

NOTICE OF PETITION

STATE OF NEW YORK  
SUPREME COURT  
WASHINGTON COUNTY

IN THE MATTER OF THE APPLICATION OF  
JON ROBERTS,

Petitioner,

FOR A JUDGMENT PURSUANT TO ARTICLE 78  
OF THE CPLR

Directed to

THE VILLAGE OF FORT EDWARD,  
WASHINGTON COUNTY, NEW YORK,

Respondent.

PLEASE TAKE NOTICE, that upon the annexed

petition of Jon Roberts, duly verified the 28th day of  
February, 1983, the undersigned will move this Court at  
a Special Term thereof, to be held at the Courthouse,  
Washington County, located at Hudson Falls, New York, on  
May 5, 1983 at 9:30 o'clock in the forenoon, or as soon  
thereafter as counsel can be heard, for a judgment  
pursuant to Article 78 of the CPLR reviewing, vacating  
and annulling a determination made by the Board of  
Trustees of the Village of Fort Edward on the 1st day of  
November, 1982, which found the petitioner guilty of

LEONARD KING  
 Mayor, Village of Fort Edward  
 118 Broadway  
 Post Office Box 345  
 Fort Edward, New York 12828

LAWRENCE E. CORBETT, JR.,  
 Village Attorney  
 Village of Fort Edward  
 70 Burgoyne Avenue  
 Fort Edward, New York 12828

DANIEL SMATKO, Village Clerk  
 Village of Fort Edward  
 118 Broadway  
 Post Office Box 345  
 Fort Edward, New York 12828

TO:

McMAHON & McMAHON, P.C.  
 Attorneys for Petitioner  
 16 Lake Avenue  
 Saratoga Springs, N.Y. 12866

Dated: February 28, 1983.

for thirty (30) days.

violating Section 1.02 of the Rules and Regulations of  
 the Fort Edward Police Department and imposed a penalty  
 against him consisting of a written reprimand to be made  
 a part of his employment record and a suspension of pay

STATE OF NEW YORK

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WASHINGTON COUNTY, NEW YORK,

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Petitioner, through his attorneys, McMahon &

McMahon, P.C., respectfully alleges:

1. Petitioner is a citizen of the State of

New York and resides at 31 Elm Street, Hudson Falls,

New York, and was at all times herein mentioned employed

as a patrolman of the Village of Fort Edward Police

Department.

2. Respondent Village of Fort Edward,

Washington County, New York, is a municipal corporation

at all times herein mentioned acting through its Mayor,

Leonard King and its Trustees, Richard I. Forte, Donald

D. Ellis, Brent Farnsworth and Andrew J. Smatko forming

the body known as the Board of Trustees of the Village

of Fort Edward.

3. On or about August 24, 1982, petitioner was charged with Unbecoming Conduct and Immoral Conduct by Leonard King, Mayor of the respondent. A copy of those charges, marked Exhibit "A" is annexed hereto and made a part hereof.

4. On or about the 7th day of September, 1982, through my attorneys, McMahon & McMahon, P.C., I served an Answer on the respondent. A copy of said Answer is annexed hereto and marked Exhibit "B".

5. On September 20, 1982, a hearing was held before Bernice McPhillips, Hearing Officer, at 7:00 o'clock in the evening. A transcript of said hearing which is already in the possession of the respondent, will be filed with the Court for use in this proceeding.

6. On or about October 29, 1982, the Hearing Officer, Bernice McPhillips, submitted her report and recommendations, a copy of which is marked Exhibit "C" and annexed hereto.

7. The conclusions regarding Charge No. 1 reached by the Hearing Officer were against the weight of the evidence and were not supported by the findings of fact made by the Hearing Officer herself.

8. On or about November 1, 1982, the respondent found the petitioner guilty of unbecoming conduct and imposed a penalty of a letter of reprimand to be placed in petitioner's personnel file and, despite the recommendations of the Hearing Officer, additionally suspended petitioner's pay for a period of thirty (30) days. A copy of the Resolution of the Village Board of Trustees and the said letter of reprimand marked Exhibits "D" and "E" are annexed hereto and made a part hereof.

9. The action of the respondent in adopting the said resolution was arbitrary and capricious; and the respondent abused its discretion in the measure of penalty or discipline imposed.

10. The determination, on the entire record, is not supported by substantial evidence.

11. By reason of the foregoing petitioner's reprimand and suspension of pay were illegal and contrary to law.

12. That no previous application has been made for the relief herein sought.

KATHRYN O'KEEFE  
Notary Public, State of New York  
Saratoga County  
My commission Expires March 30, 1984

*Kathryn O'Keefe*  
Notary Public

Sworn to before me this  
28th day of February, 1983.

Jon Roberts  
Petitioner

JON ROBERTS, being duly sworn, deposes and says that he is the petitioner in the above action; that he has read the foregoing petition and knows the contents thereof, that the same is true to his own knowledge except as to those matters which are therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

STATE OF NEW YORK :  
COUNTY OF SARATOGA : ss.:

Jon Roberts  
Jon Roberts

Dated: February 28, 1983

WHEREFORE, petitioner respectfully prays that this Court review the determination made by the respondent as hereinabove set forth, and enter a judgment annulling the same and directing the restoration of the pay suspended together with such other and further relief as to this Court seems necessary and proper.