Show Cause was thereafter served upon via facsimile on December 21, 2012 – see **Exhibit "B"**.

6. Thereafter the Affidavits of Service of the original Order to Show Cause and the Amended Order to Show Cause were forwarded to Judge Doyle – see **Exhibit "C"**.

7. Thereafter Judge Doyle issued a Decision dated December 31, 2013 (R24-30).

8. Thereafter in opposition to the Petition there was submitted the Affirmation of David C. Rowley (undated) (R96-101) with decisions attached thereto and the Affidavit of Hon. David A. Dellehunt sworn to January 8, 2013 (R113).

9. Additionally there was submitted the Verified Answer of Respondent dated January 8, 2013 (R32).

10. Thereafter Respondent, Hon. David A. Dellehunt brought an Order to Show Cause signed by Judge Devine (R10). In support of the Order to Show Cause there was submitted the Affirmation of David C. Rowley (R11).

11. In opposition thereto was submitted the Affirmation of Paul Czajka dated January 15, 2013 (R213).

12. Thereafter in support of the Order to Show Cause is the Affirmation of David C. Rowley dated February 27, 2013 (R241).

13. Thereafter in opposition to the Order to Show Cause was submitted the response of Paul Czajka dated February 28, 2013 (R258) and the Affidavit of Paul Czajka dated March 5, 2013 (R272).

14. The matter was heard before Judge Dowd who rendered a Memorandum, Decision and Order dated July 5, 2013 (R5-8).

15. Thereafter Petitioner took an appeal by filing a Notice of Appeal dated September 20, 2013 (R3) and Respondent additionally filed his Notice of Appeal dated December 8, 2013 (R4a).

16. The Appellate Division issued an Order attached hereto as **Exhibit "D"** which is the basis for the proceeding before your Honor.

WHEREFORE, it is respectfully prayed the Court will make an Order dismissing the portion of this proceeding as directed by the Appellate Division as it pertains to the assertion that Paul Czajka was involved in the alteration of an original Order to Show Cause and that he

consciously failed to appropriately inform the Court(s) of such alteration and further granting the Petitioner, Paul Czajka, such other and further relief as the Court may deem proper.

Dated: March 17, 2015

PETER V. COFFEY, ESQ.
Englert, Coffey, McHugh & Fantauzzi, LLP
Attorneys for Petitioner
224 State Street, PO Box 1092
Schenectady, New York 12301-1092
(518) 370-4645

TO: DAVID C. ROWLEY, ESQ.
Cooper Erving & Savage LLP
Attorneys for Respondent
39 North Pearl Street, 4th Floor
Albany, New York 12207
(518) 449-3900

EXHIBIT “A”

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of
Paul Czajka, in his capacity as
District Attorney, Columbia County,
New York, Petitioner, for a Judgment
Under Article 78 of the Civil Practice
Law and Rules in the nature of
Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice
of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:
SS:
COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Order to Show Cause and Verified Petition

TO:

Hon. David A. Dellehunt
Tina Puckett, Court Clerk
Kinderhook Town Court
(518) 784-2203

Lisa Bleau

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skype

Notary Public/~~Commissioner of Deeds~~

Catherine J Skype
Notary Public, State of New York
#01SK6208824
Qualified in Columbia County
Commission Expires July 8, 20 13

EXHIBIT "B"

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of Paul Czajka, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice of Kinderhook, as Village Justice of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:

SS:

COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Amended Order to Show Cause and Amended Verified Petition

TO:

Hon. David A. Dellehunt
Tina Puckett, Court Clerk
Kinderhook Village Court
(518) 758-9869

Lisa Bleau

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skype

Notary Public/~~Commissioner of Deeds~~

Catherine J Skype
Notary Public, State of New York
#01SK6208624
Qualified in Columbia County
Commission Expires July 8, 20 13

EXHIBIT "C"

COPY

DISTRICT ATTORNEY
County of Columbia
State of New York

Paul Czajka

FACSIMILE TRANSMITTAL

To: Hon. Cathryn Doyle	Fax #: 462-1316	
From: Dominic Cornelius	Date: December 26, 2012	
Pages: [# including coversheet] 13		
Re: In The Matter of the Application of Paul Czajka v. David A. Dellehunt		

Enclosed please find the attached.

Thank you!

CORRECTED AFFIDAVIT OF SERVICE FOR KINDERHOOK VILLAGE COURT ATTACHED.

(2 PAGES INC. COVER)

325 Columbia Street, Suite 260, Hudson, New York 12534
DistrictAttorney@ColumbiaCountyNY.com
(518) 828-3414

EXHIBIT “D”

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 19, 2015 519194

In the Matter of PAUL CZAJKA, as District Attorney of Columbia County,
Respondent-Appellant,
v
MEMORANDUM AND ORDER

DAVID A. DELLEHUNT, as Town Justice of the Town of Kinderhook and Village Justice of the Village of Kinderhook,
Appellant-Respondent,
et al.,
Respondent.

Calendar Date: January 6, 2015

Before: Garry, J.P., Egan Jr., Lynch and Clark, JJ.

Cooper Erving & Savage, LLP, Albany (David C. Rowley of counsel), for appellant-respondent.

Paul Czajka, District Attorney, Hudson, pro se, and Powers & Santola, LLP, Albany (Michael J. Hutter of counsel), for respondent-appellant.

Garry, J.P.

Cross appeals from a judgment of the Supreme Court (Dowd, J.), entered August 12, 2013 in Columbia County, which, in a combined proceeding pursuant to CPLR article 78 and action for

declaratory judgment, granted a motion by respondent David A. Dellehunt to vacate a judgment entered against him and dismissed the petition.

Petitioner is the District Attorney of Columbia County, and respondent David A. Dellehunt (hereinafter respondent) is the Town Justice of the Town of Kinderhook and the Village Justice of the Village of Kinderhook. In June 2012, an Assistant District Attorney asked respondent to provide petitioner's office with a copy of the electronic recording of proceedings held in Kinderhook Village Court on June 4, 2012. Respondent promptly denied this request, explaining that the procedure for obtaining a transcript was to request that the Village Court forward the recording to a designated transcriptionist. Subsequently, an Assistant District Attorney made a written request for respondent to transmit a recording of proceedings held on October 2, 2012 in Kinderhook Town Court to a transcriptionist; in this instance, there was no request for a copy of the recording. Respondent requested that petitioner identify which of the 88 matters heard on that date he wished to have transcribed, and petitioner advised that he was seeking transcriptions of all cases. The Clerk of the Kinderhook Town and Village Courts then allegedly began reviewing the recording to identify which cases could be transcribed in compliance with the Criminal Procedure Law.

In late December 2012, by order to show cause, petitioner commenced this combined CPLR article 78 proceeding in the nature of mandamus to compel and declaratory judgment action against respondent in his capacity as Town Justice. The petition sought an order directing respondent to transmit a recording of Town Court proceedings on October 2, 2012 to a transcriptionist, and to furnish petitioner with copies of such recordings and of "Town Court" proceedings on June 4, 2012.[1] The petition also sought a declaration that respondent is not precluded by law from providing petitioner's office with copies of recordings of Town Court proceedings. Supreme Court (Doyle, J.) signed petitioner's

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[1] The reference to Town Court was apparently in error, as there were proceedings conducted in Village Court on this date, but not in Town Court.

order to show cause on Friday, December 21, 2012, directing service to be made by fax and overnight mail by 4:00 p.m. on the following Monday, December 24, 2012, upon respondent in his capacity as Town Justice, the Clerk of the Town Court, and the attorney for the Town of Kinderhook. Opposing papers were required to be filed and faxed to Supreme Court by 4:00 p.m. on Thursday, December 26, 2012.

The record contains no proof of service. However, respondent acknowledges that the order to show cause and petition were received by fax at the Town Court, with a cover sheet addressed to respondent and the Clerk, at about 3:14 p.m. on December 21, 2012. At about 3:27 p.m., a fax was received at the Village Court, likewise directed to respondent and the Clerk. These papers – an order to show cause and petition – differed from those that had been received at the Town Court in that the handwritten word "Amended" had been added to the documents' titles and the handwritten phrase "as Village Justice" had been added to respondent's designation in the captions. Respondent alleges that separate express mail packages containing the original and amended documents were received at the Town Court on December 26, 2012 and an unspecified date, and at the Village Court on December 23 and 26, 2012.

Respondent requested an adjournment to permit him to obtain representation and prepare a response, and a representative of petitioner's office advised Supreme Court in writing that petitioner consented to an adjournment.[2] The court denied this request and, at approximately 5:00 p.m. on the return date of December 26, 2012, issued a written decision granting the petition and directing respondent to transmit a recording of the October 2, 2012 Town Court proceedings to a transcriptionist, and to provide petitioner with copies of recordings of Town Court proceedings on June 4, 2012 and October 2, 2012.

In January 2013, respondent moved by order to show cause to, among other things, vacate the judgment, dismiss the combined

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[2] The attorneys for the Town and Village of Kinderhook both had conflicts precluding their representation of respondent.

proceeding and action in its entirety, and impose sanctions upon petitioner. Supreme Court (Devine, J.) signed the order to show cause and granted a temporary restraining order enjoining petitioner from enforcing the judgment. In February 2013, Supreme Court (Dowd, J.) granted respondent's motion, vacated the judgment and dismissed the combined action and proceeding based upon lack of personal jurisdiction. Petitioner and respondent cross-appeal from this judgment.

We must briefly note that during the course of the proceedings, petitioner received a transcript of the October 2012 Town Court proceeding from a transcriptionist. A matter becomes moot when "a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy" (Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach, 98 NY2d 165, 172 [2002]; accord Matter of Kowalczyk v Town of Amsterdam Zoning Bd. of Appeals, 95 AD3d 1475, 1477 [2012]). Here, actual controversies remain as to petitioner's requests for recordings of the October 2012 and June 2012 proceedings, and as to respondent's request for sanctions. Further, petitioner alleges that the transcript he received is incomplete and does not fully satisfy his request. Thus, the cross appeals are not moot, as "the rights of the parties will be directly affected by [their] determination" (Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714 [1980]).

We find no merit in petitioner's challenge to the manner in which Supreme Court (Dowd, J.) was assigned by respondent Unified Court System (hereinafter UCS)[3] to hear and determine respondent's motion. The transfer of an action or proceeding, where necessary due to recusals or other issues, is governed by court rules (see 22 NYCRR 202.3 [c] [5]). Upon review, we find nothing to demonstrate that the assignment here was improperly made, no indication that either the assignment or the court's subsequent determination of the motion was affected in any manner or degree by UCS's status as an intervenor, and no suggestion of

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[3] UCS was granted permission to intervene and participated in the proceedings in Supreme Court, supporting respondent's position, but is not participating in this appeal.

unfairness or bias (compare Mokay v Mokay, 111 AD3d 1175, 1178 [2013]; Douglas v Douglas, 281 AD2d 709, 710-711 [2001]).

Next, petitioner argues that Supreme Court erred in dismissing the petition for lack of personal jurisdiction. In so doing, the court treated the amended order to show cause and amended petition as the operative documents, and found that they were not served in strict compliance with the directions in the order to show cause, as there was no fax service of the amended documents upon the Town Court and – in view of the absence of proof of service and the late arrival of some of the express mail parcels – no showing that they were timely served by mail. Accordingly, the court concluded that service was defective.

On appeal, for the first time, petitioner claims that Supreme Court erred in basing its determination upon the amended petition and amended order to show cause rather than the original documents, arguing that the amended documents are "nullit[ies]." Petitioner states in his brief that after the original order to show cause and petition had been signed and filed, he served "what purported to be an amended petition" that had been altered without court authorization to add the phrase "as Village Justice" to respondent's designation in the caption. Petitioner states that "[t]his was done in the apparent belief that such capacity was necessary to get full relief."[4] Petitioner argues that the alteration had the effect of adding a party – that is, respondent in his capacity as Village Justice – and that, as he did not obtain court leave to add a party (see CPLR 401), the amended petition is a nullity. Thus, upon this appeal, petitioner now contends that the original petition is the operative document, and that Supreme Court erred in basing its decision upon the amended documents – despite the fact that petitioner had previously failed to advise the court or the other parties of the unauthorized amendments and, thus, had held out

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[4] Notably, although petitioner acknowledges in his brief that he served the altered documents, he does not specifically admit or deny that he made these alterations. By adopting the passive voice, he further avoids either fully accepting or attributing responsibility for performing the underlying actions.

the altered order to show cause and petition as the operative documents throughout the course of those prior proceedings.[5] Now, upon this appeal, arguing that he complied with the service directions in the original unaltered documents, petitioner contends that the combined action and proceeding should not have been dismissed.

We agree with petitioner that the amended petition was rendered a nullity when it was altered to add a new party without obtaining court leave as required by CPLR 401 (see Matter of Barrett v Dutchess County Legislature, 38 AD3d 651, 653 [2007]; Matter of Board of Educ. of Fla. Union Free School Dist. v DePace, 301 AD2d 521, 522 [2003], lv denied 99 NY2d 511 [2003]; Matter of Aries Striping v Hurley, 202 AD2d 578, 578 [1994]). We do not, however, agree with petitioner's theory that the unauthorized alterations should work to his advantage by preventing dismissal of the original petition. Setting aside for the moment the startling nature of the alterations and the equally remarkable timing of this disclosure, petitioner has not demonstrated that he strictly complied with the service provisions in the original order to show cause, which were identical to those in the altered version. Such provisions are jurisdictional in nature, and failure to comply with each specified requirement results in a lack of personal jurisdiction over a respondent (see Matter of Bruno v Ackerson, 39 NY2d 718, 718-719 [1976]; U.S. Bank N.A. v Feliciano, 103 AD3d 791, 791 [2013]; Matter of Sahler v Callahan, 92 AD2d 976, 977 [1983]; see also People ex rel. Holman v Cunningham, 73 AD3d 1298, 1299 [2010]).

It was petitioner's burden to demonstrate that Supreme Court acquired personal jurisdiction over respondent (see Matter of Theodore T. [Charles T.], 78 AD3d 955, 956 [2012]; Hopkins v

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[5] In addition to petitioner's service of the altered documents as though the amendments were authorized, the captions on the documents that petitioner submitted to Supreme Court in opposition to respondent's motion – including his affirmations – include a designation of respondent in his capacity as Village Justice.

Tinghino, 248 AD2d 794, 795 [1998]), but he failed to submit affidavits of service or any other proof that would satisfy this burden. Although respondent has acknowledged that the faxed documents were timely received at the Town Court, the absence of proof of service makes it impossible to determine whether petitioner timely complied with the overnight mail requirements (see Matter of Rotanelli v Board of Elections of Westchester County, 109 AD3d 562, 563 [2013]). Moreover, it is undisputed that no service of any kind was made on the attorney for the Town, despite the requirement for such service. We reject petitioner's argument that this failure should be excused because the record reveals that the attorney for the Town was aware of the order to show cause and petition. It is well established that actual notice received by other means does not result in jurisdiction upon a failure of service (see Macchia v Russo, 67 NY2d 592, 595 [1986]; Clarke v Smith, 98 AD3d 756, 756 [2012]; Matter of Gerdts v State of New York, 210 AD2d 645, 646 [1994], lv dismissed and denied 85 NY2d 810, 856 [1995]). Further, we find no merit in petitioner's contention that he substantially complied with the service requirements, as "[s]trict compliance with court-directed methods of service is necessary in order for the court to obtain personal jurisdiction over a respondent" (Matter of Keith X. v Kristin Y., 124 AD3d 1056, ___, 2015 NY Slip Op 00429, *2 [2015]; see Bruno v Ackerson, 39 NY2d at 718). Petitioner's failure to comply with the service requirements in the order to show cause resulted in a failure to obtain personal jurisdiction over respondent. Accordingly, Supreme Court properly vacated the judgment and dismissed the combined action and proceeding.

Turning to respondent's appeal, he contends that sanctions should be imposed upon petitioner for frivolous conduct and that petitioner should be directed to reimburse respondent's expenses and counsel fees. Courts are vested with discretion to impose costs and fees for frivolous conduct, and may also impose sanctions (see 22 NYCRR 130-1.1). Conduct is frivolous when it lacks legal merit or cannot be supported by a reasonable argument, is undertaken to harass or injure another or to prolong litigation unduly, or involves false statements of material fact (see 22 NYCRR 130-1.1 [c]).

Respondent asserts that petitioner commenced the instant combined action and proceeding as the culmination of a pattern of harassment targeting respondent that had begun months earlier when – after a disagreement with respondent as to the scope of petitioner's prosecutorial authority – petitioner sought to compel respondent's recusal from all criminal and Vehicle and Traffic Law matters in Columbia County and filed more than 100 motions for respondent's recusal, thus allegedly interfering with the operation of the Town and Village Courts (see People v Chai, 37 Misc 3d 1203[A], 2012 NY Slip Op 51870[U] [Kinderhook Just Ct 2012]; People v Dorato, 37 Misc 3d 1208[A], 2012 NY Slip Op 51940[U] [Kinderhook Just Ct 2012]). Respondent contends that petitioner's requests for recordings and a transcript stemmed from these efforts and, further, that the proceeding wholly lacks merit as he was providing the transcript of the October Town Court proceedings and had so advised petitioner before the petition was filed. Respondent notes that petitioner had never previously requested a copy of the October 2012 recording, and that the petition demands a copy of the June 2012 recording although petitioner had not pursued that request after it was denied six months earlier.[6] Next, he contends that petitioner deliberately timed the filing of the petition immediately before a holiday and chose to use the expedited procedure of filing by order to show cause – rather than a notice of petition with a return date that, by statute, would have been set a minimum of 20 days after the filing date (see CPLR 7804 [c]) – to harass respondent and increase the likelihood that he would default.

Finally, respondent contends that sanctions, costs and counsel fees should be imposed upon petitioner for his conduct in altering the original order to show cause after it had been signed and filed, altering the petition after it had been verified and notarized, and holding the altered documents out thereafter to two Supreme Court Justices and the parties with the apparent intent of misleading them into believing that the

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[6] In Supreme Court, UCS supported respondent's position that his denial of the June 2012 recording was consistent with its policies, and supplied documentation of the underlying policies.

amendments were authorized.[7] In this regard, respondent states that petitioner's actions caused the Village of Kinderhook to believe that respondent, in his capacity as Village Justice, had been properly joined as a party, with the result that the Village assumed part of the cost of respondent's defense, expending approximately $15,000 by the time the briefs were filed. Respondent argues that petitioner took these actions despite his knowledge that the alterations were unauthorized and the Village Justice was not properly a party, thus continuing his allegedly frivolous conduct for an extended period (see 22 NYCRR 130-1.1 [c]). Respondent further notes that, although petitioner acknowledged his conduct in the course of this appeal, he did so solely to gain a perceived advantage in the litigation. It certainly bears significant consideration that, as an elected District Attorney, petitioner's apparent involvement here may be deemed to constitute a substantial violation of the Rules of Professional Conduct (compare Matter of Wisla, 291 AD2d 196, 199 [2002]; Matter of Rubenstein, 203 App Div 517, 519-520 [1922]).

Petitioner argues that the sanction request is unjustified, asserting, among other things, that his conduct was not frivolous, that this combined action and proceeding is not without merit in law or conducted for the purpose of harassment, and that respondent's request for sanctions related to the unauthorized alterations is unpreserved, as it was raised for the first time on appeal. We find no merit whatsoever in this last contention, as this claim could not have been fully preserved because petitioner only first disclosed in his appellate brief that the alterations had occurred.

An application for sanctions is addressed to the court's discretion (see Navin v Mosquera, 30 AD3d 883, 883-884 [2006];

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[7] Although not clearly established, it appears upon review that Supreme Court (Doyle, J.) was not advised of the alterations. The decision that court rendered appears to have been premised upon the original order to show cause and petition; it did not mention the amended documents, did not include a designation of respondent in his capacity as Village Justice, and did not grant any relief related to that capacity.

Matter of Rosenhain, 222 AD2d 745, 746 [1995], lv dismissed 87 NY2d 1053 [1996]). Here, Supreme Court did not address respondent's request for sanctions, and made no findings in this respect. Respondent urges that, at a minimum, an award be rendered for reimbursement of the counsel fees and expenses made necessary by petitioner's conduct.[8] We are sympathetic to this request – in particular as to the counsel fees that have been expended, apparently wholly without any sound legal basis or cause, by the Village of Kinderhook – but, nonetheless, we find the factual record of the circumstances surrounding the alteration of the order to show cause and petition to be incompletely developed. At oral argument, petitioner requested a hearing on this aspect of respondent's request for sanctions. A formal hearing is not always required, "depend[ing] upon the nature of the conduct and the circumstances of the case" (22 NYCRR 130-1.1 [d]). However, given the delayed nature of petitioner's acknowledgment that the documents were altered, the grave and disturbing nature of such conduct, and the lack of factual findings in Supreme Court relative to all of the other circumstances that respondent has alleged constitute a pattern of frivolous and harassing conduct, we conclude that further factual development will be helpful. Accordingly, we remit the matter of sanctions to Supreme Court for the purpose of conducting a hearing to develop the factual record as to petitioner's conduct and the surrounding circumstances.

Egan Jr., Lynch and Clark, JJ., concur.

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[8] This Court has the authority to impose sanctions in the first instance, even when asked to do so for the first time on appeal, provided that an express request has afforded notice that such relief would be considered and, thus, provided a reasonable opportunity to be heard on the issue (see Fox v Fox, 309 AD2d 1056, 1058-1059 [2003]; Matter of De Ruzzio v De Ruzzio, 287 AD2d 896, 897 [2001]).

ORDERED that the judgment is modified, on the law, without costs, by remitting the matter to the Supreme Court for further proceedings not inconsistent with this Court's decision, and, as so modified, affirmed.

ENTER:

Robert D. Mayberger
Clerk of the Court

STATE OF NEW YORK
SUPREME COURT: COUNTY OF COLUMBIA
----------X

In the matter of the Application of PAUL CZAJKA, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner

-against-

David A. Dellehunt, as Town Justice of the Town of Kinderhook and Village Justice of the Village of Kinderhook.

Respondent.
----------X

MEMORANDUM

Index No. 5395-12
RJI No.

FACTS

This motion is brought pursuant to the Order of the Appellate Division in the above mentioned case which directed a hearing stating specifically at page 10 of the Decision "...we conclude that further factual development will be helpful. Accordingly, we remit the matter of sanctions to Supreme Court for the purpose of conducting a hearing to develop the factual record as to petitioner's conduct and the surrounding circumstances". It is the purpose of this Memorandum to demonstrate that to the extent the Decision wrongfully asserts that petitioner had some involvement in the alteration of a Court Order or its submission to the party on the other side (respondent) or somehow knowingly failed to inform the Court of that alteration the conclusion is without factual basis and petitioner, Paul Czajka, is entitled to an immediate decision so stating.

POINT I

THE DECISION'S ASSERTION THAT PAUL CZAJKA FAILED TO TIMELY DISCLOSE THE ALTERATION IS BASED UPON FALSE ASSUMPTIONS

The Decision calls attention to "the startling nature of the alterations and the equally remarkable timing of the disclosure..." (Decision at page 6) and "given the delayed nature of petitioner's acknowledgement that the documents were altered..." (Decision at page 10) indicates that Paul Czajka consciously hid from the Courts the fact that there had been an alteration. As can be seen from the papers submitted, of course, that assertion is without foundation – the alteration was presented to the Court by both sides almost from the beginning. It is important to note that this motion is addressed to petitioner's involvement and to the Appellate Division's erroneous conclusion that petitioner consciously avoided disclosing the alteration. There is no question that from the very beginning everyone knew that the original Order to Show Cause was amended/altered. To begin with see the long lost Affidavits of Service which are now attached to the Affidavit of James R. Carlucci. Apparently these Affidavits of Service were simply sent to Judge Doyle by the Columbia County Clerk without copies made for the file in the rush of what was going on and then to compound the problem the County Clerk improperly filed them – whatever – they were for a long period of time lost but they are now found. **Accordingly, Judge Doyle was at the very return date supplied by the County Clerk with copies of the Affidavits of Service, which included the Affidavits of Service of the Amended Order to Show Cause.** How in the world can one claim that the alteration was hidden when it was sent to the very Judge who signed the original Order to Show Cause? The letter forwarding the Affidavits of Service was dated December 26, 2012 and is attached to the Affidavit of James Carlucci as Exhibit "1" submitted herewith.

The alteration was a known matter of fact of this case from the very beginning. The Verified Answer [verified by an attorney actually] dated January 8, 2013 – the responsive paper to the Order to Show Cause – notes in footnote 1 the inconsistency between the two Orders stating "specifically the Order to Show Cause and Petition that was subsequently sent by facsimile and hand delivered to the respondent appear to have been the subject to a handwritten modification in an attempt to include David A. Dellahunt as 'Village Justice' of Kinderhook after the Order to Show Cause was signed by Judge Doyle" (R32). In his Affirmation [undated] in opposition to the petition Mr. Rowley asserts petitioner "...i. (A)ppears to have unilaterally altered an Order of the Court, and Petition which had previously been notarized and Verified, to add an additional party" (R101). The Decision of this Court recites at great length the issue regarding the Amended Order to Show Cause (R6). Petitioner in his Brief in "Questions Presented" in question number 2 indicated clearly that the addition of David Dellahunt in his capacity as Village Justice was not authorized by the Court (Brief at page 2). Respondent, as will be seen, made several references to the improper amendment.

While the facts and circumstances as to the amendment are of course troubling and it is curious if not unfathomable that nobody sought to develop, investigate or have examinations of witnesses as to the alteration – they did not. The Court's comment "and the equally remarkable timing of this disclosure..." (see Decision at page 6) is also unfathomable. Petitioner's office sent the Amended Order to Judge Doyle before even the return date which was December 26, 2012 and the Answer of respondent on January 8, 2013 called attention to the fact.

To the extent the Appellate Division appeared concerned about the timing of the disclosure that concern is made without attention to the record submitted to the Appellate Division. To the extent the Court is implying that Paul Czajka failed to timely disclose the

matter, he had no involvement in the preparation or submission of the paper and it did not come to his conscious knowledge until late in the day – actually at oral argument – see Affidavits of Paul Czajka at paragraph 8 and Lisa Bleau at paragraph 11.

POINT II

THIS RECORD CONTAINS A PLETHORA OF MISSTATEMENTS, UNTRUE STATEMENTS AND, IF ONE WERE TO BE HARSH, RECKLESS STATEMENTS

The statements above referred to are as follows:

1. "Respondent argues that petitioner took these actions despite his knowledge that the alterations were unauthorized and the Village Justice was not a proper party..." (Decision at page 9). This is sophistry to the extreme. As Paul Czajka has stated in his Affirmation as the District Attorney he must take responsibility for his office but the Court indulges in obfuscation by cavalierly failing to distinguish between Paul Czajka as an individual and Paul Czajka as the District Attorney in charge of his office. As can be seen Paul Czajka had no knowledge of how the alteration was made or that it was unauthorized. He put his faith in his office. Why not? Yes, an attorney with direct supervisory authority over another lawyer shall make reasonable efforts to insure that the supervised lawyer conforms to these rules – Rules of Professional Conduct Rule 5.1;

Reasonable efforts – meaning reasonable supervision but without knowledge of prior conduct does not include a lawyer making a bad decision. This is in direct contradiction to Rule 5.1(d) "a lawyer shall be responsible for a violation of these rules by another lawyer if: **(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct ratifies it"** (emphasis supplied). That is exactly what did not happen here. Paul Czajka did not order the Assistant District Attorney to do this nor did he ratify it. The Rules of Professional

Conduct are clear and they clearly demonstrate why Paul Czajka is not responsible in this case on these facts for a violation of these rules. An analysis of these rules specifically points to the invalidity of the Decision when it says "it certainly bears significant consideration that, as an elected District Attorney, petitioner's **apparent** involvement here may be deemed to constitute a substantial violation of the Rules of Professional Conduct [citing case law]" (emphasis supplied). Yes, if petitioner were involved in this conduct it would constitute a violation of the rules but an analysis of the rules based on the facts of this situation indicates that statement is totally wrong when one examines the facts of this case and the Rules of Professional Conduct.

2. "However, given the delayed nature of petitioner's acknowledgement that the documents were altered..." (Decision at page 10). Paul Czajka could not disclose what he did not know. He had no "hands on" involvement in the preparation or service of the papers and had no conscious knowledge of the fact that there was an alteration to the Order to Show Cause. Yes, ultimately he had knowledge that there was an Amended Order to Show Cause but no knowledge at all that it was anything other than authorized and nothing to call that to his attention. Yes, everyone knew from day one that there was an Amended Order to Show Cause but to go from there to make the utterly libelous assertion that the documents were improperly altered by Paul Czajka is a reach beyond reason.

3. "Petitioner's conduct in engaging in an unauthorized alteration of a Court Order is conduct that constitutes a significant departure from the conduct expected of an attorney" (see respondent-appellant's Reply Brief at page 7). The statement is scandalous, libelous and reckless and it is submitted sanctionable in and of itself. The drafter (whoever) had no knowledge of petitioner's conduct – no knowledge if petitioner engaged in any part of this conduct.

4. "17. As evidenced by this proceeding, petitioner: ...i. (A)ppears to have unilaterally altered an Order of the Court, and Petition which had previously been notarized and Verified to add an additional party". This is an undated Affirmation signed by David Rowley (see R97-101). Mr. Rowley had no basis for making that statement and the qualification "appears" fails to temper the inappropriateness of that statement. One would think he had an obligation before making such statements to undertake some minimal investigation of the factual situation as it existed which it appears from that statement – and its factual invalidity – that he failed to do. To accuse a fellow attorney of such grievous unethical conduct without knowing the facts is unacceptable.

5. "SUPREME COURT ERRED IN NOT GRANTING SANCTIONS AGAINST PETITIONER UPON THE GROUNDS THAT PETITIONER'S IMPROPER AND ILLEGAL MODIFICATION OF THE ORDER TO SHOW CAUSE, AFTER IT WAS SIGNED BY ACTING SUPREME COURT JUSTICE DOYLE..." (respondent-appellant's Brief Argument Point I). That is again a baseless statement. The author had obviously no idea what petitioner, Paul Czajka's, involvement and conduct was in this matter. Such statements cannot be excused under the cover of argumentation.

6. **Finally, and most importantly – Mr. Rowley had reason to question his statements made previously and as the following was set forth in his respondent-appellant's Brief submitted to the Court, the Court had every reason to exercise caution and reservation in making his/its statements as to the assertion that the alteration was not made by Paul Czajka.** In respondent-appellant's Brief at footnote 1 on page 9 Mr. Rowley states "(I)n addition, it is noted that another addition was made to paragraph 12 of the Verified Petition; this change appears in both the initial Verified Petition and the Amended Verified Petition (R. 126f).

In contrast to the blue-marker additions that Respondent contests, this addition is in pen and merely excludes some civil proceedings from Petitioner's request. Further, this addition has noted 'PC' at the end; presumably this was made and initialed by Petitioner." In substance then Mr. Rowley and by implication of the Court had full knowledge that the alteration to the Order to Show Cause made in blue marker was not made by Mr. Czajka. When he made a change it was in pen **AND INITIALED BY HIM**. Proof positive as to who made the alterations – no, but more than sufficient to put everyone in this case who made the statements set forth above on notice that those statements were highly questionable and based on that, improper.

CONCLUSION

Paul Czajka has been improperly and terribly maligned by a decision of the Court which has no factual basis. Be that as it may this motion for partial summary judgment is based upon facts uncontroverted. Petitioner is entitled to a motion for summary judgment dismissing the portion of this proceeding as directed by the Appellate Division to be held as it pertains to Paul Czajka's involvement in the alteration of the original Order to Show Cause which was nonexistent or that he failed to appropriately inform the Court of such. The Court set forth two reasons for holding a hearing. One was the perceived concept that Paul Czajka was involved in an improper alteration of an Order to Show Cause. As has been seen by the papers submitted herewith that perception is without basis and that aspect of the Court's order as a basis for this hearing should be dismissed.

Dated: March 17, 2015

PETER V. COFFEY, ESQ.
Englert, Coffey, McHugh & Fanguzzi, LLP
Attorneys for Petitioner
224 State Street, P.O. Box 1092
Schenectady, New York 12301
(518) 370-4645

TO: DAVID C. ROWLEY, ESQ.
Cooper Erving & Savage LLP
Attorneys for Respondent
39 North Pearl Street, 4th Floor
Albany, New York 12207
(518) 449-3900

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of PAUL CZAJKA, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town and Village Justice of Kinderhook,

Respondent.

----------X

AFFIDAVIT

Index No.
RJI No.

STATE OF NEW YORK)
) ss:
COUNTY OF COLUMBIA)

PAUL CZAJKA, being duly sworn, deposes and says:

1. I am the District Attorney of the County of Columbia, State of New York, and I have been since January 1, 2012. I previously served as District Attorney from 1988 through 1994. From 1986 through 1987, I was the Public Defender of Columbia County. From 1981 to 1985, I was a Columbia County Assistant District Attorney.

2. From 1995 until 2011, I served as one of two duly elected Judges of the County, Family and Surrogate Courts of Columbia County. From 1997 until my resignation to run for District Attorney in 2011, I served as an acting Justice of the New York State Supreme Court, the last several years on a full-time basis. By appointment and/or at the request of the Unified Court System/Office of Court Administration, I believe I have presided over matters in every Superior Court of all seven counties of the Third Judicial District.

3. Like all such officials, I have been the subject of innumerable baseless allegations made to the Committee on Professional Standards, The Commission on Judicial Conduct (including one by an attorney who gave his complaint to the news media for publication in utter violation of the Rules) and in support of civil rights complaints.

4. However, neither the Committee nor the Commission has ever filed a complaint against me, much less issued any punishment, sanction or instruction, public or private. Nor has any civil rights complaint ever survived motion practice, gone to trial or resulted in any judgment or settlement, monetary or otherwise. Further, I know of no investigations, complaints or charges pending at the time of my resignation from the bench in May of 2011 to date.

5. That I am the petitioner in this matter and on February 19, 2015 the Appellate Division issued a Memorandum and Order, a copy of which is attached as Exhibit "A".

6. That I commenced this proceeding in an attempt to obtain an Order directing Respondent to transmit a recording of all but the civil Town Court proceedings "on October 2, 2012 to a transcriptionist, and to further furnish petitioner with copies of such recordings and of 'Town Court' proceedings on June 4, 2012. By the petition, I also sought a declaration that Respondent is not precluded by law from providing petitioner's office with a copy of recordings of Town Court proceedings." See Exhibit "A" page 2.

7. That the proceeding was commenced by obtaining from Supreme Court an Order to Show Cause, a copy of which I have obtained from the records of my office and I attach hereto as Exhibit "B". That it appears that the Order to Show Cause Hon. Catherine Doyle executed was subsequently altered in my office to add Justice Dellehunt's capacity as Village Justice in addition to the original stated capacity as Town Justice. I have no personal knowledge of the identity of the person who "amended" the document, the circumstances in which it was

done; nor do I have any personal knowledge as to whether court permission was sought or received. (However, please see the Affidavits of Lisa Bleau and Ryan Carty who do have such personal knowledge of the identity of the person who altered the document.)

8. Professor Michael Hutter is correct in stating he brought this matter to my attention. However, the first time the factual matter of an alteration and its significance was impressed upon me was at oral argument in the Appellate Division. Indeed, I was so shocked by the questions to Professor Hutter, beginning with that of Hon. Michael Lynch, I reacted by standing at my seat. That immediately after oral argument concluded, I called my secretary, Lisa Bleau, who has outlined the situation in paragraph 11 of her Affidavit, submitted herewith.

9. That the Appellate Division has referred this matter to Your Honor to hold a hearing pursuant to the instructions of the Decision.

10. That it is my understanding, and I have been so advised, that the Order calls for a hearing as it pertains to two matters:

(a) Any involvement of mine in the alteration of the original Order and the timing of my notifying the Court of this alteration;

(b) Respondent's allegation that I have engaged in frivolous and harassing conduct.

11. While nothing in paragraph 10(a) and (b) above could be further from the truth, I have been advised that item 10(a) should be the subject of an immediate summary judgment motion.

12. The implications of the Decision as regards paragraph 10(a) are absolutely and demonstrably untrue. Accordingly, I make this Affidavit in support of a motion for partial summary judgment declaring that the factual situation as outlined in the Order as it alleges that I

was involved in the alteration and several other circumstances are demonstrably wrong:

(a) "Despite the fact that petitioner had previously failed to advise the court or the other parties of the unauthorized amendment and, thus, had held out the altered order to show cause and petition as the operative documents throughout the course of those prior proceedings" (page 6). I had no idea and no involvement;

(b) "In addition to petitioner's service of the altered documents as though the amendments were authorized the captions on the documents that petitioner submitted to Supreme Court in opposition to Respondent's motion – including his affirmations – include a designation of Respondent in his capacity as Village Justice" (footnote 5 at page 6). Again, as can be seen from the Affidavits submitted herewith, I had nothing to do with the amendment of the Order, the obtaining of the Order or the service of the Order based upon the specific and unchallengeable evidence submitted herewith to correct. The typing of the caption was, indeed, largely a ministerial or clerical chore with which I simply did not concern myself after I signed the first set of papers. (In this regard, I do not mean to seek to absolve myself from responsibility as the District Attorney; nor do I mean to imply that I did not direct that this proceeding be brought. Rather, I simply seek to correct the invalid and untrue statements of the Decision that I was personally involved in the alteration of the Order and somehow benefited therefrom.)

(c) "Respondent argues that petitioner took these actions despite his knowledge that the alterations were unauthorized and the Village Justice was not properly a party thus continuing his allegedly frivolous conduct for an extended period...It certainly bears significant consideration that, as an elected District Attorney, petitioner's apparent involvement here may be deemed to constitute a substantial violation of the Rules of Professional Conduct [citing cases]"

(emphasis supplied) (at page 9). The Decision itself exposes its contradictions. After making declarative statements, the Decision thereafter adopts the word "apparent," acknowledging the lack of any affirmative evidence or proof whatsoever implicating me. Indeed, not only, as the Court determined, has the "factual record of the circumstances surrounding the alteration of the Order to Show Cause and petition [been] incompletely developed," it has not been developed at all.

(d) "However, given the delayed nature of petitioner's acknowledgement that the documents were altered, the grave and disturbing nature of such conduct..." (Page 10). I did not delay at all. As soon as it came to my attention we informed the Court. As can be seen in the outline of the Memorandum submitted herewith, there was no delay whatsoever in acknowledging the papers had been altered. I personally was unaware of the alteration but, again, this alteration was made known in the initial Answer [Reply] of the Respondent within two weeks of the signing of the original Order to Show Cause.

13. What has become actually apparent here is that there was a lack of interest by anyone on either side to delve into the nature of the alteration until the untrue comments that were made in the papers submitted to the Court and, I respectfully assert, in the Court decision itself. Nobody seemed to care, and, as my attorney, Professor Hutter discussed, without a signed Order formalizing same, the Amended Order was probably invalid *ab initio*, whether or not permission was granted.

14. However, it was not until the very end that anyone made an allegation that the Order to Show Cause had been unauthorized. I did not know about it, so I certainly did not undertake an investigation. Respondent undertook no investigation of the facts whatsoever, but made baseless and untrue allegations anyway.

15. That there is no question of fact whatsoever regarding this aspect of the Decision. There is nothing in the record upon which the Court could conclude that I was involved in the alteration or had any knowledge of the alteration. Moreover, neither Respondent nor his attorney have ever had any information upon which to base their allegations.

16. I respectfully emphasize that the request for relief in this matter is solely to address the issue of my personal involvement in the alteration, of which there was none. I respectfully reserve my right to move further with respect to any issues that may remain.

17. Further, although I respectfully submit that the motion herein must be granted on the papers, I shall gladly submit myself to cross-examination on any matter the Court deems relevant.

18. Lastly, I have been informed that the Assistant District Attorney who made the alteration sought and received permission to make that alteration, although I have no personal knowledge thereof. I have also been informed that, had he sought such permission, it would have been granted.

Dated: March 17, 2015

PAUL CZAJKA

Sworn to before me this
17th day of March, 2015.

Catherine J Skype

Catherine J Skype
Notary Public, State of New York
#01SK6208624
Qualified in Columbia County
Commission Expires July 6, 20 17

STATE OF NEW YORK
SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of PAUL CZAJKA, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

AFFIRMATION

Index No.
RJI No.

Petitioner,

-against-

David A. Dellehunt, as Town and Village Justice of Kinderhook,

Respondent.

----------X

James A. Carlucci, an attorney duly admitted to practice before the Courts of the State of New York, affirms under penalty of perjury as follows:

1. I am an Assistant District Attorney in and for Columbia County.

2. I make this affirmation upon my own personal knowledge.

3. On December 21, 2012, this office filed an Order to Show Cause and Petition in the Columbia County Supreme Court seeking an Order directing Judge Dellehunt to provide the District Attorney's Office with the transcripts of Kinderhook Town Court proceedings. This Order to Show Cause was signed by Hon Catherine J. Doyle.

4. Judge Doyle directed service of the Order to Show Cause and Petition upon Judge Dellehunt, Court Clerk Tina Puckett and Andrew Howard, Esq, Attorney for the Town of Kinderhook by both facsimile and overnight mail by December 24, 2012.

5. An "Amended" Order to Show Cause and Petition was created. The "amendment" consisted of the addition of "the Village of Kinderhook" to the caption on both the Order to Show

Cause and the Petition handwritten, in ink. There were no other amendments. There was no provision in the Amended Order to Show Cause which directed how service should be made upon the Village.

6. On December 27, 2012 Judge Doyle issued a decision granting the requested relief.

7. Thereafter, this case was removed from Judge Doyle and reassigned to Judge Dowd.

8. Judge Dowd determined that Judge Doyle's Order directed that the "Amended" Order to Show Cause and Petition were to be served upon Judge Dellehunt, Court Clerk Tina Puckett and Andrew Howard, Esq, Attorney for the Town of Kinderhook by both facsimile and overnight mail.

9. Judge Dowd also determined that there was no proof that the original Order to Show Cause had been served by overnight mail in a timely manner.

10. Therefore, Judge Dowd dismissed both the original Order to Show Cause and the "Amended" Order to Show Cause upon jurisdictional grounds.

11. Both parties appealed Judge Dowd's decision.

12. During the appeal process, Michael Hutter, Esq. asked me to check the file at the Columbia County Clerk's Office to determine if the "Amended" Order to Show Cause had been filed and, if so, when that occurred.

13. On February 27, 2015, after the decision of the Appellate Division, I went to the Columbia County Clerk's Office to review the file again and, specifically, to determine what, if any, Affidavits of Service were contained therein.

14. I discovered an orange folder with a note attached on the outside which stated "Sharon, This Was Assigned To Judge Dowd Downstate – Case Closed – Sent Here For Filing #5395-12".

15. This orange folder was not in the County Clerk's file when I had reviewed it previously.

16. I inquired of the clerk who informed me that this was Judge Dowd's file which had been sent to the County Clerk's Office. The clerk stated that this was unusual and, as a result, it was decided that it would be kept in the file exactly as it had been received.

17. I reviewed the contents of the orange folder and found several copies of Affidavits of Service and receipts for overnight mailings.

18. There was also a fax cover sheet which indicated that these documents had been sent by facsimile to Hon. Catherine Doyle on December 26, 2012. See Exhibit 1.

19. Included in these Affidavits of Service were affidavits indicating that the original Order to Show Cause had been served upon Judge Dellehunt as Justice of the Town of Kinderhook, Tina Puckett, as Court Clerk of the Town of Kinderhook and Andrew Howard, Esq, Attorney for the Town of Kinderhook by both facsimile and overnight mail on December 21, 2012. See Exhibit 2.

20. These Affidavits of Service are supported by the overnight mailing receipts. See Exhibit 3.

21. Therefore, the original Order to Show Cause was properly served as directed by Judge Doyle on December 21, 2012.

22. In addition, these Affidavits of Service indicate that the "Amended" Order to Show Cause and Petition were served upon Judge Dellehunt, as Justice of the Town of Kinderhook and as Justice of the Village of Kinderhook, Tina Puckett, as Court Clerk of the Town of Kinderhook and as Court Clerk of the Village of Kinderhook, Andrew Howard, Esq, Attorney for the Town of Kinderhook and Robert Fitzsimmons, Esq., Attorney for the Village of Kinderhook by both

facsimile and overnight mail on December 21, 2012. See Exhibit 4.

23. Again, these Affidavits of Service are supported by the overnight mailing receipts. See Exhibit 3.

Dated: March 17, 2015

James A. Carlucci
Assistant District Attorney
325 Columbia Street, Suite 260
Hudson, New York 12534

EXHIBIT “1”

DISTRICT ATTORNEY
County of Columbia
State of New York

Paul Czajka

David M. Costanzo
James A. Carlucci
H. Neal Conolly
Carl G. Whitbeck, Jr.
Dominic J. Cornelius
Robert M. Gibson

FACSIMILE TRANSMITTAL

To: Hon. Cathryn Doyle	Fax #: 462-1316	
From: Dominic Cornelius	Date: December 26, 2012	
Pages: [# including coversheet] 13		
Re: In The Matter of the Application of Paul Czajka v. David A. Dellehunt		

Enclosed please find the attached.

Thank you!

CORRECTED AFFIDAVIT OF SERVICE FOR KINDERHOOK VILLAGE COURT ATTACHED.

(2 PAGES INC. COVER)

325 Columbia Street, Suite 260, Hudson, New York 12534
DistrictAttorney@ColumbiaCountyNY.com
(518) 828-3414

EXHIBIT "2"

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of
Paul Czajka, in his capacity as
District Attorney, Columbia County,
New York, Petitioner, for a Judgment
Under Article 78 of the Civil Practice
Law and Rules in the nature of
Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice
of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:
SS:
COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Order to Show Cause and Verified Petition

TO:

Andrew B. Howard, Esq.
Kinderhook Town Attorney
(518) 828-2420

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skype
Notary Public/~~Commissioner of Deeds~~

Catherine J Skype
Notary Public, State of New York
#01SK6208824
Qualified in Columbia County
Commission Expires July 8, 20 13

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of
Paul Czajka, in his capacity as
District Attorney, Columbia County,
New York, Petitioner, for a Judgment
Under Article 78 of the Civil Practice
Law and Rules in the nature of
Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice
of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:
SS:
COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Order to Show Cause and Verified Petition

TO:

Hon. David A. Dellehunt
Tina Puckett, Court Clerk
Kinderhook Town Court
(518) 784-2203

Lisa Bleau

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skypa

Notary Public/~~Commissioner of Deeds~~

Catherine J Skypa
Notary Public, State of New York
#01SK6206824
Qualified In Columbia County
Commission Expires July 8, 20 13

STATE OF NEW YORK:
SUPREME COURT: COUNTY OF COLUMBIA

----------X

PAUL CZAJKA, as District Attorney,

-against-

DAVID A. DELLEHUNT, as Town and Village Justice of Kinderhook,

Defendant.

----------X

STATE OF NEW YORK:

SS:

COUNTY OF COLUMBIA

I, Ryan Carty, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, he served a copy of the following, by Express Mail: ORDER TO SHOW CAUSE

TO: Hon. David Dellehunt
Kinderhook Town & Village Courts
6 Chatham Street
Kinderhook, New York 12106

Andrew Howard, Esq.
Kinderhook Town Attorney
441 East Allen Street
Hudson, New York 12534

Tina Puckett, Court Clerk
Kinderhook Town and Village Courts
6 Chatham Street
Kinderhook, New York 12106

by depositing a true and correct copy of the same copy of the same property enclosed in a post-paid wrapper in an official depository maintained and exclusively controlled by the United States Post Office at Hudson, New York, 12534, directed to said person(s) at said address(s) respectively mentioned above and being within the state designated for that purpose.

RYAN M. CARTY
Legal Intern

Sworn to before me this
26 day of December, 2012

Catherine J Skype
Notary Public/~~Commissioner of Deeds~~

Catherine J Skype
Notary Public, State of New York
#01SK6208624
Qualified In Columbia County
Commission Expires July 6, 20 13

EXHIBIT “3”

EG 658291250 US

EXPRESS MAIL
UNITED STATES POSTAL SERVICE®
Post Office To Addressee

DELIVERY (POSTAL USE ONLY)

Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature	
Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature	
Delivery Date Mo. Day	Time ☐ AM ☐ PM	Employee Signature	

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.

☐ WAIVER OF SIGNATURE (Domestic Mail Only). Additional merchandise insurance is void if customer requests waiver of signature. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

Federal Agency Acct. No. or Postal Service Acct. No.

☐ NO DELIVERY ☐ Weekend ☐ Holiday

Mailer Signature

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code 12534	Day of Delivery ☑ Next ☐ 2nd ☐ 3rd Day	Postage $ 16.95	
Date Accepted 12 21 12 Mo. Day Year	Scheduled Date of Delivery Month 12 Day 22	Return Receipt Fee $	
Time Accepted 3:43 ☐ AM ☐ PM	Scheduled Time of Delivery ☐ Noon ☑ 3 PM	COD Fee $	Insurance Fee $
Flat Rate or Weight lbs. ozs.	Military ☐ 2nd Day ☐ 3rd Day	Total Postage & Fees $ 23.30	
	Int'l Alpha Country Code	Acceptance Emp. Initials	

FROM: (PLEASE PRINT) PHONE (518) 828-3414
Columbia County District Attorney
325 Columbia Street, Suite 2100
Hudson, NY 12534

TO: (PLEASE PRINT) PHONE (518) 828-1521
Andrew Howard
441 East Allen Street
Hudson, NY
Kinderhook Town Attorney
ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)
12534+
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Visit www.usps.com
Call 1-800-222-1811

USPS

EI 363825390 US

EXPRESS MAIL
UNITED STATES POSTAL SERVICE®
Customer Copy
Label 11-B, March 2004
Post Office To Addressee

DELIVERY (POSTAL USE ONLY)

Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature	
Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature	
Delivery Date Mo. Day	Time ☐ AM ☐ PM	Employee Signature	

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.

☐ WAIVER OF SIGNATURE (Domestic Mail Only). Additional merchandise insurance is void if customer requests waiver of signature. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

Federal Agency Acct. No. or Postal Service Acct. No.

☐ NO DELIVERY ☐ Weekend ☐ Holiday

Mailer Signature

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code 12534	Day of Delivery ☑ Next ☐ 2nd ☐ 3rd Day	Postage $ 16.95	
Date Accepted 12 21 12 Mo. Day Year	Scheduled Date of Delivery Month 12 Day 22	Return Receipt Fee $	
Time Accepted 3:38 ☐ AM ☐ PM	Scheduled Time of Delivery ☑ Noon ☐ 3 PM	COD Fee $	Insurance Fee $ 2.35
Flat Rate or Weight lbs. ozs.	Military ☐ 2nd Day ☐ 3rd Day	Total Postage & Fees $ 23.30	
	Int'l Alpha Country Code	Acceptance Emp. Initials	

FROM: (PLEASE PRINT) PHONE (518) 828-3414
Columbia County District Attorney
325 Columbia Street, Suite 2100
Hudson, NY 12534

TO: (PLEASE PRINT) PHONE (518) 828-1521
Andrew Howard, Esq.
441 East Allen Street
Hudson, NY
Kinderhook Town Attorney
ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)
12534+
FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

FOR PICKUP OR TRACKING
Visit www.usps.com
Call 1-800-222-1811

USPS

EI 383825369 US

EXPRESS MAIL
UNITED STATES POSTAL SERVICE®
Customer Copy
Label 11-B, March 2004
Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)
PO ZIP Code: 12534
Day of Delivery: ☑ Noon ☐ 3rd ☐ 3rd Day
Postage: $ 18.95
Date Accepted: 12 21 17 (Mo. Day Year)
Scheduled Date of Delivery: Month 12 Day 22
Return Receipt Fee: $
Time Accepted: 3:36 ☐ AM ☑ PM
Scheduled Time of Delivery: ☐ Noon ☑ 3:00
COD Fee: $
Insurance Fee: $ 1.35
Flat Rate ☑ or Weight: lbs. ozs.
Military: ☐ 2nd Day ☐ 3rd Day
Total Postage & Fees: $ 21.30
Int'l Alpha Country Code:
Acceptance Emp. Initials:

FROM: (PLEASE PRINT) PHONE ( )
Columbia County District Attorney's office
325 Columbia Street, Suite 260
Hudson NY 12534

DELIVERY (POSTAL USE ONLY)
Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Date: Mo. Day Time ☐ AM ☐ PM Employee Signature

CUSTOMER USE ONLY
PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.
Federal Agency Acct. No. or Postal Service Acct. No.
☐ WAIVER OF SIGNATURE (Domestic Mail Only): Additional merchandise insurance is void if you have requested waiver of signature. When delivery is to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and authorize that delivery employee's signature constitutes proof of delivery.
☐ NO DELIVERY Weekend Holiday
Mailer Signature

TO: (PLEASE PRINT) PHONE ( )
Tina Puckett, Court Clerk
Village of Kinderhook Court
Town of Kinderhook Court
4 Church Street
Niverville, NY 12130

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)
+

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EMS

EI 383825355 US

EXPRESS MAIL
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Customer Copy
Label 11-B, March 2004
Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)
PO ZIP Code: 12534
Day of Delivery: ☑ Noon ☐ 3rd ☐ 3rd Day
Postage: $ 18.95
Date Accepted: 12 21 17 (Mo. Day Year)
Scheduled Date of Delivery: Month Day
Return Receipt Fee: $ 2.35
Time Accepted: 3:41 ☐ AM ☑ PM
Scheduled Time of Delivery: ☑ Noon ☐ 3:00
COD Fee: $
Insurance Fee: $
Flat Rate ☑ or Weight: lbs. ozs.
Military: ☐ 2nd Day ☐ 3rd Day
Total Postage & Fees: $ 21.30
Int'l Alpha Country Code:
Acceptance Emp. Initials:

FROM: (PLEASE PRINT) PHONE ( )
Columbia County District Attorneys office
325 Columbia Street, Suite 260
Hudson, NY 12534

DELIVERY (POSTAL USE ONLY)
Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Date: Mo. Day Time ☐ AM ☐ PM Employee Signature

CUSTOMER USE ONLY
PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.
Federal Agency Acct. No. or Postal Service Acct. No.
☐ WAIVER OF SIGNATURE (Domestic Mail Only): Additional merchandise insurance is void if you have requested waiver of signature. When delivery is to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and authorize that delivery employee's signature constitutes proof of delivery.
☐ NO DELIVERY Weekend Holiday
Mailer Signature

TO: (PLEASE PRINT) PHONE ( )
Tina Puckett, Court Clerk
Town and Village Kinderhook Court
6 Chatham Street
Kinderhook, NY 12106

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)
+

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

FOR PICKUP OR TRACKING
Visit www.usps.com
Call 1-800-222-1811

EMS

EI 383825443 US

EXPRESS MAIL
UNITED STATES POSTAL SERVICE®

Customer Copy
Label 11-B, March 2004

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code: 12534
Day of Delivery: ☑ Next ☐ 2nd ☐ 3rd Day
Postage: $ 10.95
Date Accepted: Mo. 12 Day 21 Year 17
Scheduled Date of Delivery: Month 12 Day 22
Return Receipt Fee: $ 2.35
Time Accepted: 3:40 ☐ AM ☒ PM
Scheduled Time of Delivery: ☐ Noon ☐ 3 PM
COD Fee: $
Insurance Fee: $ 0.00
Flat Rate ☒ or Weight: lbs. ozs.
Military: ☐ 2nd Day ☐ 3rd Day
Total Postage & Fees: $ 21.30
Int'l Alpha Country Code:
Acceptance Emp. Initials: S

DELIVERY (POSTAL USE ONLY)

Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Date: Mo. Day Time ☐ AM ☐ PM Employee Signature

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.
Federal Agency Acct. No. or Postal Service Acct. No.

☐ WAIVER OF SIGNATURE (Domestic Mail Only): Additional merchandise insurance is void if waiver of signature is requested. I/We request delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I/we agree that delivery employee's signature constitutes valid proof of delivery.

☐ NO DELIVERY ☐ Weekend ☐ Holiday
Mailer Signature

FROM: (PLEASE PRINT) PHONE ( )
Col. Co. District Attorney
325 Columbia ST, Ste 360
Hudson, NY 12534

TO: (PLEASE PRINT) PHONE ( )
Hon. David Dellehunt
Kinderhook Town Court
Village of Kinderhook Court
6 Chatham Street
Kinderhook, NY

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)
12106+

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

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Call 1-800-222-1811

EI 383825430 US

EXPRESS MAIL
UNITED STATES POSTAL SERVICE®

Customer Copy
Label 11-B, March 2004

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code: 12534
Day of Delivery: ☑ Next ☐ 2nd ☐ 3rd Day
Postage: $ 10.95
Date Accepted: Mo. 12 Day 21 Year 17
Scheduled Date of Delivery: Month 12 Day 22
Return Receipt Fee: $ 2.35
Time Accepted: 3:15 ☐ AM ☒ PM
Scheduled Time of Delivery: ☐ Noon ☒ 3:00 PM
COD Fee: $
Insurance Fee: $ 0.00
Flat Rate ☐ or Weight: lbs. ozs.
Military: ☐ 2nd Day ☐ 3rd Day
Total Postage & Fees: $ 21.30
Int'l Alpha Country Code:
Acceptance Emp. Initials:

DELIVERY (POSTAL USE ONLY)

Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Attempt: Mo. Day Time ☐ AM ☐ PM Employee Signature
Delivery Date: Mo. Day Time ☐ AM ☐ PM Employee Signature

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.
Federal Agency Acct. No. or Postal Service Acct. No.

☐ WAIVER OF SIGNATURE (Domestic Mail Only): Additional merchandise insurance is void if waiver of signature is requested. I/We request delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I/we agree that delivery employee's signature constitutes valid proof of delivery.

☐ NO DELIVERY ☐ Weekend ☐ Holiday
Mailer Signature

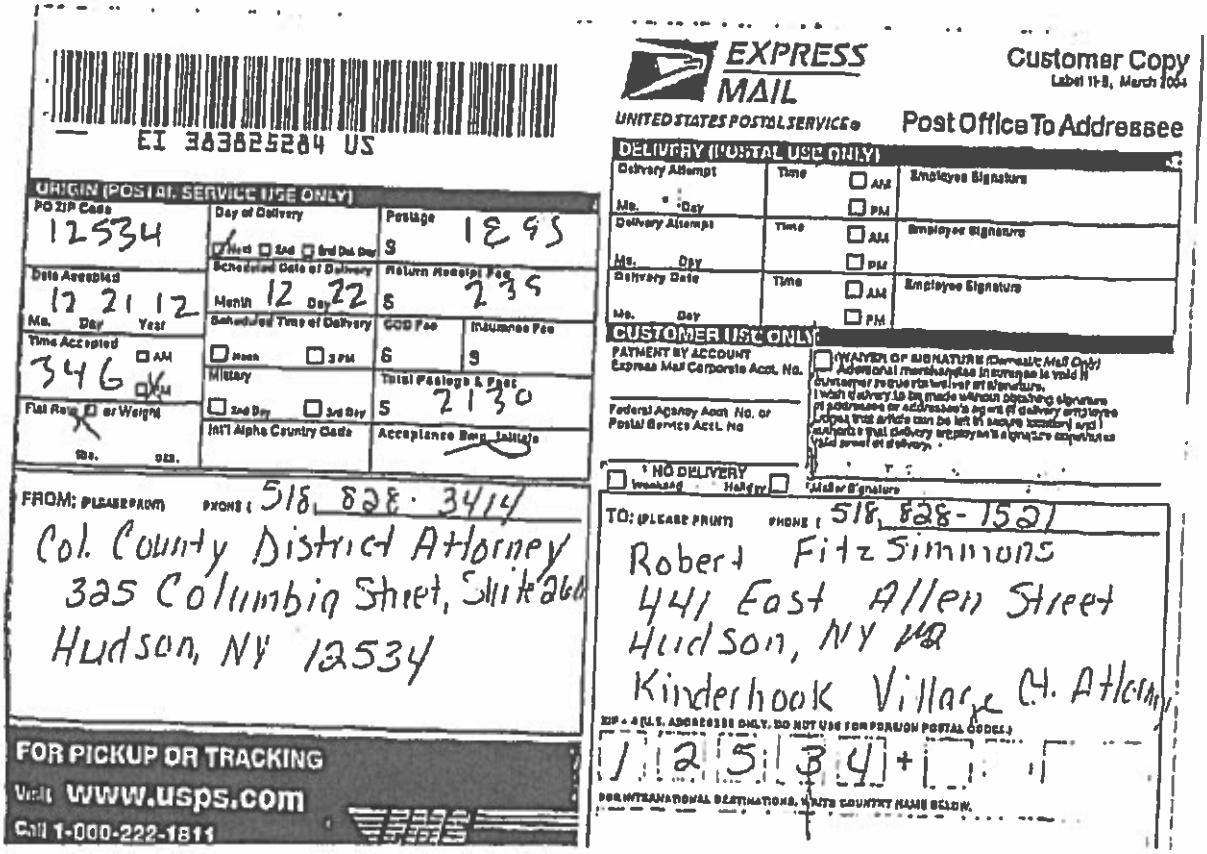
FROM: (PLEASE PRINT) PHONE ( )
Col. County District Attorney
325 Columbia Street
Hudson, NY 12534

TO: (PLEASE PRINT) PHONE ( )
Hon. David Dellehunt
Kinderhook Town Court
Village of Kinderhook Court
6 Chatham, Street
Kinderhook, NY

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)
12106+

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

FOR PICKUP OR TRACKING
Visit www.usps.com
Call 1-800-222-1811



EI 383825284 US

EXPRESS MAIL
UNITED STATES POSTAL SERVICE®
Customer Copy
Label 11-B, March 2004
Post Office To Addressee

DELIVERY (POSTAL USE ONLY)
Delivery Attempt — Time — Employee Signature
Delivery Attempt — Time — Employee Signature
Delivery Date — Time — Employee Signature

CUSTOMER USE ONLY
PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.
Federal Agency Acct. No. or Postal Service Acct. No.
WAIVER OF SIGNATURE (Domestic Mail Only)
NO DELIVERY
Weekend Holiday
Additional merchandise insurance is void if customer requests waiver of signature.
I want delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitute valid proof of delivery.
Addr'l Signature

ORIGIN (POSTAL SERVICE USE ONLY)
PO ZIP Code: 12534
Day of Delivery: Next / 2nd / 3rd Day
Postage: $ 10 95
Date Accepted: 12 21 12 (Mo. Day Year)
Scheduled Date of Delivery: Month 12 Day 22
Return Receipt Fee: $ 2 35
Scheduled Time of Delivery: Noon / 3 PM
COD Fee: $
Insurance Fee: $
Time Accepted: 346 AM PM
Military: 2nd Day / 3rd Day
Total Postage & Fees: $ 21 30
Flat Rate / or Weight: lbs. ozs.
Int'l Alpha Country Code
Acceptance Clerk Initials

FROM: (PLEASE PRINT) PHONE (518) 828-3414
Col. County District Attorney
325 Columbia Street, Suite 260
Hudson, NY 12534

TO: (PLEASE PRINT) PHONE (518) 828-1521
Robert Fitz Simmons
441 East Allen Street
Hudson, NY 12
Kinderhook Village Ct. Atty
ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)
1 2 5 3 4 + [ ] [ ]
FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

FOR PICKUP OR TRACKING
Visit www.usps.com
Call 1-800-222-1811

EXHIBIT "4"

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of
Paul Czajka, in his capacity as
District Attorney, Columbia County,
New York, Petitioner, for a Judgment
Under Article 78 of the Civil Practice
Law and Rules in the nature of
Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice
of Kinderhook, as Village Justice of
Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:
SS:
COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Amended Order to Show Cause and Amended Verified Petition

TO:

Hon. David A. Dellehunt
Tina Puckett, Court Clerk
Kinderhook Town Court
(518) 758-9869

Lisa Bleau

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skype

Notary Public/Commissioner of Deeds

Catherine J Skype
Notary Public, State of New York
#01SK6208624
Qualified in Columbia County
Commission Expires July 8, 20 13

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of Paul Czajka, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice of Kinderhook, as Village Justice of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:

SS:

COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Amended Order to Show Cause and Amended Verified Petition

TO:

Andrew B. Howard, Esq.
Kinderhook Town Attorney
(518) 828-2420

Lisa Bleau

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skype

Notary Public/~~Commissioner of Deeds~~

Catherine J Skype
Notary Public, State of New York
#01SK6209824
Qualified in Columbia County
Commission Expires July 6, 20 13

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of
Paul Czajka, in his capacity as
District Attorney, Columbia County,
New York, Petitioner, for a Judgment
Under Article 78 of the Civil Practice
Law and Rules in the nature of
Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice
of Kinderhook, as Village Justice of
Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:

SS:

COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Amended Order to Show Cause and Amended Verified Petition

TO:

Robert Fitzsimmons, Esq.
Kinderhook Village Attorney
(518) 758-2330

Lisa Bleau

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skype

Notary Public/Commissioner of Deeds

Catherine J Skype
Notary Public, State of New York
#01SK6208624
Qualified in Columbia County
Commission Expires July 8, 20 13

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of Paul Czajka, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner,

-against-

David A. Dellehunt, as Town Justice of Kinderhook, as Village Justice of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK:
SS:
COUNTY OF COLUMBIA

I, Lisa Bleau, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, I faxed a copy of the following: Amended Order to Show Cause and Amended Verified Petition

TO:

Hon. David A. Dellehunt
Tina Puckett, Court Clerk
Kinderhook Village Court
(518) 758-9869

Lisa Bleau

Lisa Bleau
Confidential Secretary

Sworn to before me this
26th of December, 2012

Catherine J Skype

Notary Public/~~Commissioner of Deeds~~

Catherine J Skype
Notary Public, State of New York
#01SK6208824
Qualified in Columbia County
Commission Expires July 6, 20 13

STATE OF NEW YORK:
SUPREME COURT: COUNTY OF COLUMBIA

----------X

PAUL CZAJKA, as District Attorney,

-against-

DAVID A. DELLEHUNT, as Town and Village Justice of Kinderhook,

Defendant.

----------X

STATE OF NEW YORK:
SS:
COUNTY OF COLUMBIA

I, Ryan Carty, an employee for the District Attorney of Columbia County, being over 21 years of age, and being duly sworn, deposes and says that on December 21, 2012, he served a copy of the following, by Express Mail:
AMENDED ORDER TO SHOW CAUSE

TO:

Hon. David Dellehunt
Kinderhook Town & Village Courts
6 Chatham Street
Kinderhook, New York 12106

Robert Fitzsimmons
Kinderhook Village Attorney
441 East Allen Street
Hudson, New York 12534

Andrew Howard, Esq.
Kinderhook Town Attorney
441 East Allen Street
Hudson, New York 12534

Tina Puckett, Court Clerk
Kinderhook Town and Village Courts
6 Chatham Street
Kinderhook, New York 12106

by depositing a true and correct copy of the same copy of the same property enclosed in a post-paid wrapper in an official depository maintained and exclusively controlled by the United States Post Office at Hudson, New York, 12534, directed to said person(s) at said address(s) respectively mentioned above and being within the state designated for that purpose.

RYAN M. CARTY
Legal Intern

Sworn to before me this
26 day of December, 2012

Catherine J Skype
Notary Public/~~Commissioner of Deeds~~

Catherine J Skype
Notary Public, State of New York
#01SK6208624
Qualified in Columbia County
Commission Expires July 6, 20 13

STATE OF NEW YORK
SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of PAUL CZAJKA, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

AFFIDAVIT

Index No.
RJI No.

Petitioner

-against-

David A. Dellehunt, as Town and Village Justice of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK)

COUNTY OF COLUMBIA) ss:

RYAN CARTY, being duly sworn, deposes and says:

1. That I am a legal intern for the District Attorney of Columbia County, New York and I have been since June of 2012. I make this affidavit based upon by own personal knowledge. I attended Albany Law School from August of 2011 until May of 2014 when I graduated. I have taken the New York State Bar Exam and I am awaiting the results.

2. In December of 2012 I was working at the Columbia County District Attorney's Office while completing the fall semester of my second year of law school. I was working in the office on Friday December 21, 2012.

3. On that day, Assistant District Attorney, Dominic J. Cornelius was working on an Order to Show Cause and a Petition to be filed against Kinderhook Town Judge David Dellehunt. I did not assist in writing the Order or Petition, but did do some legal research for different issues that ADA Cornelius asked of me. In the afternoon on December 21, 2012, we had an office Christmas luncheon. At the luncheon, District Attorney Paul Czajka told me,

"Rico, you are not done working for today. I want you to personally serve this Order to Show Cause on everyone." Thereafter, the District Attorney left the office and told me, "Let me know how it went, and also if you have any questions to call me."

4. After the District Attorney left the office, ADA Cornelius was putting together the paperwork on the Order to Show Cause and Petition. When the paperwork was all put together, I observed Lisa Bleau, Confidential Secretary to the District Attorney, fax the Order and Petition to all the parties. I then got all the contact information from Ms. Bleau for Kinderhook Town Attorney Andrew Howard.

5. It was at that point that it was brought up that this Order and Petition needed to also name the Village of Kinderhook because Judge Dellehunt was also the Judge there. It was at that point ADA Cornelius told Ms. Bleau in my presence that we needed to add the Village of Kinderhook Judge Dellehunt. I heard Ms. Bleau ask ADA Cornelius, "Are you sure we can do that?" To which ADA Cornelius responded "Yes, it will be fine don't worry about it we just need to write amended on the top. It's all the same people anyway." I did not see the words "Amended" and "as Village of Kinderhook Judge" be written on the original Order and Petition.

6. I observed Ms. Bleau fax the amended order to all the parties again. After they were faxed, copies were made. The copies were placed into express mail envelopes and the labels were printed and given to me. I brought the envelopes to the post office and delivered them to be mailed to Judge Dellehunt as Kinderhook and Village Judge, Tina Puckett as Clerk of the Court in the town and the village of Kinderhook, Town Attorney Andrew Howard, and Village Attorney Robert Fitzsimmons.

7. After delivering the mailed copies to the post office I went back to the office. When I got back in the office I received Village Attorney Fitzsimmons contact information from

Ms. Bleau. ADA Cornelius told me that I needed to serve each party with a copy of the original Order and Petition and also the Amended Order and Petition except for the Village Attorney Fitzsimmons who only gets the Amended Order and Petition. I left the office a little before 5:00 p.m. to personally serve the parties.

8. I had previously spoken to Attorney Howard and he informed me he would be in his office until around 4:30 p.m. I drove to his office on East Allen Street, Hudson, New York, but he was not there. I called his cell phone and he told me he would be at his house in Kinderhook and that I could serve the papers on him there. I drove to Attorney Howard's house on County Route 21 in Kinderhook, New York and personally served him with a copy of both the original and Amended Order and Petition.

9. I contacted Attorney Fitzsimmons who informed me he was picking up his child and would be returning to his home shortly thereafter.

10. I proceeded to Judge Dellehunt's house on Albany Avenue, in Kinderhook, New York and went up to the door, knocked several times and rang the doorbell. There was no answer.

11. I drove to Ms. Puckett's house of Route 9, Wagon Wheel Road, Kinderhook, New York. I rang the doorbell numerous times and knocked and no one answered. As I was about to leave, Ms. Puckett pulled into her driveway. When she got out of her car, I served on her a copy of both the original and Amended Order and Petition. She accepted both.

12. I drove to Attorney Fitzsimmons home on Route 9 in Kinderhook, New York and served a copy of the Amended Order and Petition upon him.

13. I drove back to Judge Dellehunt's home and rang the doorbell and knocked several times and there was no answer. I called the District Attorney and told him that I was

unable to serve Judge Dellehunt and he said not to worry, but to go home and try again later or tomorrow. I went home and had dinner with my parents. At approximately, 7:30 p.m. or later, I made another attempt to serve Judge Dellehunt. I ran the doorbell, and he answered the door. I served on him a copy of the original and Amend Order and Petition. He stated to me, "Yeah I already know about this I got the fax earlier."

14. I signed affidavits of service to this effect swearing that I both express mailed and personally served each party. I then called the District Attorney to tell him that I served Judge Dellehunt to which he responded, "Good, thanks Rico."

Ryan Carty
Legal Intern

Sworn to before me this
17th day of March, 2015.

Catherine J Skype

Catherine J Skype
Notary Public, State of New York
#01SK6208624
Qualified in Columbia County
Commission Expires July 8, 20 17

STATE OF NEW YORK
SUPREME COURT: COUNTY OF COLUMBIA

----------X

In the matter of the Application of PAUL CZAJKA, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner,

AFFIDAVIT

Index No.
RJI No.

-against-

David A. Dellehunt, as Town and Village Justice of Kinderhook,

Respondent.

----------X

STATE OF NEW YORK)
) ss:
COUNTY OF COLUMBIA)

LISA BLEAU, being duly sworn, deposes and says:

1. That I am the Confidential Office Administrator (formerly Confidential Secretary) for the District Attorney of Columbia County, New York and I have been since January 1, 2012 and as such, my duties include performing all legal secretarial tasks, including, but not limited to, transcribing, preparing and proofreading confidential letters, legal documents and reports for the District Attorney and his staff.

2. I make this affidavit based upon by my own personal knowledge.

3. On the afternoon of December 21, 2012, and as part of my duties in the office, I assisted Assistant District Attorney, Dominic J. Cornelius, in the service of an Order to Show Cause which commenced the action above stated. The Order to Show Cause was signed by Acting Supreme Court Justice, Catherine Doyle.

4. As we were preparing the papers, I observed Mr. Cornelius, in handwriting with a blue marker, add "Amended" and "as Village Justice of Kinderhook" to the caption of the Order to Show Cause, which had already been signed by Hon. Catherine Doyle. (See Exhibit 1)

5. I asked Mr. Cornelius if he could do that and he stated, in sum and substance, "Yes, it's OK. It's the same people. We just need to get this out."

6. I am not an attorney and, as Mr. Cornelius was the attorney in charge of drafting the Order to Show Cause and Petition, I accepted his statement.

7. District Attorney Paul Czajka was not in the office at that time.

8. The Order to Show Cause was served by facsimile and overnight mail as directed by Judge Doyle upon David Dellehunt as Kinderhook Town Judge, Tina Puckett as Kinderhook Town Court Clerk, and Andrew Howard, Esq. as Kinderhook Town Attorney.

9. The "Amended" Order to Show Cause was served by facsimile and overnight mail upon David Dellehunt as Kinderhook Town Court Judge, David Dellehunt as Kinderhook Village Court Judge, Tina Puckett as Kinderhook Town Court Clerk, Tina Puckett as Kinderhook Village Court Clerk, Andrew Howard, Esq. as Kinderhook Town Attorney and Robert Fitzsimmons, Esq., as Kinderhook Village Attorney.

10. Affidavits of Service were prepared, executed and sent by facsimile to Judge Doyle's Chambers indicating service of the documents as set forth above.

11. On January 6, 2015, District Attorney Czajka attended Oral Argument at the Appellate Court on the underlying matter. Before he returned to the Office, he called and asked me if I knew that there was an "Amended" Order to Show Cause. I told him yes. When he returned to the Office that day, he asked me to show it to him. When I gave it to him, he told me he had not seen that document before or this was the first time he had seen it. At that time, I told him that I had observed Mr. Cornelius add "Amended" and "as Village Justice of Kinderhook" to

the caption of the Order to Show Cause, which had already been signed by Hon. Catherine Doyle.

12. On January 7, 2015, before 9:00 a.m., District Attorney Czajka called and asked me to call the New York State Police to get an Investigator to the Office to copy the "Amended" Order to Show Cause that I first showed him on January 6, 2015. He instructed me to put the "Amended" Order to Show Cause in a sealed envelope and have the Investigator open it and make a copy for our file. New York State Police Investigator Eric Barnes came shortly thereafter, unsealed the envelope, made a copy of the "Amended" Order to Show Cause, gave me the copy for our file and retained the "Amended" Order to Show Cause that District Attorney Paul Czajka had directed me to put in the sealed envelope.

13. On March 5, 2015 at approximately 8:35 a.m., I answered a call to the Office. Sheila Zito at the County Attorney's Office was on the line and told me "DJ Cornelius" wanted to speak to me. In sum and substance, Mr. Cornelius stated that he had talked to "Mike Hutter" about getting copies of documents and that "Mike" told him he should get the copies from our Office, but [Mr. Cornelius] thought he wouldn't be welcomed here. I asked Mr. Cornelius if he wanted me to check and he said, in sum and substance, "No, no, no. That's alright. Don't worry about it. I'm (Mr. Cornelius) not worried about it."

Lisa Bleau

Lisa Bleau
Confidential Office Administrator

Sworn to before me this
17th day of March, 2015.

Catherine J Skype

Catherine J Skype
Notary Public, State of New York
#01SK6206624
Qualified in Columbia County
Commission Expires July 6, 20 17

Exhibit 1

Amended

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

Appearances are not required on the return date

In the matter of the Application of Paul Czajka, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner

-against-

David A. Dallehunt, as Town Justice Of Kinderhook, as Village Justice of Kinderhook

Respondent

ORDER TO SHOW CAUSE

Index No.

Upon the annexed verified complaint of Paul Czajka, dated the 20th day of December, 2012, upon the exhibits annexed thereto and upon all proceedings had heretofore,

NOW THEREFORE, LET THE RESPONDENT SHOW CAUSE BEFORE THIS COURT, in and for the County of Columbia at the Columbia County Courthouse, Hudson, New York[1], on 26th day of December, 2012 at 4:00 a.m. (p.m.) of that day or as soon thereafter as counsel can be heard, why the Court should not issue an order, pursuant to C.P.L.R. Article 78, directing and requiring the respondent to transmit the electronic recording of the proceeding held in the Town of Kinderhook Court, on the 2nd day of October, 2012, to Candyco. Inc. at 1 Mann Boulevard, Clifton Park, New York 12065, a certified electronic transcriptionist and provide petitioner with copy(s) of the original electronic recording made of Court proceedings held in the Town of Kinderhook Court the 4th day of June and October 2, 2012, together with such other and further relief as this Court may deem just and proper.

[1] However, the parties shall determine if the Courthouse has been temporarily moved to Claverack, New York

SUFFICIENT REASON APPEARING THEREFORE, it is hereby,

ORDERED, that Service of a copy of this order and the papers upon which is based, upon [Town of Kinderhook Justice, David Dellehunt] (and/~~or~~) [Clerk of Town of Kinderhook Justice Court, Tina Puckett] (and/~~or~~) [Andrew Howard, Attorney for the Town of Kinderhook] ~~[and/or]~~ _____

_____

on or before [redacted]24thday of December 2012 [redacted] by ~~or~~ overnight Mail) ~~[redacted]~~ (and/~~or~~) (Facsimile) shall be deemed good and sufficient service

Answering papers, if any, are to be filed and faxed to the Court at (518) 462-1316 on or before 12/26/12 at 4:00 pm.

Signed this 21 day of December, 2012 at Hudson, New York.

ACTING Supreme Court Justice
Columbia County,
State of New York

STATE OF NEW YORK

SUPREME COURT: COUNTY OF COLUMBIA

In the matter of the Application of Paul Czajka, in his capacity as District Attorney, Columbia County, New York, Petitioner, for a Judgment Under Article 78 of the Civil Practice Law and Rules in the nature of Mandamus,

Petitioner

-against-

David A. Dellehunt, as Town Justice Of Kinderhook, as Village Justice of Kinderhook

Respondent

Amended

VERIFIED PETITION

Index No.

5395 12

TO THE COUNTY COURT OF THE STATE OF NEW YORK, COUNTY OF COLUMBIA

The petition of Paul Czajka, respectfully show as follows:

The Parties

1. The petitioner is the duly elected District Attorney of Columbia County.

2. The respondent, David A. Dellehunt, is a Justice of the Town of Kinderhook Justice Court.

Jurisdiction

3. Pursuant to Civil Practice Law and Rules section 7801, this Honorable Court is empowered to render a decision to determine whether Kinderhook Town Justice Dellehunt is required to transmit an electronic recording of the court proceedings of October 2, 2012 to Dandypo, Inc., a certified transcriptionist; and further, whether such Town Justice is required to provide the Columbia County District Attorney with copies of the electronic recording of the court proceedings.

4. Pursuant to Civil Practice Law and Rules Section 7801, this Honorable Court is empowered to render a decision restraining the commencement or continuation of proceedings by another