

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

March 3, 1994

Telephone: (518) 483-4330

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Mayor James Feeley
Village of Malone Offices
16 Elm Street
Malone, New York 12953

PERSONAL & CONFIDENTIAL

Re: Malone Police Department

Dear Jim:

Thank you for letting me review and comment on the new information compiled with respect to Officer Nichols. The information tends to group itself in two major sets of complaints. The first is that Officer Nichols is engaging in an intentional pattern of discrimination against out of town residents. The second is that Officer Nichols has engaged in a pattern of behavior calculated to bring discredit upon the Department. In this last group, I note that he has had a questionable announcement published in the newspaper, that he has circulated petitions intending to directly influence the Village Board's governance of the Police Department and that he may have solicited letters to the newspaper which were critical of the Department.

There were numerous other incidents set forth in the information that you gave me, most of which I considered to be of a minor nature.

The alleged discrimination against out of town residents is particularly troubling. Nevertheless, I do not think it will be adequate to result in his dismissal. The period of time that Mr. Nichols has been back at work is a short one. The statistics which the Department has offered us could have been skewed by that short period of time. If Officer Nichols issued an unusually high or low number of tickets since he has been back at work, that too could have skewed the statistical results. It would be extremely important to review the statistics involving in town and out of town arrests by the other officers of the Police Department during the same period of time. The information which you provided me with measures Officer Nichols recent performance as against his past performance and that is important. It is also important to measure his performance against the performance of the other members of the force.

TO: MAYOR JAMES FEELEY
RE: MALONE POLICE DEPARTMENT

Officer Nichols will argue that every case is different and that each case calls for the exercise of a certain amount of discretion. He will testify that not every stop can or should result in a ticket. We will be hard pressed to disagree with that, and you can be sure that you will have a logical sounding explanation for every incident in which he failed to issue a ticket to an in town resident.

Officer Nichols' fallback position will be that if any discrimination did take place it was certainly unconscious and unintentional. In effect, he is going to say that if you did not want this result then you should not have let me run for political office.

The ads that Nichols placed in the Malone Telegram thanking his friends and supporters for their support during his difficult ordeal is certainly questionable. It does not mention the Police Department or any of its officers by name. There is a fine line between a police officer's right of free speech and his obligation not to bring discredit upon the Department. This advertisement may have gone over the line, but it is a close call.

Nichols' solicitation of signatures for the petition to influence the conduct of the Village Board with respect to his case seems to me to be a clear violation of the rules regarding the bringing of discredit upon the Department and also the rule against attempting to influence the conduct of the Village Trustees. Nevertheless, it is not the kind of charge that is going to be understood by the general public.

It seems likely that Mr. Nichols solicited letters from his wife, his daughter and Mr. Faubare which were critical of the Department and which were published in the local paper. However, we are not going to be able to prove that he solicited those letters.

My analysis is that the proposed charges are not sufficiently serious to guarantee a dismissal of Officer Nichols. At this point, I would deal with them on an internal basis. I believe that Officer Nichols should be given a counseling letter outlining these problems, indicating the seriousness of the problems and warning him to correct his behavior. A counseling letter is not punishment, does not require a Section 75 hearing and will not prevent the bringing of charges at a later date based upon these allegations.

DISCIPLINARY ACTION AGAINST PTL. NICHOLS

KNOWLEDGE AND VIOLATING SAME DEPARTMENT RULES

- 01-28-93 Ass't Chief goes over section 10.1.27, 10.1.77, 11.5 with Pat Nichols to make sure he understands these rules.
- 02-04-93 Two hour counsel session with Chief & Asst. Chief with Pat Nichols due to his violation of the rules (11.5) after he was informed not to violate them on 01-28-93 Oral reprimand given to Pat Nichols by the Chief
- 05-11-93 Department rules updated and Pat Nichols signs that he understands all the rules.
- 07-??-93 Pat Nichols openly admits to several Officers that he brought a complaint against Asst. Chief and feels that the Chief is covering up the complaint. Also tells members that he is going outside the department (Mayor & D.A.) This violates the same rules that he has been advised and counseled on and also signed that he understood the rules. (11.5)
- 07-??-93 Openly admits to members that he went to the FBI on the incident. Violating the same rules that he has been counseled on by the Chief & Asst. Chief. (11.5)
- 08-05-93 Pat Nichols is suspended from Police Dept. on numerous charges. Approx 16 of the charges consist of the same charges he has been counseled on several times in the past (11.5). Pat Nichols still bound by the department rules during suspension.
- 08-??-93 While on suspension, Pat Nichols violates approx. 10 rules of conduct on at least four different occasions. Several of these rules are the same rules that he has been counseled on and is also on SUSPENSION FOR. (11.5)
- 10.20-93 Village Board hands down 60 days suspension for violations of rules. Particularly section 11.5. Minutes after his penalty is handed down, Pat Nichols comments to a reporter of WICY violating section 11.5 again.

10-21-93 After being advised of his 60 day suspension, Pat Nichols is advised by the Mayor of section 11.5 of rules of conduct. Pat Nichols still violates this rule even after his penalty and warning from the Mayor on section 11.5



J. Brian McKee
11 Charles Street
Malone, New York 12953-1209

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28 December 1993

Honorable Jan H. Plumadore
New York State Supreme Court Justice
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

Re: Notice of Petition
Index 93-755
Patrick Nichols v. Village
of Malone

Dear Judge Plumadore:

The Village of Malone has furnished me with a copy of cited NOTICE OF PETITION and while I am not personally a party to that action, Petitioner makes numerous references to my actions as Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York. In the NOTICE OF PETITION, Petitioner accuses me of being partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993 and variously attacks my integrity and professionalism.

As a local and federal law enforcement officer for over thirty years and a law enforcement executive for most of my adult life, I respectfully deny Petitioner's allegations and wish to go on record with you as indicating my total willingness to appear before you in this matter; to give testimony under oath; and to refute Petitioner's allegations. If it is appropriate to do so, I not only welcome such an opportunity, but respectfully request it.

Respectfully,

J. BRIAN MCKEE

RESPONSE BY HEARING OFFICER J. BRIAN MCKEE TO ALLEGATIONS RAISED BY
PATRICK NICHOLS (PETITIONER) AND INCLUDED IN HIS PETITION DATED 9
DECEMBER 1993 (INDEX # 93-755)

Petitioner, in the cited petition, alleged that the undersigned, who served as the Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York, was partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993. In the aforementioned petition, Petitioner alleges that I was biased and impartial because I had demonstrated a friendship for the Malone Police Department, citing a 14 March 1991 letter, written by me as the owner of the Gateway Motel of Malone, wherein I extended courtesy accommodations to the Police Department on an as requested basis. As a former member of the Malone Police Department (1961), I have always had a sense of admiration for the department in which I got my real start in the law enforcement profession. I must point out, however, that the primary purpose of the letter in question was to commend members of the department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the motel. Members of the department, and other law enforcement agencies in the Malone area, have utilized the motel for out of town guests, temporary lodging, et al, and I have always extended courtesy rates to them. It has always been done in the spirit of friendship with police officers representing agencies with which I was formerly affiliated as an active police officer and never as a improper inducement as suggested by Petitioner. The foregoing hardly suggests partiality or bias on my part. I showed no partiality or bias to either party to the hearing as demonstrated by my report and recommendations which included strong and public criticism for management personnel in the department and for the Mayor himself, as well as findings unfavorable to Petitioner. It must also be pointed out that, where appropriate and required, I recommended dismissal of some charges and specifications levied against Petitioner and did not concur with the request of the Village of Malone that Petitioner be outright terminated. Rather I weighed the evidence presented by both parties and recommended that every effort be made to return Petitioner to full employment in village government, but outside the Police Department.

For the record, I have always considered myself a "friend" of all members of the Malone Police Department because of my past employment in that department. In specific relation to Petitioner, I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I made a significant financial donation to Police Officer Nichols and also accepted his request that I be the keynote speaker at one of the DARE graduation ceremonies.

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Because of my knowledge of the operations of a law enforcement agency, and specifically my past association with the Malone Police Department, I am convinced that I was then, and remain, a most qualified person to serve as a hearing officer in a disciplinary proceeding involving a police officer and his or her performance of duty. My college education (Cornell University) involved a major in industrial and labor relations (personnel management, et al) and my 28 1/2 years with a federal law enforcement agency, the last 4 as the director of the 2000 person agency, have given me extensive experience in disciplinary matters.

I have always been able to demonstrate my integrity and professionalism in disciplinary matters, despite my personal friendship or working relationship with the parties thereto, and to act without bias or partiality.

I would point out that I am as much a "friend" with the patrolmen in the Malone Police Department (including Police Officer Nichols) as with the sergeants, Assistant Chief and Chief of Police. If I were forced to identify with management or the street-level police officer, I would have to say the latter. Despite all this, I can say without reservation that I acted throughout the hearing in question in a totally unbiased and impartial manner.

On the matter of Petitioner's claim that his actions in violation of various sections of the department's Rules and Regulations were protected by the "Whistle Blower Law", I continue to hold the conviction that such a claim is without merit. His complaint was not timely (he waited from 2 April to 13 July 1993, just after he was disciplined for another offense, to raise charges against the investigating officer) nor did he permit management a reasonable amount of time to investigate his charges (a matter of a few days) before bypassing the chain of command and making unauthorized contacts and disclosures outside the department - despite being assured, in writing by the Chief of Police, that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

On the matter of Petitioner's allegation that he suspected, repeat suspected, a "cover up" of his charges by management in the police department, I also found that without merit. I did not permit the testimony of defense witness Hanna on the topic of "coverups" after counsel for Petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police coverup" in the past and the actions of those involved in the actions charged in the Nichols case then before the Hearing Officer.

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I enclose herewith two Memoranda of Law, provided during the course of the hearing in question by counsel for the Village of Malone, on which the Hearing Officer relied for guidance in the absence of any contradictory memorandum of law by counsel for Petitioner.

On the matter of post-hearing submission of closing statements by counsels for the Village and Petitioner, it must be pointed out that it was indicated by me to both counsels at the time of the closing of the hearing on 17 September 1993 that I required their input within three weeks (8 October 1993) and, to that end, I telephonically contacted Petitioner on 7 October 1993 to remind him that I had not received a closing memorandum from his counsel. I received a closing memorandum from the Village of Malone on 7 October 1993. During subsequent conversations with Petitioner and his counsel, I pointed out that I had not received their closing memorandum which they had indicated they desired to submit. I further provided my personal FEDEX account number to expedite transmittal of Petitioner's closing memorandum. It was never agreed that submission of closing memoranda by counsels would await receipt and review by them of a transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about 12 October 1993, a copy was transmitted by me to Petitioner's counsel by FEDEX.

As demonstrated by the enclosed copy of my letter of 15 October 1993 to Mayor James N. Feeley, I did closely review the post-hearing closing memorandum of counsel for Petitioner and found nothing contained therein which was not already raised during the hearing and, accordingly, was not compelled to make any change to my report and recommendations of 13 October 1993.

While I have not seen it, I have been advised by the Publisher of the MALONE TELEGRAM that during an interview prior to the hearing of 16 and 17 September 1993, Petitioner told a reporter for that newspaper that he was comfortable with my assignment as Hearing Officer and felt he would receive fair and impartial treatment by me as Hearing Officer.

I respectfully deny Petitioner's allegations that I was biased and partial in my service as the Hearing Officer in Petitioner's disciplinary proceedings and wish to go on record as indicating my total willingness to appear in any judicial proceeding to give testimony under oath and to refute Petitioner's allegations.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
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BRYAN J. HUGHES
BRIAN S. STEWART

April 20, 1994

Telephone: (518) 483-4330
Fax: (518) 483-4005

Mayor James Feeley
Village of Malone Offices
16 Elm Street
Malone, New York 12953

Re: Patrolman Patrick Nichols

Dear Jim:

Enclosed herewith please find a proposed set of charges against Patrolman Patrick Nichols. If they meet with your approval, they should be personally served on Pat by the Chief of Police at the Police Station.

Very truly yours,



HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosure

CIVIL SERVICE LAW §75

VILLAGE OF MALONE,

Petitioner,

v.

CHARGES

PATRICK NICHOLS,

Respondent.

The Village of Malone hereby charges Police Officer Patrick Nichols pursuant to Civil Service Law §75 as follows:

- 1) During the first part of September 1993, Police Officer Patrick Nichols, while on suspension, did knowingly and intentionally solicit four persons to sign a petition, the object of which was to influence the opinions and votes of the Board Members of the Village Board of the Village of Malone with respect to a personnel matter then pending in front of such Board involving Officer Patrick Nichols. This action violated the following Departmental Rules and Regulations:

Regulation Section:

10.1.1 Discredit upon Department

10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of personal preferment or advantage.

10.1.27 Publicly criticizing the official actions of a Department member.

10.1.34 Deliberate violation of regulations pertaining to police management and control.

- 2) On March 17, 1994, while being questioned by superiors regarding the solicitation of signatures on the aforesaid petition, Officer Nichols failed to disclose the full scope of his behavior in soliciting signatures for such petition. His answers to direct questions about the direct solicitation of such signatures were misleading and false. This action violated the following Departmental Rules and Regulations:

Regulation Section:

10.1.4 Insubordination.

- 3) In Malone Telegram publication, Vol. 88 No. 216 of August 17, 1993, the respondent did criticize the Police Department stating "There's somebody else who should be suspended for 30 days". This action violated the following Departmental Rules and Regulations:

Regulation Section:

11.5 A member of the Force or Department shall treat as confidential the official business of the Police

Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall impart information relating to the official business of the Department.

10.1.27 Publicly criticizing the official actions of a Department member.

10.1.34 Deliberate violation of regulations pertaining to police management and control.

- 4) In the Plattsburgh Press Republican publication dated August 17, 1993, the respondent did publicly criticize the actions of the Police Department stating "In June 1988, I took an oath to serve the public. I did what I did because it was in the best interest of the public, and this attempt to shut me up isn't going to work. Does it make sense to take a man out of work for 30 days for doing the right thing"? This action violated the following Departmental Rules and Regulations:

Regulation Section:

11.5 A member of the Force or Department shall treat as confidential the official business of the Police Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall impart information relating to the official business of the Department.

10.1.27 Publicly criticizing the official actions of a Department member.

10.1.34 Deliberate violation of regulations pertaining to police management and control.

- 5) In the Plattsburgh Press Republican publication dated August 18, 1993, respondent did publicly criticize the official business of the Police Department stating that he feared retaliation from the Chief of Police and also stating "Retaliation is the number one reason I waited so long, that is the reason a lot of others are waiting before they say anything. They fear retaliation too. But I made the decision I'd see this through, and I want the public to know what's going on." Respondent also confirmed that he also filed a complaint against another officer earlier in the year regarding another unrelated incident. This action violated the following Departmental Rules and Regulations:

Regulation Section:

11.5 A member of the Force or Department shall treat as confidential the official business of the Police Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall impart information relating to the official business of the Department.

- 10.1.27 Publicly criticizing the official actions of a Department member.
- 6.2.7 Treat Superior Officers with respect.
- 10.1.4 Insubordination.
- 10.1.34 Deliberate violation of regulations pertaining to police management and control.

6) On October 21, 1993 at 12:10 p.m., Mayor Feeley notified Officer Nichols by telephone from his office, while Chief Phillips and Elizabeth Bessette were present, that even though he was suspended, he was still a member of the Malone Police Department and as such was still covered by the department rules and regulations. The Mayor told Officer Nichols to read rule 11.5 before he made any statements to Channel 5 WPTZ News. Even after Officer Nichols was advised by the Mayor to read section 11.5 of the rules and regulations regarding talking publicly, Officer Nichols gave an interview to a reporter for Channel 5 WPTZ News. This action violated the following Departmental Rules and Regulations:

Regulation Section:

- 11.5 A member of the Force or Department shall treat as confidential the official business of the Police Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall impart information relating to the official business of the Department.
- 10.1.34 Deliberate violation of regulations pertaining to police management and control.
- 10.1.4 Insubordination.

WHEREFORE, the Village of Malone intends to conduct a hearing pursuant to Civil Service Law §75 in order to make determinations with respect to these charges and to determine the appropriate and legal response.

PLEASE TAKE NOTICE, that written answers to the foregoing charges must be served upon the attorneys for the Village within eight days of the service of these charges upon the respondent.

Dated: April 20, 1994

Yours, etc.
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
31 Elm Street, P.O. Box 788
Malone, New York 12953
Telephone: (518) 483-4330

POLICE DEPT.

VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

Memo

To: Mayor & Board of Trustees
Village of Malone

From: James Phillips
Chief of Police

Date: October 22, 1993

Subject: Attached are disciplinary charges against Officer
Patrick Nichols.

On advise from the legal Council of the New York State Chief's of Police Association. The following disciplinary charges are preferred against Officer Patrick Nichols. In accordance with the provisions of Section S75 of the Civil Service Law of the State of New York.

I have all paperwork statements etc. that go along with supporting the charges.

DISCIPLINARY CHARGES CIVIL SERVICE LAW ARTICLE 75

MALONE POLICE DEPARTMENT Complainant

V.

PATRICK NICHOLS Respondent

The Malone Police Department hereby charges Police Officer Patrick Nichols pursuant to Civil Service Law §75 as follows:

- 1) During the first part of September 1993 Police Officer Patrick Nichols while on suspension did actively solicit persons to sign a petition which stated. We, the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing, for the following reasons.
- 1) He acted in good faith with an honorable intent.
 - 2) He acted in the best interest of the public
 - 3) His actions took courage and fortitude.
 - 4) His motivation was not self-serving.
 - 5) He is an ethical person who believes in justice and fair play.

This action violated the following departmental rules and regulations.

- 10.1.1 Discredit upon Department
- 10.1.27 Public criticism of a member of the department.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.
- 11.5 Disclosing official business of the Department without permission.

- 2) In Malone Telegram publication Vol.88 No. 216 of August 17, 1993, the respondent did criticize the police department stating "There's somebody else who should be suspended for 30 days".

11.5 A member of the Force or Department shall treat as confidential the official business of the police department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall impart information relating to the official business of the department.

10.1.27 Publicly criticizing the official actions of a department member.

- 3) In Plattsburgh Press Republican publication dated August 17, 1993, the respondent did publicly criticize the actions of the police department stating " In June 1988, I took an oath to serve the public. I did what I did because it was in the best interest of the public, and this attempt to shut me up isn't going to work. Does it make sense to take a man out of work for 30 days for doing the right thing"?

11.5 A member of the force shall treat as confidential the official business of the department. He shall not talk for publication.

10.1.27 Publicly criticizing the official actions of a department member.

- 4) In the Plattsburgh Press Republican publication dated August 18, 1993, respondent did publicly criticize the official business of the police department stating that he feared retaliation from the Chief of Police and also stated "Retaliation is the number one reason I waited so long, that is the reason a lot of others are waiting before they say anything. They fear retaliation too. But I made the decision I'd see this through, and I want the public to know what's going on." Respondent also confirmed that he also filed a complaint against another officer earlier in the year regarding another unrelated incident.

11.5 A member of the force shall treat as confidential the official business of the police department. He shall not talk for publication.

10.1.27 Publicly criticizing the official actions of a department member.

5) On October 21, 1993 at 12:10PM Mayor Feeley notified Officer Nichols by telephone from his office. Chief Phillips and Elizabeth Bessette were present. Mayor Feeley told Officer Nichols that even though he was suspended he was still a member of the Malone Police Dept. and as such was still covered by the department rules and regulations. The Mayor told Officer Nichols to read rule 11.5 before he made any statements to Channel 5 WPTZ News. Even after Officer Nichols was advised by the Mayor to read section 11.5 of the rules and regulations regarding talking publicly, Officer Nichols went ahead and did it anyway.

11.5 A member of the force shall treat as confidential the official business of the Police Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall he impart information relating to the official business of the Department to anyone except under due process of law and as directed or with the permission of the Chief of Police.

THOMAS P. HALLEY

ATTORNEY AT LAW

December 10, 1993

297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-9120
FAX (914) 452-9192

Michael V. Fleuryuntain
POB 74
Malone, NY 12953-0074

RE: Election for Collective Bargaining Representative

Dear Sir:

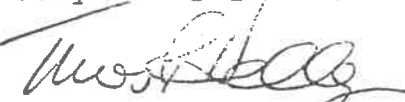
I am writing in response to a letter of November 30, 1993, that was sent to Ralph Purdy, the President of the New York State Federation of Police.

I believe that your impressions of the "defense strategy" are incorrect. The defense offered for your fellow officer, Patrick Nichols, was based upon his belief, and my belief, that he had not done anything wrong, but rather, had acted in a matter which any law enforcement officer should have acted when faced with the facts and circumstances that were presented to him. As I noted in my closing argument to the Hearing Officer there has been some discredit and disruption brought to the Police Department, but it was not as a result of the actions of Patrick Nichols. Rather, it was a result of what Patrick Nichols' discovered. The purpose of going through with a disciplinary hearing was to keep Patrick Nichols on the police force, and to maintain his reputation in the Community. The actions of the Village Board, in refusing to fire him, and the results of the recent election in which he led the ticket, both demonstrate that the "defense strategy" was valid and appropriate. I believe that by these actions, "every member of the Community" has indicated that they did not believe that the Chief of Police and the Mayor were acting properly in attempting to fire Officer Nichols.

You have indicated in your letter that you want a particular type of representation in the future. I would suggest to you that the Federation of Police, and this Attorney fully understand that desire, and are fully prepared to act in your best interests.

As you make a decision in the upcoming election as to whether or not you wish to continue your affiliation with the Federation of Police, I would ask you to consider the following. If you were brought up on disciplinary charges, like Patrick Nichols, and your entire livelihood, future, and reputation in the Community was on the line and at risk, who would you like to have representing you?

Very truly yours,



THOMAS P. HALLE

cc: Ralph Purdy
New York State Federation of Police. Inc.
540 North State Road
Briarcliff NY 10510

Brian,

I talked with Ron Reyome and went over his questions. He feels a little uncomfortable with question #6 (In your opinion, was Pat's performance as a DARE officer satisfactory?)

The answer to the question would be yes BUT where Pat had a problem was the other duties that were required as a police officer during the DARE Program.

The questions could be worded:

When teaching the sessions of the DARE Program, can the DARE Officer's duty be concentrated solely on the DARE Program?

Was Officer Nichol's performance while teaching the DARE Program go above and beyond the normal duties as a DARE Officer?

Because of this extra concentration of the DARE Program, did Officer Nichol's give less attention to his other duties as a police officer?

In your opinion, did the actions of Officer Nichols during the DARE Program cause any disruption in the police department?

In your opinion, was it necessary to change the workings of the DARE Program in order to limit this disruption?

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

August 12, 1993

I do not remember the exact date but several weeks ago I had a conversation with Officer Patrick Nichols at the Police Station. Officer Nichols advised me that he was going to fight the letter that he received in his personnel file. I asked him if he had contacted the Union yet and he told me that he had not. I advised him that if he was go to fight the letter that he should contact the Union, to make sure that things were done in the proper manner. He also showed me at this time some paperwork that he was doing concerning A/C Moll's actions during an arrest that had taken place several months ago. He also advised me that he had gone to see the subject that was arrested and talked to him about the alleged incident. I advised him at this time he was going against Department policy by contacting this subject. He stated that all he did was ask the subject if he still had the pants that he was wearing the night the incident took place. I advised him that if he did have an actual complaint against A/C Moll that it has to be done in proper procedures and by him doing the investigation he would be breaking those procedures. He stated that he was going to turn the information over to Chief Phillips and that if he did not feel that the matter was handle correctly he was going to go to the Mayor and to the DA for possible criminal prosecution against Moll. I advised him that he was not only getting Moll into trouble but that he was also setting the other officers on duty, which included himself, up for possible law suits as well as the Village of Malone. He stated that he did not feel that he was because Moll was the supervisor on the shift. I again advised him that he should contact the Union before he continued.

I also told him that it would look like he was doing this to get back at Moll for writing him up, since the alleged incident took place so long ago. He advised me that he did not feel that this was the case because the reason he took so long to bring this to the Chief's attention was because he was just doing a thorough investigation. I again told him that he was not suppose to be doing this type of investigation without following procedure.

There also was other time that I spoke with Ptlm Nichols concerning the alleged incident. He brought up a letter that Chief Phillips had written on the computer. He stated that he had already made a copy of the letter and was going to give it to the Mayor. He told me that the letter was on the computer so he felt he had every right to have access to it. I again advised him to contact the Union concerning what he was doing.

There was one other time that I remember talking to Officer Nichols about his actions. We were working a night

POLICE DEPT.

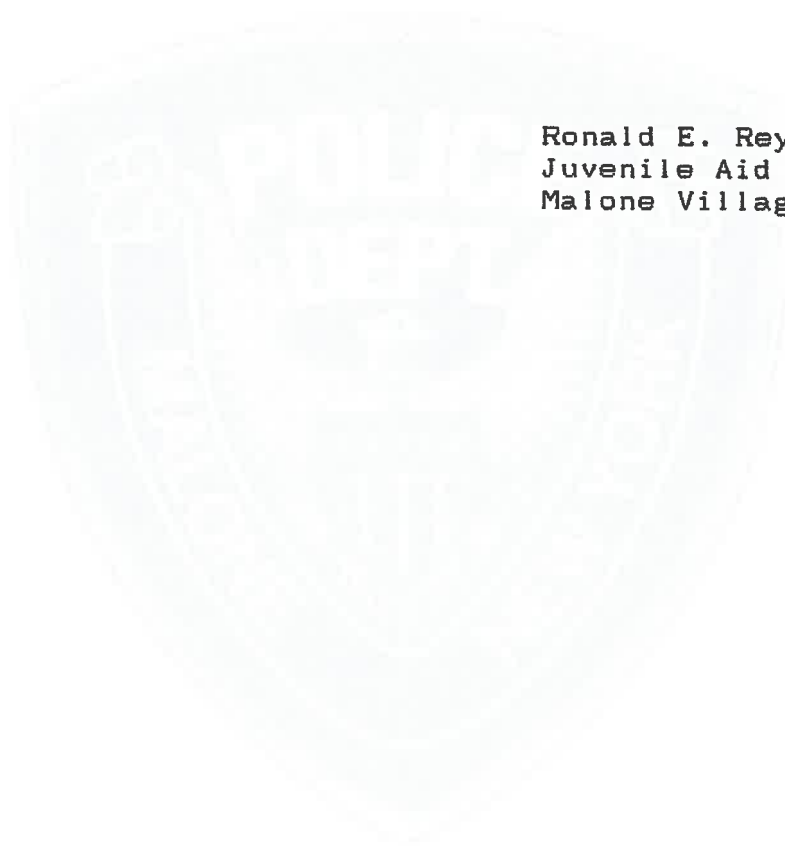
VILLAGE OF MALONE

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James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

shift together and he told me that he felt that he had enough on Moll and Phillips that there may be some job openings on the Department. He also advised me that he had gone and talked to the DA and to the Mayor.



Ronald E. Reyome
Juvenile Aid Officer
Malone Village Police

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

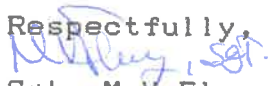
Chief James Phillips
Malone Village Police Department
2 Park Place
Malone N.Y. 12953

August 5, 1993

Chief Phillips,

This letter is in reference to a memo that I submitted to you on July 27th 1993 concerning the actions of Ptlm Patrick Nichols.

I would like to state that on that day, July 27th, I was approached by Ptlm. Nichols and he related to me the following: He stated that he could not believe how stupid you were because he had accessed your computer and recovered some of the information that you had stored in it concerning the personnel investigation concerning A/C Moll. The memo that I submitted to you was for your information as I did not see any of the materials that he refered to. If anymore information is needed on this issue please notify me when necessary.

Respectfully,

Sgt. M.V. Fleury

PERSONNEL COMPLAINT

JULY 13, 1993

RECEIVED A STATEMENT FROM OFFICER PATRICK NICHOLS STATING THAT ASST. CHIEF GERALD MOLL HAD VIOLATED SEVERAL RULES AND REGULATIONS OF THE MALONE POLICE DEPARTMENT. DURING THE NIGHT OF APRIL 2ND 1993. (COPY OF STATEMENT ATTACHED)

THIS COMPLAINT WAS FILED JUST AFTER PTLM NICHOLS WAS GIVEN A LETTER OF REPRIMAND. FOR VIOLATION OF THE DEPARTMENT RULES AND REGULATIONS. IN LOOKING OVER HIS COMPLAINT I FIND THAT ALL OF THE INFORMATION THAT HE STATES IN THE LETTER IS HEARSAY AND HE IS NOT THE PERSON THAT SHOULD OF FILED THE COMPLAINT.

IN TALKING WITH THE OFFICERS THAT WERE PRESENT DURING THE INCIDENT IN QUESTION I FIND NO BASIS FOR THE COMPLAINT TO BE CARRIED ANY FURTHER THAN THIS. THE PERSON THAT WAS ARRESTED PLEAD GUILTY TO THE CHARGES THAT WERE BROUGHT AGAINST HIM. IT HAS ALWAYS BEEN THE POLICY OF THIS DEPARTMENT THAT IF A PERSON DOES DAMAGE TO VILLAGE PROPERTY THAT PERSON BE CHARGED WITH CRIMINAL MISCHIEF AND WHEN ASST CHIEF MOLL ORDERED THE ARRESTING OFFICER TO FILE PAPER WORK IN REGARDS TO THIS HE WAS JUST ACTING IN HIS CAPACITY OF A SUPERVISOR.

THERE IS ALSO THE QUESTION THAT AT THE TIME THIS INCIDENT TOOK PLACE THERE WERE NO DEPARTMENT RULES OF CONDUCT THAT WERE IN EFFECT FOR THE POLICE DEPARTMENT.

I FIND THAT OFFICER MOLL ACTED PROPERLY DURING THE ARREST AND FIND THAT THERE IS NO BASIS FOR ANY TYPE OF DISCIPLINARY HEARING IN REGARDS TO THIS MATTER.

THE BIG QUESTION IS ABOUT THE BLEACH THAT ASST CHIEF MOLL SPILLED ON THE FLOOR IN FRONT OF THE HOLDING ROOM CELL TO NEUTRALIZE THE URINE THAT THE DEFENDANT HAD PUT ON THE FLOOR WHEN HE URINATED IN THE HOLDING ROOM CELL AND WHICH WAS MOPED UP A SHORT TIME AFTER ASST CHIEF MOLL WAS JUST FOLLOWING DEPARTMENT POLICY IN REGARDS TO THE BLOOD BORN POLICY THAT THE STATE HAD US IMPLEMENT LAST YEAR WHERE IF BODY FLUIDS ARE SPILLED THEY ARE TO BE NEUTRALIZED WITH A DISINFECTANT BEFORE THEY ARE CLEANED.

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Mayor Feeley

ADDRESS: _____

DATE: August 3, 1993

SUBJECT: _____

Jim, Sgt. Ritchie advised me shortly after speaking with you this past evening that Phillips told him that he knew I was meeting with you in your office. He also told Ritchie that if I were the one that requested the meeting that I would be disciplined. No surprise of course. I ask that for the time being ~~xxx~~ the context of our meeting remain confidential due to the circumstances. Sincerely, Pat Nichols

SIGNED: 

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Chief Phillips

ADDRESS:

DATE: July 21, 1993

SUBJECT: Personnel Comp.

Could you advise me of the results of the investigation regarding a personnel complaint I filed with you July 13, 1993. Ref: Assistant Chief Moll.

SIGNED: Patrick M Nichols



Chief *Copy*

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

TO: PTLM PATRICK NICHOLS

FROM: CHIEF JAMES E. PHILLIPS

DATE: JULY 21, 1993

SUBJECT: PERSONNEL COMPLAINT FILED DATED JULY 13, 1993

I APPRECIATE YOUR CONCERN IN REGARDS TO THE COMPLAINT THAT YOU FILED. THE COMPLAINT IS UNDER INVESTIGATION AND AS YOU ARE AWARE ACTIONS AGAINST PERSONNEL ARE COVERED UNDER THE PRIVACY ACT AND I CAN NOT DISCUSS WITH YOU ANY PART OF THE INVESTIGATION. ALL I CAN SAY IS THAT IT WILL BE TREATED THE SAME AS OTHER INVESTIGATIONS THAT ARE BROUGHT AGAINST MEMBERS OF THIS DEPARTMENT AND IF DISCIPLINARY ACTION IS REQUIRED IT WILL BE TAKEN.

PTL. NICHOLS DISCIPLINARY ACTION

EVENTS IN CHRONOLOGIC ORDER

- 03-28-90 Written instructions to Ptl. Nichols from Former Chief, Richard Brown, on proper chain of command.
- 04-17-92 Reprimand by Chief for causing over \$500.00 in overtime pay and not following rules
- 08-30-92 Insubordination on verbal order by Sergeant Moll in regards to making entries in official log book
- 01-28-93 Taken off DARE Program due to total disruption within the department on conduct by Ptl. Nichols Ass't Chief informed Ptl. Nichols of this and had Ptl. Nichols read section 10.1.77 & 10.1.78
- 02-04-93 Two hour counsel session with Ass't Chief and Chief informing Ptl. Nichols of several violations Handed over copies of sections that he violated, including section 10.1.77 & 10.1.78 & 10.1.27 & 10.1.40. Ptl. Nichols was asked to read the sections and asked if he understood them. Ptl. Nichols stated he understood the sections and he was advised that this type of conduct would not be tolerated. Chief decided not to bring formal charges against Ptl. Nichols in hopes that counsel session and oral reprimand would take care of the matter.
- 05-11-93 Updated copy of departmental rules and regulations posted and each Officer required to sign. Ptl. Nichols signed that he read over the rules.
- 06-01-93 Personnel Complaint from Karon Russell against Ptl. Nichols
- 07-08-93 Personnel Complaint investigation completed and counsel session with Ptl. Nichols & Ass't Chief conducted in Chief's Office. N.Y. State V&T Laws reviewed and discussed. Review of sections 6.1, 8.3 8.12, 8.13 reviewed and discussed. Ptl. Nichols advised that a letter of reprimand would be placed in his file for three years due to leaving the scene of this incident.
- 07-08-93 Sgt. Fountain stops at station and stated that Ptl. Nichols contacted him stating that he was upset about the results of the investigation. Ptl. Nichols made the comment to Sgt. Fountain, how can Moll do this when he sends us on a call on Webster

St. and doesn't tell us the nature of the call and also pours bleach under the cell door when someone was inside causing this guy to break the window.

- 07-??-93 Ptl. Nichols talks with Officer Reyome (former Union President) and started talking about the letter that was going into his file. Reyome asked if he was going to fight it, Ptl. Nichols said yes but hadn't contacted the Union yet. Officer Reyome advises Ptl. Nichols to contact the Union. Ptl. Nichols then shows Officer Reyome paperwork that he has typed up in order to file a complaint against Ass't Chief Moll on an incident that happened several months ago. Ptl. Nichols stated that he has been doing a thorough investigation on Ass't Chief Moll's conduct and has talked to the person that was arrested about the incident. Officer Reyome advises Ptl. Nichols that he was going against Dept. policy by contacting this subject. He stated that he was going to turn over his paperwork to the Chief and further stated that if he felt that the Chief didn't handle the matter correctly, he was going to the Mayor and the D.A. for possible criminal prosecution. Officer Reyome advises Ptl. Nichols that he should go to the Union before he continues.
- 07-12-93 Chief discusses case with Mayor and they decide to have the letter in file for only one year.
- 07-13-93 Chief informs Ptl. Nichols that letter will be placed in file for only one year and further he is to read and review all the departmental rules and regulations even though he read them 05-11-93. Ptl. Nichols made the comment to the Chief, "I have something that I have been holding onto for some time but now that this has happened I guess this is a good time to give you it officer Nichols then leaves the Chiefs office and comes back about 1 1/2 hours later and brings in a typed personnel complaint against Ass't Chief Moll. Chief reviews complaint and information contained in Ptl. Nichols statement. Statement implicates Ptl. Stone & Ptl. Mulverhill as actual witnesses to the incident. Ptl. Mulverhill interviewed and statement taken. Ass't Chief located at Campground at Meachum Lake, advised of the complaint and interviewed over the phone. Ass't Chief on vacation until July 31st and was advised to submit statement at that time. July 14th through July 18th Ptl. Stone on days off. Justice Court contacted on disposition of individual that was arrested during incident. File started on Chief's Personal Computer

on the investigation reflecting notes and thoughts. Mayor advised of the personnel complaint filed against Ass't Chief by Ptl. Nichols.

- 07-14-93 Disposition records obtained from Justice Court showing that subject pled guilty to the charges.
- 07-20-93 Ran Criminal History on subject involved.
- 07-??-93 Ptl. Nichols shows Officer Reyome a document in the department computer and further told Officer Reyome that he had made a copy of the letter and was going to give it to the Mayor. Officer Reyome again advises Ptl. Nichols to contact the Union before he does anything.
- 07-??-93 Ptl. Nichols tells Ptl. LaChance that he doesn't feel that the Chief was doing anything about the complaint that he put in against Ass't Chief Moll, Ptl. Nichols tells Ptl. LaChance that he was going to submit a memo asking him about the complaint.
- 07-21-93 Memo from Ptl. Nichols requesting results of personnel complaint he filed against Ass't Chief Moll. Letter sent back to Ptl. Nichols explaining that the investigation was being conducted, Privacy Act, & assuring him that the investigation was being treated the same as other personnel investigations.
- 07-22-93 Statement secured from Ptl. Stone on incident
- 07-??-93 (Week of July 24th) While working mornings, Ptl. Mulverhill & Ptl. Nichols go to Tessy's Diner and meet with Richard Brown. Ptl. Nichols tells Brown about the complaint that he made against Ass't Chief Moll and that he was dissatisfied on the way it was handled. Ptl. Nichols asked Brown on what he could do next.
- 07-??-93 Ptl. Nichols obtains a copy of a document in the computer with the help of Ptl. LaChance. Ptl. Nichols reads the document and tells Ptl. LaChance that the Chief was definitely covering up the complaint he made against Ass't Chief Moll. Ptl. LaChance tells Ptl. Nichols that anybody could have typed this in the computer and that it doesn't have much value.
- 07-27-93 Ptl. Nichols tells Det. Sgt. Mike Fleury that the Chief was very stupid as he was able to access into the Chiefs computer and get information that the Chief had in regards to Asst. Chief Molls

investigation.

- 07-??-93 Ptl. Nichols tells Ptl. LaChance that he is going to the Mayor because he felt he had enough on the Chief to bring him up on charges. Ptl. LaChance tells Ptl. Nichols that he should contact the Union first because going to the Mayor may be a violation of departmental rules.
- 07-??-93 Ptl. Nichols tells Ptl. LaChance that he was going to the D.A. with his information because he felt that Ass't Chief could be brought up on criminal charges. Ptl. Nichols tells Ptl. LaChance that he spoke with Mattimore and also obtained the pants that Mattimore was wearing the night of the incident. Ptl. Nichols also states that there maybe some FBI involvement if he doesn't get some satisfaction with the D.A. Ptl. LaChances tells Ptl. Nichols that he should not talk about what he is doing, Ptl. Nichols said that he doesn't care because he wants them (Chief & A/C) to sweat the way they made him (Nichols) sweat.
- 07-31-93 Ass't Chief returns from vacation and submits statement
- 07-31-93 During a work bee at the Franklin County Fair Grounds, Ptl. Nichols request a meeting with the Mayor. Mayor thought meeting was to discuss recent disciplinary action that was taken against Ptl. Nichols
- 08-02-93 Officer Reyome and Ptl. Nichols working night shift together. Ptl. Nichols told Officer Reyome that he felt that he had enough on Phillips and Moll that there may be some job openings on the department. He further stated that he had been to the Mayor and the D.A.
- 08-02-93 Ptl. Nichols asked Sgt. Ritchie who he should talk to if he had a problem with the Chief. Sgt. Ritchie advises him to contact the Union or an attorney for advice.
- 08-02-93 Ptl. Nichols meets with the Mayor at the Mayor's office. Ptl. Nichols starts talking about the Personnel investigation that he made against Ass't Chief Moll. Ptl. Nichols using words such as cover up by the Chief of Police. Ptl. Nichols tells the Mayor that he is keeping Mattimore appraised of the the investigation. Ptl. Nichols shows the Mayor a document that is a copy of notes that the Chief made during the personnel investigation. Ptl. Nichols states that he has been to the D.A. and

also mentions Grogan who is a FBI Agent. Ptl. Nichols mentions that he is continuing his investigation and has put alot of thought into this. Mayor gives document back to Ptl. Nichols.

- 08-02-93 (Monday) Chief returns from days off and compiles all information regarding personnel complaint made by Ptl. Nichols.
- 08-02-93 While working the night shift, Ptl. Nichols drives patrol car to Mayor's house and starts talking to Mayor about the DARE Program. Ptl. Nichols tells the Mayor that he has been terminated from the DARE Program. (No notice of termination to the DARE Program was ever given to Ptl. Nichols) Ptl. Nichols also tells the Mayor that the Chief offered the DARE Program to Ptl. Simonsen and that he only gave Ptl. Simonsen a day to make a decision. Mayor continually changes the subject of conversation to avoid discussing police department matters. Mayor is starting to get concern about Ptl. Nichols conduct and his stable frame of mind.
- 08-03-93 District Attorney Richard Edwards confirms that Ptl. Nichols was at his office about two weeks ago and showed him a document that had names blanked out and claimed that there was a cover up.
- 08-03-93 Memo from Ptl. Nichols left at Mayor's Office asking the Mayor to keep meetings with him confidential.
- 08-03-93 Complete file on personnel investigation reviewed by Chief.
- 08-04-93 Outline on Personnel Investigation against Ass't Chief Moll type up.
- 08-04-93 While working the night shift, Ptl. Nichols telephones the Mayor at his house and it became necessary for the Mayor to advise Ptl. Nichols to follow the departments rules and regulations. Mayor becomes very concerned with Ptl. Nichols frame of mind, phones the Chief at home and also locks windows in his own home.
- 08-05-93 Mayor contacts Chief asking him to submit charges and evidence to his office. Mayor wants this today because he is very concerned with Ptl. Nichols state of mind.
- 08-05-93 Mayor signs paperwork and Ptl. Nichols is suspended from regular duties.

- 08-05-93 Final determination on Chief's Investigation on Personnel complaint filed against Ass't Chief Moll submitted to Mayor and board for final determination.
- 08-10-93 Letter from Thomas P. Halley representing Ptl. Nichols and requested a public hearing.
- 08-16-93 Brian Stewart advises that he has talked with Halley and that in order to protect the right of privacy of Ass't Chief Moll, no other officers names will be identified at the hearing.
- 08-16-93 Brian Stewart interviews Ptl. Mulverhill at the station. Ptl. Mulverhill states that Ptl. Nichols met with Richard Brown and discussed the case.
- 08-16-93 Tom Grady Ft. Cov. Sun calls seeking comments on a officer being suspended. Grady stated that Ptl. Nichols attorney had a press release. Alison Calkins comes to station seeking log book for April 3rd 1993.
- 08-17-93 Malone Telegram, Nichols publically criticizes the police department stating "There's somebody else who should have been suspended for 30 days"
- 08-18-93 Plattsburgh Press Rubublican, Nichols publically criticizes department, stating he feared retaliation by the Chief, Others fear retaliation, Nichols confirmed he filed a complaint against another officer earlier this year.
- 08-18-93 Malone Telegram interviews Scott Mattimore. Mattimore states that Ptl. Nichols has talked with him twice about the incident since he got out of jail. Mattimore was released from Jail 06-11-93

DISCIPLINARY ACTION AGAINST PTL. NICHOLS

KNOWLEDGE AND VIOLATING SAME DEPARTMENT RULES

- 01-28-93 Ass't Chief goes over section 10.1.27, 10.1.77, 11.5 with Pat Nichols to make sure he understands these rules.
- 02-04-93 Two hour counsel session with Chief & Asst. Chief with Pat Nichols due to his violation of the rules (11.5) after he was informed not to violate them on 01-28-93 Oral reprimand given to Pat Nichols by the Chief
- 05-11-93 Department rules updated and Pat Nichols signs that he understands all the rules.
- 07-??-93 Pat Nichols openly admits to several Officers that he brought a complaint against Asst. Chief and feels that the Chief is covering up the complaint. Also tells members that he is going outside the department (Mayor & D.A.) This violates the same rules that he has been advised and counseled on and also signed that he understood the rules. (11.5)
- 07-??-93 Openly admits to members that he went to the FBI on the incident. Violating the same rules that he has been counseled on by the Chief & Asst. Chief. (11.5)
- 08-05-93 Pat Nichols is suspended from Police Dept. on numerous charges. Approx 16 of the charges consist of the same charges he has been counseled on several times in the past (11.5). Pat Nichols still bound by the department rules during suspension.
- 08-??-93 While on suspension, Pat Nichols violates approx. 10 rules of conduct on at least four different occasions. Several of these rules are the same rules that he has been counseled on and is also on SUSPENSION FOR. (11.5)
- 10.20-93 Village Board hands down 60 days suspension for violations of rules. Particularly section 11.5. Minutes after his penalty is handed down, Pat Nichols comments to a reporter of WICY violating section 11.5 again.

10-21-93 After being advised of his 60 day suspension, Pat Nichols is advised by the Mayor of section 11.5 of rules of conduct. Pat Nichols still violates this rule even after his penalty and warning from the Mayor on section 11.5

CHIEF JIM PHILLIPS

- 1) His name?
- 2) Address? *Military History + Education!*
- 3) Position?
- 4) Number of years on the force?
- 5) Number of years as assistant chief?
- 6) Number of years as chief?
- 7) Duties of chief?
- 8) Duties as assistant chief?
- 9) Who conducts personnel investigations as a general rule?
- 10) Size of force?
- 11) Size of Village population?
- 12) Number of complaints in June, July August of 1993?
- 13) Past practice with respect to discipline procedures? Number of discipline procedures?
- 14) Introduce collective bargaining contract.
- 15) Introduce rules & regulations.
- 16) Go over the following rules:
 - 10.11 Discredit upon department
 - 10.14 Insubordination or disrespect
 - 10.1.27 Public criticism
 - 10.1.28 Releasing of departmental information without permission
 - 10.1.77 Seeking the influence or intervention of a person outside the department for purpose of advantage
 - 11.5 Disclosing official business of the department without permission
- 17) Ask chief purpose behind the rules?
- 18) Date of hire of Pat Nichols?
- 19) Was Pat familiar with work rules?
- 20) Introduce signed statement by Pat that he reviewed work rules?
- 21) General performance of Pat as a police officer up to the start of 1992 school year?
- 22) Did you receive a complaint about certain patrolmen on or about June 1, 1993 relating to an incident that of Knights of Columbus?
- 23) Who investigated?
- 24) How many police officers were the subject of that investigation?
- 25) Did the investigating officer make a recommendation as to punishment and what was it?
- 26) What punishment, if any, did you impose?
- 27) How long did it take from the time that you received the report to the time discipline was imposed?
- 28) Is six weeks a normal period of time to conduct an investigation and impose discipline?
- 29) How was the discipline imposed and did you meet with Pat in person?
- 30) If you met in person, what did Pat say to you and what did you

- say to Pat? Who was present?
- 31) How long after that meeting was it before Pat filed written charges against Jerry Moll?
 - 32) Introduce charges against Moll.
 - 33) Who was assigned to investigate the charges against Moll?
 - 34) Did you assign Pat Nichols to do any investigation in this matter?
 - 35) What investigatory action did you take on July 13th?
 - 36) Did you write a note on your computer?
 - 37) Introduce note.
 - 38) For whose benefit was the note?
 - 39) Did there come a time when you contacted Village Court to find out the disposition of the criminal mischief charges against Scott Mattamore?
 - 40) Introduce certificate of conviction.
 - 41) Did there come a time when you took a statement from Scott Mulverhill and when was that (July 14th)?
 - 42) Did there come a time when you ordered a rap sheet on Scott Mattamore (July 20, 1993)?
 - 43) Did there come a time when you took a written statement from Patrolman Steven Stone (July 22, 1993)?
 - 44) Did there come a time when you took a statement from Jerry Moll (July 31, 1993)?
 - 45) During this investigatory process, did Pat Nichols inquire about the progress?
 - 46) Introduce note from Nichols to chief dated 7/21?
 - 47) Introduce note from chief to Nichols dated 7/21?
 - 48) What is the DARE program?
 - 49) Who were the DARE officers for the 1992-93 school year?
 - 50) During the 1992-93 school year, did you experience any problems with Pat Nichols as DARE officer?
 - 51) As a result of those problems what happened?
 - 52) How did Mr. Nichols react to being removed as DARE officer?
 - 53) Was contacting a village trustee a violation of the rules? What rules?
 - 54) What happened as a result of this violation?
 - 55) Did there come a time when Pat was allowed to finish out the year as DARE officer?
 - 56) Put in Pat's memo on babysitting and mileage.
 - 57) As of August 5, 1993, had you made any decision as to who would be the DARE officer for the 1993-94 school year?
 - 58) Had you made any indication to Pat as to his future as a DARE officer?
 - 59) Is it possible that Pat could have misunderstood the rules about contacting trustees or the mayor regarding his assignment as DARE officer?
 - 60) Has any member of the police department or the union ever filed a grievance with respect to the rules?
 - 61) Up until July 13, 1993, had any member of the police department or the union ever filed a grievance with respect to disciplinary procedures in force at the police department?
 - 62) Did you ever give permission to Officer Nichols to talk with the District Attorney, former Chief Brown or the Mayor regarding April 2, 1993?

Chief *copy*

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

TO: PTLN PATRICK NICHOLS

FROM: CHIEF JAMES E. PHILLIPS

DATE: JULY 21, 1993

SUBJECT: PERSONNEL COMPLAINT FILED DATED JULY 13, 1993

I APPRECIATE YOUR CONCERN IN REGARDS TO THE COMPLAINT THAT YOU FILED. THE COMPLAINT IS UNDER INVESTIGATION AND AS YOU ARE AWARE ACTIONS AGAINST PERSONNEL ARE COVERED UNDER THE PRIVACY ACT AND I CAN NOT DISCUSS WITH YOU ANY PART OF THE INVESTIGATION. ALL I CAN SAY IS THAT IT WILL BE TREATED THE SAME AS OTHER INVESTIGATIONS THAT ARE BROUGHT AGAINST MEMBERS OF THIS DEPARTMENT AND IF DISCIPLINARY ACTION IS REQUIRED IT WILL BE TAKEN.

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE August 12, 1993 PLACE Malone PD

I, Clyde LaChance [REDACTED]
is [REDACTED] I am police officer within the
Village of Malone NY and my degree of education is high
school graduate.

I would like to state that I am employed by the Village of
Malone NY as a police officer and that I have been aware of
a personal complaint involving A/C Moll. Officer Patrick
Nichols made it known to me that he had a complaint against
him. The complaint involves an incident surrounding the
arrest of Scott Matamore. Officer Nichols told me that A/C
Moll had fucked up he felt that he had enough to bring him up
on charges. It was common knowledge among the people that
worked at the department that Pat was going to do just that.
He told me that he was going to submit a letter to the chief
about the alleged incident. A short while passed and he told
me that he felt that the chief wasn't doing anything about
it. He told me that he was going to put a memo in asking him
about the complaint. A couple days went by and Pat and I were
working and I was fooling around with the computer, checking
different functions and just getting used to it. I came
across the name Jim in one of the memories. Pat asked me to
check that and I did, when I did that there was something
to do with the investigation involving A/C Moll. He asked me
if I could print that out. I showed him how and printed a
copy of it. Pat then made the statement that the chief was
definitely covering his complaint up. He then took that copy
and told me that he's keeping it for his records. I told him
that I didn't think it would be of much value because there
was no signature on it. I told Pat that anybody could have
put that in there and it didn't mean much of anything.

A couple of days passed, he told me that he was going to
talk to the mayor because he felt that now he had enough
information to bring the chief up on charges. I told him that
I felt that he should contact the union because going to the
mayor could be a violation of our rules and regulations. He
told me that he couldn't go to the chief because he was now
involved. I am unsure of the date but I remember Pat telling
me that he had met with the mayor. I again told Pat that I
thought what he was doing was not a good idea and that he
should check with the union if he didn't know how to go about
it. Sometime passed and he told me that he was going to go
and speak with the DA with the information that he had on A/C
Moll because he felt that it was criminal. I kept telling him
that the way he was going about things wasn't the way to do
it but he insisted that he had everything covered.

CFL/mst

Pat told me that he had approached Matamore about the incident and that Matamore told him that he would testify and that he had gotten his pants that he was wearing that evening. He also told me that that there may be some FBI involvement if he doesn't get some satisfaction with the DA. I would also like to add that I told Pat if ^{he} was doing something of this nature he should keep it to himself and not to be talking to anyone about it. He told me that he didn't care because he wanted them to sweat like they made him sweat.

Clyde Talchance
8/12/93

Witness:
M. V. [Signature]

Document in
Chief's
Computer

PERSONNEL COMPLAINT

JULY 13, 1993

RECEIVED A STATEMENT FROM OFFICER PATRICK NICHOLS STATING THAT ASST. CHIEF GERALD MOLL HAD VIOLATED SEVERAL RULES AND REGULATIONS OF THE MALONE POLICE DEPARTMENT. DURING THE NIGHT OF APRIL 2ND 1993. (COPY OF STATEMENT ATTACHED)

THIS COMPLAINT WAS FILED JUST AFTER PTLM NICHOLS WAS GIVEN A LETTER OF REPRIMAND. FOR VIOLATION OF THE DEPARTMENT RULES AND REGULATIONS. IN LOOKING OVER HIS COMPLAINT I FIND THAT ALL OF THE INFORMATION THAT HE STATES IN THE LETTER IS HEARSAY AND HE IS NOT THE PERSON THAT SHOULD OF FILED THE COMPLAINT.

IN TALKING WITH THE OFFICERS THAT WERE PRESENT DURING THE INCIDENT IN QUESTION I FIND NO BASIS FOR THE COMPLAINT TO BE CARRIED ANY FURTHER THAN THIS. THE PERSON THAT WAS ARRESTED PLEAD GUILTY TO THE CHARGES THAT WERE BROUGHT AGAINST HIM. IT HAS ALWAYS BEEN THE POLICY OF THIS DEPARTMENT THAT IF A PERSON DOES DAMAGE TO VILLAGE PROPERTY THAT PERSON BE CHARGED WITH CRIMINAL MISCHIEF AND WHEN ASST CHIEF MOLL ORDERED THE ARRESTING OFFICER TO FILE PAPER WORK IN REGARDS TO THIS HE WAS JUST ACTING IN HIS CAPACITY OF A SUPERVISOR.

THERE IS ALSO THE QUESTION THAT AT THE TIME THIS INCIDENT TOOK PLACE THERE WERE NO DEPARTMENT RULES OF CONDUCT THAT WERE IN EFFECT FOR THE POLICE DEPARTMENT.

I FIND THAT OFFICER MOLL ACTED PROPERLY DURING THE ARREST AND FIND THAT THERE IS NO BASIS FOR ANY TYPE OF DISCIPLINARY HEARING IN REGARDS TO THIS MATTER.

THE BIG QUESTION IS ABOUT THE BLEACH THAT ASST CHIEF MOLL SPILLED ON THE FLOOR IN FRONT OF THE HOLDING ROOM CELL TO NEUTRALIZE THE URINE THAT THE DEFENDANT HAD PUT ON THE FLOOR WHEN HE URINATED IN THE HOLDING ROOM CELL AND WHICH WAS MOPED UP A SHORT TIME AFTER ASST CHIEF MOLL WAS JUST FOLLOWING DEPARTMENT POLICY IN REGARDS TO THE BLOOD BORN POLICY THAT THE STATE HAD US IMPLEMENT LAST YEAR WHERE IF BODY FLUIDS ARE SPILLED THEY ARE TO BE NEUTRALIZED WITH A DISINFECTANT BEFORE THEY ARE CLEANED.

POLICE DEPT. VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

Chief Phillips,

In accordance with article 10 section 10.1.33 of the Malone Police Department's rules of conduct I am informing you, in writing, that a member of the department has violated several rules and regulations and may have also committed Official Misconduct as defined in section 195.00 of the N.Y.S. Penal Law. All violations related to one incident that took place April 3rd, 1993.

On April 2, 1993 I was working night shift along with Officer Stone, Officer Mulverhill and Assistant Chief Moll. At about 1:15 a.m. on the 3rd of April all three patrolman were dispatched to a burglary on Duane St.. The response resulted in the arrest of Scott Mattimore. Mattimore was transported to the station and seated in the processing room. I was directed to return to the scene to gather further evidence. When I returned to the station I entered through the front door at which time I smelled a strong odor of bleach and also noticed the holding cell window smashed. Mattimore stated to me that an Officer had thrown a large quantity of Bleach under the door which was the only point of ventilation causing it very difficult to breath and therefore had to break the window to breath fresh air.

The following list of circumstances, mannerisms and chain of events would indicate that there was intent on Moll's part to injure Mattimore.

- 1, Verbal statements by Mattimore, Stone and Mulverhill indicate that Moll splashed bleach under the base of the door and then kicked it under the door.
- 2, Mulverhill asked Moll if he wanted hand irons put on Mattimore at which time Moll said no and proceeded with the bleach.
- 3, The holding cells only source of ventilation is under the door.
- 4, The warning on bleach indicates the potential hazards to humans.
- 5, Moll ordered the arresting Officer to additionally charge Mattimore with criminal mischief for breaking the window after Moll created the circumstances that caused Mattimore to commit the crime.
- 6, Moll commented to Mulverhill at the end of shift that he felt bad about what happened and that maybe he should pay for the window himself.
- 7, Mattimore requested several times for the door to be opened as he could not breath.

After a lengthy review and much thought I firmly believe that Moll's actions caused Mattimore to break the window and Moll's directive also caused the unlawful charge of Criminal Mischief against Mattimore. Such behavior by a public servant constitutes Official Misconduct. Department rules of conduct sections 6.1, 6.2.2, 6.2.15, 6.2.34, 9.11, 10.1.1, 10.1.9, 10.1.16, 10.1.18, and 10.1.19 have also been violated by the actions of Assistant Chief Moll.

I trust this matter will be dealy with accordingly now that you have been made aware of the details. PMN

Officer Patrick M Nichols



Chief Phillips
Malone Police Dept
2 Park Place
Malone, New York 12953

Chief Phillips:

On August 2, 1993 I was at the station for a short time (off Duty) in the afternoon. At that time you stated to me that Officer Nichols was supposedly meeting with the Mayor today. You further stated that if Officer Nichols in fact met with the Mayor and it was at Nichols request that he could possibly be written up.

That same night I was the shift supervisor working with Officer Nichols. Early on in the shift Officer Nichols started to explain to me that he had met with the Mayor, at that point I told Officer Nichols that the chief had stated to me that if the meeting with the Mayor was at his request he could face departmental charges. Officer Nichols stated to me that he wanted to know who he should talk to if he had a complainant about the Chief. I told him that I honestly did not know how the chain of command worked in that situation but that he should contact an attorney or the Union for advice.

I would further state that if Officer Nichols made any contact with the Mayor during my shift it was without my knowledge or authority.


Sgt Wm Ritchie

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

October 20, 1995

MEMO TO: FEELEY, ET AL
FROM: JIM FEELEY
RE: NICHOLS VS VILLAGE OF MALONE

Attached is a copy of Brian Stewart's Notice of Motion and supporting affidavit to the Appellate Division, seeking to reject the Record of Appeal filed by Pat Nichols. The motion also seeks to dismiss the entire appeal if the Record is rejected.

Translation - Nichols sought to combine his appeals of both the Civil Service Hearings. The Appellate Division allowed this, giving him until October 6, 1995, to do so. It was incumbent on Nichols to supply the complete record of both hearings, this includes transcripts, exhibits, hearing officers reports, determinations, etc. He failed to do so.

Brian Stewart is now asking the Appellate Division to reject the record as incomplete, as the Court cannot make a determination without a complete set of facts.

He also seeks, in the event the Court rejects the record, to dismiss the entire combined appeal, based on the fact that Nichols failed to comply with the Court's filing deadline.

How does this affect the Federal lawsuit? On October 13, 1995, Jim Brooks met with the Federal Judge in Syracuse for a settlement and trial schedule conference. At this conference, in which Nichols was represented by a Syracuse area attorney, the Judge was not offered any possible settlement arrangement from either side.

The Judge did put forth a new trial schedule that includes dates far into the future. He did this, according to Attorney Brooks, to let the combined appeal at the State Appellate level play out to a conclusion. Further, he did this with the express opinion that if Nichols were to be unsuccessful, at the Appellate Division, that there would then be no grounds for the Federal lawsuit.

Both Brooks and Stewart view these recent events as positive and we must now wait for the Appellate Division ruling, which is expected some time in mid-November.

Any questions, call.

JAMES M. BROOKS
RICHARD B. MEYER

LAW OFFICES
BROOKS & MEYER

2 OLYMPIC DRIVE
LAKE PLACID, NEW YORK 12946

518-523-1555
FAX: 518-523-4486

February 5, 1998

Police Chief James Phillips
2 Park Place
Malone, New York 12953

RE: Mattimore v. Mohl, et al
95-CV-1164

Dear Chief:

Enclosed find a copy of the decision and order of Judge Scullin with a judgment awarding attorneys fees and reimbursement of expenses against Mattimore in the amount of \$12,321.57. The court essentially granted us a complete victory, our request being reduced by only \$240 by the court's reduction of our fee entitlement for travel time.

I am in the process of initiating the collection processes against Mr. Mattimore. All proceeds are ultimately payable to the insurer of the Village, it having paid for my legal expenses. If someone approaches the Village on behalf of Mr. Mattimore regarding any payment and a release please refer them to my office.

When last I had reason to inquire of Mattimore's present residence we secured the Elyria, Ohio address. Perhaps you are aware of a more current address. If so, I would appreciate your advices via fax or mail.

Lastly, it is possible that Mattimore may appeal to the Court of Appeals of the Second Circuit. For that reason I suggest this result not be discussed publicly until after his time to appeal has expired. To be on the safe side let us calendar no disclosure until March 15th to allow for delay in mail. Please feel free to advise Assistant Chief Moll, Jim Feeley and the Village Board but such should be done in a quiet fashion while the appeal processes are running.

Yours very truly,



James M. Brooks

Enclosures
JMB/pb

cc: Scottsdale Insurance Co.
Claim No. 413320-88

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SCOTT G. MATTIMORE,

Plaintiff,

-against-

GEROLD MOHL, ASST. CHIEF OF POLICE,
MALONE VILLIAGE POLICE DEPARTMENT,
JAMES PHILLIPS, CHIEF OF POLICE,
MALONE VILLIAGE POLICE DEPARTMENT,
JAMES FEELY, MAYOR OF MALONE, N.Y.,
12953,

NOTICE OF ENTRY

95-CV-1164
(FJS) (DNH)

Defendants.

SIRS:

PLEASE TAKE NOTICE, that the within are true copies of the Memorandum-Decision and Order dated February 2, 1998 entered in the office of the clerk of the United States District Court of the Northern District of New York on February 2, 1998 and the Amended Judgment dated February 3, 1998 entered in the office of the clerk of the United States District Court of the Northern District of New York on February 3, 1998.

Dated: February 5, 1998

Brooks & Meyer
Attorney for all defendants
2 Olympic Drive
Lake Placid, New York 12946
(518) 523-1555

TO: Scott G. Mattimore, pro se
221 George Street
Elyria, Ohio 44035

COPIES SENT
2/3/98 JmB
date by

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SCOTT G. MATTIMORE,

Plaintiff,

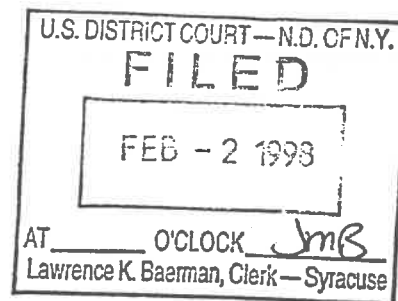
-V-

GEROLD MOHL, Asst. Chief of Police,
Malone Village Police Department;
JAMES PHILLIPS, Chief of Police,
Malone Village Police Department;
JAMES FEELY, Mayor of Malone, N.Y.,

Defendants.

95-CV-1164
(FJS)

COPY



APPEARANCES:

SCOTT G. MATTIMORE
221 George Street
Elyria, Ohio 44035
Plaintiff, Pro Se

BROOKS & MEYER
2 Olympic Drive
Lake Placid, New York 12946
Attorney for Defendants

OF COUNSEL:

JAMES M. BROOKS, ESQ.

FREDERICK J. SCULLIN, JR., D.J.:

MEMORANDUM-DECISION AND ORDER

Introduction

This is an action brought pursuant to 42 U.S.C. § 1983 alleging that the Plaintiff's temporary incarceration in a holding cell at the Malone Village Police Department violated his constitutional rights. In a Memorandum-Decision and Order issued August 7, 1997, the Court

granted Defendants' summary judgment motion, dismissed all of Plaintiff's claims, and granted Defendants' motion for award of attorney's fees and costs. At oral argument, the Court directed the Defendants to submit additional briefing setting forth in detail their charges and costs. Presently before the Court is Defendants' application which seeks \$11,625.00 in attorney's fees and \$936.57 in costs.

Discussion

The determination of reasonable attorney's fees under § 1988 is governed by the "lodestar" analysis which requires a court to multiply the number of hours reasonably expended by a reasonable hourly rate. See Tanzini v. Marine Midland Bank, N.A., 978 F. Supp. 70, 82 (N.D.N.Y. 1997) (citing Blum v. Stenson, 465 U.S. 886, 888 (1984)). The hourly rate requested by the Defendants, \$150.00/hour, is within the guidelines established in the Northern District of New York. See, e.g., Blisset v. Casey, 969 F. Supp. 118, 130 (N.D.N.Y. 1997); Kahre-Richardes Family Found. v. Baldwinsville, 953 F. Supp. 39, 42 n.4 (N.D.N.Y. 1997). The Defendants request a total of 77.50 hours at \$150.00/hour for a total fee request of \$11,625.00. However, 2.4 hours of the requested time was for travel which is only fairly compensable at \$50.00/hour. See Cooley v. Arena, 90-CV-603, 1996 WL 494983, at *4 (N.D.N.Y., Aug. 29, 1996). Thus, of the 77.5 hours set forth, only 75.1 are recoverable at the \$150.00/hour rate.

Additionally, Defendants request the award of \$936.57 in costs to cover disbursements and expenses in this matter. Rule 54(d)(1) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1920 permit a court to award a prevailing party certain costs associated with a particular action. The Court finds the costs requested by the Defendants are allowable under § 1920 and are reasonable. Thus, Defendants are awarded costs in the amount of \$936.57.

Based on the foregoing, the total fees awarded are as follows:

1) Attorney's fees	75.1 x \$150.00/hr.	\$11,265.00
2) Travel time	2.4 x \$50.00/hr.	\$ 120.00
3) Costs		\$ 936.57

	<i>Total</i>	\$12,321.57


Conclusion

Having carefully reviewed the submissions of the parties, the entire record, and the applicable law, it is hereby

ORDERED that Plaintiff is directed to promptly make payment of attorney's fees and costs in the amount for \$12,321.57 to Defendants.

IT IS SO ORDERED.

Dated: February 2, 1998
Syracuse, New York


Frederick J. Scullin, Jr.
United States District Judge

COPIES SENT
2/3/98 JMB
CJZ

United States District Court

Northern District of New York

AMENDED JUDGMENT

SCOTT G. MATTIMORE

V.

CASE NUMBER: 95-CV-1164 (FJS)

GEROLD MOHL, Assistant Chief of Police, Malone Village Police Department; JAMES PHILLIPS, Chief of Police, Malone Village Police Department; and JAMES FEELY, Mayor of Malone, New York

27

DISTRICT COURT — N.D. OF N.Y.
FILED
FEB - 3 1998
AT _____ O'CLOCK JMB
Lawrence K. Baerman, Clerk — Syracuse

COPY

[X] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That the report recommendation of Magistrate Judge David N. Hurd dated March 13, 1997 is accepted to the extent that Magistrate Judge Hurd recommends that the court grant the defendants' joint motion for summary judgment, therefore the defendants' joint motion for summary judgment is granted and the defendants' motion for attorney's fees pursuant to 42 USC 1988 is granted in the amount of \$12,321.57.

All of the above pursuant to the orders of the Honorable Judge Frederick J. Scullin, Jr., dated 8/7/97 and 2/2/98.

February 3, 1998

DATE

LAWRENCE K. BAERMAN

CLERK

Joanne Bleskoski

(BY) JOANNE BLESKOSKI
DEPUTY CLERK

NOTICE TO LITIGANTS
FILING NOTICE OF APPEAL

This notice is to inform you of the time limitations for filing a Notice of Appeal under Federal Rules of Appellate Procedure 4 (see below) and of the necessity of filing a timely motion for extension within the thirty-day extension period if the Notice of Appeal is untimely.

Lawrence K. Baerman
Clerk of the Court

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.—

(1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date when the clerk received the notice and send it to the clerk of the district court and the notice will be treated as filed in the district court on the date so noted.

(2) A notice of appeal filed after the court announces a decision or order but before the entry of the judgment or order is treated as filed on the date of and after the entry.

(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If any party files a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;

(C) to alter or amend the judgment under Rule 59;

(D) for attorney's fees under Rule 54 if a district court under Rule 58 extends the time for appeal;

(E) for a new trial under Rule 59; or

(F) for relief under Rule 60 if the motion is filed no later than 10 days after the entry of judgment.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file a notice, or amended notice, of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be *ex parte* unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days

of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(7) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(b) Appeal in a Criminal Case.—In a criminal case, a defendant shall file the notice of appeal in the district court within 10 days after the entry either of the judgment or order appealed from, or of a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, or order—but before entry of the judgment or order—is treated as filed on the date of and after the entry. If a defendant makes a timely motion specified immediately below, in accordance with the Federal Rules of Criminal Procedure, an appeal from a judgment of conviction must be taken within 10 days after the entry of the order disposing of the last such motion outstanding, or within 10 days after the entry of the judgment of conviction, whichever is later. This provision applies to a timely motion:

(1) for judgment of acquittal;

(2) for arrest of judgment;

(3) for a new trial on any ground other than newly discovered evidence; or

(4) for a new trial based on the ground of newly discovered evidence if the motion is made before or within 10 days after entry of the judgment.

A notice of appeal filed after the court announces a decision, sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Rule 3(c), a valid notice of appeal is effective without amendment to appeal from an order disposing of any of the above motions. When an appeal by the government is authorized by statute, the notice of appeal must be filed in the district court within 30 days after (i) the entry of the judgment or order appealed from or (ii) the filing of a notice of appeal by any defendant.

A judgment or order is entered within the meaning of this subdivision when it is entered on the criminal docket. Upon a showing of excusable neglect, the district court may—before or after the time has expired, with or without motion and notice—extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Fed.R.Crim.P. 35(c), nor does the filing of a motion under Fed.R.Crim.P. 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(c) Appeal by an Inmate Confined in an Institution.—If an inmate confined in an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or by a declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid. In a civil case in which the first notice of appeal is filed in the manner provided in this subdivision (c), the 14-day period provided in paragraph (a)(3) of this Rule 4 for another party to file a notice of appeal runs from the date when the district court receives the first notice of appeal. In a criminal case in which a defendant files a notice of appeal in the manner provided in this subdivision (c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's receipt of the defendant's notice of appeal.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7111; 102 Stat. 4419; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995.)

you agree to enter a valid appeal under Rule 4(b) (2) and to file a notice of appeal in the district court within 30 days of the entry of the judgment or order appealed from or within 10 days of the filing of a notice of appeal by any defendant.

you agree to enter a valid appeal under Rule 4(b) (3) and to file a notice of appeal in the district court within 30 days of the entry of the judgment or order appealed from or within 10 days of the filing of a notice of appeal by any defendant.

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

Clinton County Government Center
137 Margaret Street
Plattsburgh, NY 12901
Tel (518) 565-4770
Fax (518) 565-4777



ASSISTANT DISTRICT ATTORNEYS

Catherine M. Paul
Joseph Lavorando
Mark E. Anderson
Douglas B. Appel

May 9, 1996

Mr. Patrick M. Nichols

Mayor James Feeley

Chief James Phillips


Assistant Chief Gerald Moll

RE: Report of Franklin County Special Prosecutor

Gentlemen:

Enclosed please find my Report with respect to the criminal charges sought by Mr. Nichols arising from the April 3, 1993 "Mattimore Incident."

Sincerely,


Penelope D. Clute
Special District Attorney
for Franklin County

encl.

cc: Inv. Sheldon Pray
Malone Evening Telegram
Plattsburgh Press Republican
Adirondack Daily Enterprise
WPTZ - Channel 5
WCAX - Channel 3
WIRY - AM
WCFE - FM

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

Clinton County Government Center
137 Margaret Street
Plattsburgh, NY 12901
Tel (518) 565-4770
Fax (518) 565-4777



May 9, 1996

ASSISTANT DISTRICT ATTORNEYS

Catherine M. Paul
Joseph Lavorando
Mark E. Anderson
Douglas B. Appel

REPORT OF FRANKLIN COUNTY SPECIAL PROSECUTOR

Regarding Criminal Charges sought by Patrick Nichols against Mayor James Feeley, Police Chief James Phillips, and Assistant Chief Gerald Moll arising from an April 3, 1993 Incident.

By Order dated July 13, 1995, I was appointed Special District Attorney for Franklin County in these matters. My responsibilities encompassed investigating the criminal accusations made by Patrick Nichols, determining whether criminal charges should be brought, and prosecuting any such charges.

It was clear that interviews of numerous witnesses would be necessary. Since I have no investigators in my Office, I requested that the New York State Police assist me by conducting a thorough investigation. They agreed and Inv. Sheldon Pray was assigned.

That investigation is now completed. During the course of the investigation, I met with Inv. Pray several times. Every person who was a witness to any aspect of the original incident or to the subsequent reporting and review was interviewed. All items submitted by Patrick Nichols were exhaustively examined and he was interviewed three times. Additional investigation was conducted regarding the holding cell and the bleach.

Because of the wide public reporting of this matter, I have decided to publicly release the results of the investigation and

the determination I have made as Special District Attorney for Franklin County.

Except for the two matters noted below, there is no dispute from any eye-witness about the following facts:

1. Scott Mattimore was brought to the Malone Village Police Station shortly after 1:15 AM on April 3, 1993, as the result of a reported burglary and other charges.

2. While at the police station, Mattimore was first seated in the processing room while investigation and paperwork were being completed.

3. According to all three police officers who were present, Mattimore was intoxicated, and became loud and verbally abusive. Mattimore admits that he had been drinking, but denies that he was intoxicated or abusive. Because of his behavior, Assistant Chief Moll soon moved Mattimore to the holding cell, where he was not handcuffed, and the door was left open.

4. After a short time in the holding cell, the door was closed and, a little later, a file folder was placed over the window in the door, because Mattimore continued to yell, swear at the police officers, and verbally threaten them.

5. According to Mattimore and all three police officers, none of the police made any threatening or demeaning remarks to Mattimore at any time that night.

6. Within a brief time, Mattimore shouted that he "had to piss" (there was no toilet in the holding cell).

7. Assistant Chief Moll told Mattimore he would have to wait

a minute.

8. Mattimore responded that, if they did not let him out to go to the bathroom, he would piss on the floor. Within a couple of minutes, according to the three police officers (20-30 minutes according to Mattimore), Mattimore did just that, and the urine ran under the door out into the hallway.

9. Assistant Chief Moll promptly obtained a bottle of bleach to disinfect and clean up the urine, and poured bleach on the floor outside the closed cell door.

10. Moll briefly left the area to obtain other cleaning supplies. Mattimore yelled that he couldn't breathe and would break the window if they did not let him out. Moll did not hear this but the other two officers did.

11. Moll returned and began mopping the floor outside the cell, and Mattimore broke the window.

12. The cell door was immediately opened and Mattimore was removed. He had a small cut on his hand from breaking the window, which the officers cleaned in the bathroom.

13. The officer who removed Mattimore said that there did not appear to be any bleach inside the holding cell, only urine, but there was a bleach odor.

14. Moll completed cleaning the floor, both inside and outside of the cell, and also cleaned up the broken glass.

15. Mattimore was placed back in the holding cell, where he was handcuffed to the bench and the door was left open.

16. Moll ordered one of the officers to charge Mattimore with

criminal mischief 4th degree for breaking the window.

17. Patrick Nichols was on-duty that night as a patrol officer, but was not in the station during any of this incident.

18. On April 13, 1993, Scott Mattimore appeared in justice court with his attorney and pled guilty to the Class A misdemeanor of criminal mischief 4th degree for breaking the holding cell window.

19. On July 8, 1993, Assistant Chief Moll orally advised Nichols that he would be reprimanded on an unrelated personnel complaint.

20. On July 13, 1993 Patrick Nichols was given a written reprimand for the unrelated personnel complaint against him. The reprimand was based upon an investigation by Assistant Chief Moll, and a decision by Chief Phillips.

21. On July 13, 1993, within hours after receiving the reprimand, Patrick Nichols submitted a written statement to Chief Phillips complaining of mistreatment of Scott Mattimore on April 3, 1993 by Assistant Chief Moll.

22. At the Chief's direction, an investigation was conducted. On July 14, 1993, a detective interviewed one of the two officers present during the April 3 incident, and took a written, sworn statement from him. The other officer was interviewed by the detective on July 22, 1993, also giving a written sworn statement. On July 31, 1993, Assistant Chief Moll filed a five-page written statement with the Chief responding to Nichols' allegations.

23. On August 5 1993, Chief Phillips sent a Memo to Mayor

Feeley indicating that he had completed the investigation of Nichols' complaint against Moll, and found that Moll "acted properly and within Department rules."

By letter affidavit sworn to on April 4, 1994, one year after the Mattimore incident, Patrick Nichols sought to file the following criminal charges with Franklin County District Attorney Richard H. Edwards:

A. Against Moll: Official misconduct for his alleged mistreatment of Mattimore on April 3, 1993.

B. Against Phillips: Official misconduct, perjury, obstructing governmental administration & conspiracy for allegedly making a "false report" of Moll's "commission of a crime;" improperly investigating the incident; interfering with Nichols' investigation of the "Mattimore Incident" and conspiring with another to do so; and allegedly lying about not learning of the allegations against Moll until July 13, 1993 and in stating that the officers present during the incident "contradicted everything that Officer Nichols" told him happened.

C. Against Feeley: Official misconduct, obstructing governmental administration & conspiracy for allegedly interfering with Nichols' investigation, disclosing information to the Police Chief, and allegedly conspiring with the Police Chief to suspend and intimidate Nichols to prevent him from completing his investigation.

Nichols alleges that he reported the "Mattimore Incident" shortly after it occurred, and was conducting his investigation in June 1993. The officers to whom Nichols claims he made the complaint are certain that he did not do so before July 8, 1993. They all report that the first they heard Nichols allege the possibility of misconduct by Moll was after Moll disciplined Nichols in the unrelated matter.

Patrick Nichols was a trained, experienced police officer. Police and prosecutors must be ever aware that a criminal accusation is an extremely serious matter. Before making an arrest, a police officer must have non-hearsay evidentiary facts to support every element of the crime charged, from one or more witnesses with personal knowledge.

There is no credible evidence to support any of the criminal accusations made by Nichols, who was not present during the incident. The eye-witnesses, including Scott Mattimore, contradict Nichols' allegations of wrong-doing against Moll on April 3, 1993. In particular,

1. They all deny Nichols' assertion that Moll used abusive and demeaning language towards Mattimore.

2. Nichols' claim that "toxic" fumes were produced by pouring bleach on the urine is baseless. New York State Police Crime Laboratory Scientist John Brenner says that this does not occur. The officer who removed Mattimore from the cell after he broke the window smelled only the odor of bleach. Moll stood over the affected area cleaning up the urine and bleach and did not

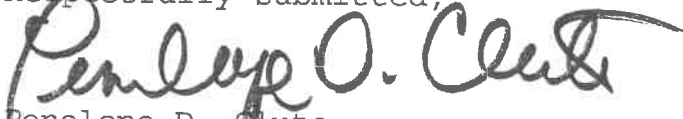
experience any "toxic" fumes.

3. Mattimore states that he has worked around bleach and it has not affected his breathing. Inv. Pray poured a bottle of bleach into an open bucket and sat next to it in the closed holding cell for half an hour with no discomfort or ill effects.

There is no dispute that the incident described above at paragraphs #1-17 occurred in the early morning of April 3, 1993. The incident itself does not give rise to criminal charges. They are appropriate only if there is evidence of intent to injure Mattimore and to act in an unauthorized manner. There is no such evidence.

There is no basis for the official misconduct charge against Assistant Chief Moll. There is no evidence of any impropriety by either Chief Phillips or Mayor Feeley during the investigation and review of the incident or their interactions with Patrick Nichols. There is no competent, credible evidence to support any of the criminal accusations made by Patrick Nichols.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Penelope D. Clute". The signature is fluid and cursive, with the first name "Penelope" being more prominent and the last name "Clute" following in a similar style.

Penelope D. Clute
Special District Attorney
for Franklin County

Honesty

Integrity

Experience

Lawliss Investigative Agency

July 28, 1994

Hon. James N. Feeley
Mayor
Village of Malone
16 Elm Street
Malone, New York 12953

Re: Village of Malone v. Patrick Nichols

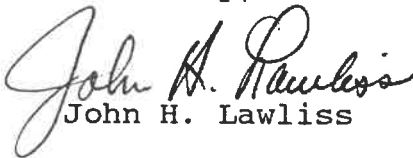
Dear Mayor Feeley:

Pursuant to my being appointed Hearing Officer in the above matter, I have conducted a hearing in this matter regarding disciplinary proceedings against Police Officer Patrick Nichols which was held in Malone, New York on June 16, 1994. My report of findings and recommendations in this matter is attached to this letter.

Also please find my bill for services rendered.

If I can be of further assistance to you in this matter or any other matter, please do not hesitate to contact me.

Sincerely,


John H. Lawliss

Enclosures
JHL/lms

Lawliss Investigative Agency

VILLAGE OF MALONE, COMPLAINANT

In the Matter of Disciplinary Charges

- against -

PATRICK NICHOLS, Respondent

Under and Pursuant to Section 75 of the
Civil Service Law of the State of New York

REPORT AND RECOMMENDATIONS OF HEARING OFFICER

TO: Hon. James Feeley, Mayor
Village of Malone
Malone, New York

By your designation in letter dated May 10, 1994, and made part of the record herein, I was appointed as the Hearing Officer in the above matter pursuant to Section 75(2) of the Civil Service Law.

Transmitted herewith is the record herein consisting of the following:

1. Hearing Officer Exhibit 1, copy of the charges;
2. Hearing Officer Exhibit 2, copy of an answer to the charges;

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By your designation in letter dated May 10, 1994, and made part of the record herein, I was appointed as the Hearing Officer in the above matter pursuant to Section 75(2) of the Civil Service Law.

Transmitted herewith is the record herein consisting of the following:

1. Hearing Officer Exhibit 1, copy of the charges;
2. Hearing Officer Exhibit 2, copy of an answer to the charges;

Village Exhibit 8: Memorandum of Patrolman Nichols to Assistant Chief Moll, which is undated, concerning a DWI arrest he and Officer D. Fountain was involved in.

Village Exhibit 9: Alco-sensor mouthpiece that had been used in a DWI arrest.

Village Exhibit 10: A memorandum from Acting Chief Moll to All Personnel, Malone Village Police Department, dated 10/10/92 regarding Abortion Detail.

Village Exhibit 11: Memorandum of Village Police Chief James Phillips advising Patrolman Nichols to appear at the Chief's office on March 17, 1994 for a discussion that may possibly involve disciplinary action.

Village Exhibit 12: Transcript of March 17, 1994 proceedings between Patrolman Nichols and Chief Phillips.

Village Exhibit 13: Statement of Carl Thomas dated 10/21/93 concerning Patrolman Nichols approaching him to sign a petition.

Village Exhibit 14: Statement of Dale Lamitie regarding Patrolman Nichols approaching him to sign a petition.

Village Exhibit 15: Statement of Edward Ritzmann regarding Patrolman Nichols approaching him to sign a petition.

Village Exhibit 16: Statement of Scott Smith, dated 9/24/93, regarding Patrolman Nichols approaching him to sign a petition.

The Notice and Statement of Charges were served on the Respondent, Patrolman Patrick Nichols, on May 3, 1994. The Respondent's answer, through his attorney, Thomas P. Halley, Esq., dated May 10, 1994, entered a general denial to the charges and specifications and further demanded a bill of particulars and a hearing in this matter.

A hearing was held before me at the Village Office, Elm Street, Malone, New York on June 16, 1994. The Respondent, Patrolman Patrick Nichols appeared in person and was represented by his attorney, Thomas P. Halley, Esq., 297 Mill Street, Poughkeepsie, New York. The Village in the matter was represented by Brian S. Stewart, Esq., 31 Elm Street, Malone, New York. The following witnesses testified at this hearing:

For the Village: James Phillips, Chief of Police
 Gerald Moll, Assistant Chief of Police
 James Feeley, Mayor
 Ronald Reyome, Officer - Malone Police
 Department
 Scott Smith, Garage Proprietor
 Dale Lamitie, Employee of Scott Smith's
 Edward Ritzmann, Retired NYS Trooper

The following witnesses testified on behalf of the Respondent:

Carl Thomas, Employee of Scott Smith's

Dean Fountain, Officer - Malone Police
Department

Steve Stone, Officer - Malone Police
Department

Robert Benjamin, Retired NYS Trooper

Richard Brown, Retired Malone Village Police
Chief

Ken Cring, Employed Franklin Academy High
School

John Hardy, A. S. Hardy Company and former
employer of Patrolman Nichols

Betsy Nichols, wife of Patrolman Nichols

Respondent, Patrolman Nichols.

All witnesses were duly sworn and their testimony is
summarized as follows:

Chief James E. Phillips testified that he has been a member
of the Malone Police Department for the past 18 years and Chief
of Police for over 2½ years. He has received the usual basic
training that a police officer receives and was in the United
States Military for 25 years and received various training in
military operations and leadership. Chief Phillips identified
Village Exhibit 1 as the Malone Village Police Department Rules
and Regulations. He testified that he did not give permission to
Officer Nichols during September or in the fall of 1993 to make
comments to the news media about the Malone Police Department.

He further identified Village Exhibits 2, 3 and 4 as newspaper articles quoting Officer Nichols making, what the Chief considered, inappropriate remarks to the media about the Malone Police Department and that these quoted remarks were a violation of the Malone Police Department Rules and Regulations. Chief Phillips testified as to the morale of the Police Department and the negative effects these media articles had on the overall morale of the Department. He felt that morale was the lowest it had been during his employment on the Police Department. Other officers in the Department were expressing their concern about working with Officer Nichols and that three officers had put in for a lateral transfer. It became necessary for work schedules to be changed as the result of this concern that officers had about working with Officer Nichols. On one occasion, within one hour after Officer Nichols received a letter of reprimand from Assistant Chief Moll, Officer Nichols filed a complaint alleging misconduct on the part of Assistant Chief Moll for an incident that happened four months prior. Ten days after Officer Nichols filed these charges, and had not received a reply, he took his complaint to the District Attorney's Office in Malone and subsequently to the F.B.I. Chief Phillips further testified that when Officer Nichols came back to duty from suspension in November 1993, Officer Nichols continued to violate in small ways the Malone Police Department's Rules and Regulations which caused further problems for him and his administration. He reviewed some of these problems in detail; such as, fingerprinting an

arrestee with his service revolver on, failing to follow instructions at his assignment at the abortion clinic detail, issuing a substantial amount of traffic tickets for minor violations, criticizing a fellow officer for his disposal of an Alco-sensor, vehicle pursuits outside of the Village, and so on. Chief Phillips testified that he decided to have a formal meeting with Officer Nichols to address these problems with him. He gave Officer Nichols 10 days notice in writing and an opportunity to be represented by a member of the union. A meeting was held on March 17, 1994 between Chief Phillips, Officer Nichols, Assistant Chief Moll and a representative of the local Police Benevolent Association (PBA). The meeting was recorded by a stenographer and during the meeting Chief Phillips stated that they discussed a petition containing approximately 300 names that had been circulated around the Village of Malone to garner support for Officer Nichols (Village Exhibit 6). Chief Phillips stated it would be a violation of the Department's Rules and Regulations if Officer Nichols had himself solicited people to sign this petition. In the meeting Officer Nichols denied soliciting people to sign the petition. Chief Phillips testified that the Police Department had conducted an investigation in this matter and had obtained four signed statements from individuals that they had been approached by Officer Nichols requesting that they sign the petition. These statements, according to Chief Phillips, were in conflict with Officer Nichols' statement. After this meeting with Officer Nichols a meeting was held

between Chief Phillips, the Village Attorney and the Mayor. A decision was made to suspend Officer Nichols with pay pending further investigation. Chief Phillips further testified that subsequent to the suspension, an article in the Fort Covington Sun was published accusing the Chief, Assistant Chief Moll and the Mayor of committing felonies and misdemeanors. During cross examination, Chief Phillips continued to reiterate his belief that the unauthorized statements made to the news media by Officer Nichols regarding Officer Nichols' internal problems with the Department and other personnel problems within the Department caused a severe problem with Department morale.

Assistant Chief Gerald Moll testified that he has been a member of the Malone Police Department for the past 15 years and now holds the rank of Assistant Chief. During his service he received basic police training and supervisory training and has passed the Civil Service Test for Police Chief and Acting Chief of Police. Assistant Chief Moll testified about an article that appeared in the Malone Telegram (Village Exhibit 2), a article which appeared in the Plattsburgh Press-Republican (Village Exhibit 3), and another article in the Plattsburgh Press-Republican (Village Exhibit 4). He stated that he had read those articles and they disturbed him because they were made by a Police Officer who violated the Department's Rules and Regulations by speaking to the news media about the Police Department's internal problems and that these articles brought discredit to the Department. He testified that in his 15 years

on the Malone Police Department, the morale was at its lowest state. When Officer Nichols came back to duty from suspension in November 1993, every Officer in the Department, with the exception of one, was concerned about Officer Nichols coming back to work with them and he received letters from Officers stating they would seek transfers if they were forced to work with Officer Nichols. When Officer Nichols did return to duty, some of the other Officers would not even enter the locker room if Officer Nichols was in there. Assistant Chief Moll further testified that he was present on March 17, 1994 when there was a formal questioning session with Officer Nichols. Further, that he was concerned about the truthfulness of Officer Nichols during the questioning, in particular to the answers of Officer Nichols about the circulation of the petition marked Village Exhibit 6. At that time, the Village was in the possession of signed statements that were totally different from the testimony that Officer gave and Officer Nichols was offered an opportunity to read these statements to refresh his memory and he refused to do so. Acting Chief Moll was concerned that Officer Nichols was not only lying to his supervisors, but was lying under oath. He testified that lying under oath would completely destroy an Officer's credibility.

Mayor James Feeley testified that he had been Mayor of the Village of Malone since April 1993 and he identified Village Exhibit 6 as the petitions presented to the Malone Village Board Meeting. He testified that he observed Officer Nichols sitting

in a patrol car for an extended period of time on February 23, 1994 while on duty at the Village Abortion Clinic. He realized that unless there had been a change in policy of the Police Department, that the patrolman should not have been in his patrol car. He brought this incident to the attention of Chief Phillips. Mayor Feeley further testified that in October 1993 he had conversation with a reporter from television Channel 5 News, Plattsburgh, New York advising him that he, the reporter, was coming to Malone to interview Officer Nichols. After this phone conversation with the news reporter, Mayor Feeley contacted the Chief of Police concerning this matter and then phoned Officer Nichols and advised him that even though he was under suspension, he was still a Village Police Officer and subject to the Rules and Regulations of the Malone Village Police Department. He further advised him that he should review Rule 11.5 which deals with giving information to members of the news media. Mayor Feeley testified that Officer Nichols did speak to Channel 5 T.V. News about the DARE program and that if he had a choice for a spokesperson for the DARE program, it would not have been Officer Nichols.

Ronald Reyome testified that he is a juvenile aid officer on the Malone Village Police Department and has been with the Police Department for 8 years. He further testified that morale in the Department is down. People in the community are asking a lot of questions about what is going on in the Department and people are starting to have doubts about the capabilities of the Department.

He testified that if Officer Nichols came back to work, the majority of the Officers in the Department would, for various reasons, not want to work with him. He testified as to his involvement in the arrest and transport of an insane person, when the insane person received some injuries. Officer Nichols was with him at that time and spent some time with the insane person at the hospital. The following morning the arrested subject came into the Police Department and made an accusation against Reyome stating that Officer Nichols was very professional and that Reyome had inflicted some unnecessary injuries on him. The subject at that time stated that he wanted Reyome to receive two months suspension, a letter of reprimand and a weeks vacation lost time. Reyome testified that this was suspicious in his mind, due to the fact that that was the same exact punishments Officer Nichols received at his last hearing to the best of his knowledge. It made him suspicious as to whether or not Officer Nichols had spoken to this subject regarding this matter.

Scott Smith testified he is the owner of Smith's Towing Service in Malone and has known Officer Nichols for 10 years. He identified Village Exhibit 6 as the petition that he signed for Officer Nichols. He testified that Officer Nichols approached him, then asked him for his support in a court deal that was going on, and asked if he would read it and sign it. He testified that the testimony in this matter given by Officer Nichols on March 17th was not true and that Officer Nichols himself approached Mr. Smith and asked him to sign the petition.

He further testified that the testimony given by Officer Nichols on March 17th concerning this matter involving Scott Smith asking Ed Ritzmann to sign the petition was not true. That he, Scott Smith, had never asked Ed Ritzmann to sign the petition and that Officer Nichols had asked Ritzmann to sign the petition.

Dale Lamitie, an employee of Smith's Towing, testified that he has known Officer Nichols for 3 or 4 years and he identified the petition (Village Exhibit 6) and stated that he had signed the petition. He testified that Pat (Officer Nichols) had asked him to sign it after he read it. He testified as to Village Exhibit 14 which was his statement at the Police Department stating that he signed the petition after being asked by Officer Nichols, that this was his signature, and that this document was true.

Edward A. Ritzmann testified that he is unemployed, a retired NYS Trooper, and that he has known Officer Nichols for 8 to 10 years. He further testified that he was approached by Officer Nichols while at Smith's Towing Service and asked to sign a petition which was identified by him as Village Exhibit 6. Mr. Ritzmann also reviewed certain pages of the statement given by Officer Nichols on March 17, 1994 and testified to those areas where Officer Nichols related that he had not asked anyone to sign the petition as being not true as relates to Officer Nichols conversation with Mr. Ritzmann concerning the request to sign the petition.

Carl Thomas testified that he is an ex-employee of Smith's Towing and was at Smith's Towing on the day that several people signed the petition (Village Exhibit 6). Mr. Thomas' testimony was rather vague as his recollections in how he came about to sign the petition, however, he did state that Dale was asked by Officer Nichols to sign the petition and Dale Lamitie said yes and afterwards he, Dale Lamitie, came over and asked Carl to sign it. He could not state for sure the month or year that the petition was signed, however, he did remember signing a statement at the Police Department (Village Exhibit 14).

Dean Fountain testified that he is an Officer with the Malone Police Department and has been so employed for approximately 5 years. He has worked with Officer Nichols for about 6 months and did not want to work with him, as Officer Nichols was having problems. He stated that he did not want to get dragged into the problems that Nichols has. He further testified that at a meeting at work, all of the Officers that were there expressed their feelings that they did not want to work with Officer Nichols for different reasons.

Steve Stone testified that he is an Officer with the Malone Police Department and has been so employed for the past 7 years. He testified that many of the Police Officers did not like working with Officer Nichols as they did not trust him and that he himself did not like working with Officer Nichols as they have a communications problem. He also testified that he felt that if

Officer Nichols returned to duty, the Department's morale would be kept at a low point.

Robert Benjamin testified. Mr. Benjamin is in the real estate business and a retired NYS Trooper advising that he has known Officer Nichols for sometime and does not know anything bad about him. He thought that Officer Nichols was doing a good job in the DARE program and he believes that Officer Nichols is a truthful and straightforward person.

Richard Brown testified. Mr. Brown is a retired Chief of Police of Malone, New York and stated that during the last 3 years that he was on the job, Officer Nichols worked for him. He described his performance during that time as good and does not recall any personnel complaints made against him.

Ken Cring testified. Mr. Cring is employed at Franklin Academy High School in Malone, New York and stated that he has known Officer Nichols since he was in 2nd Grade, he believes Officer Nichols has an excellent reputation as far as telling the truth and Mr. Cring assisted in drawing up the petitions that were signed on behalf of Officer Nichols.

Betsy Nichols testified. Betsy Nichols is the wife of Officer Nichols and the petitions which are Village Exhibit 6, she testified as helping to obtain signatures for them and at one time left some petitions in a vehicle that her husband took over to Smith's Towing.

Patrick Nichols, Respondent in this matter, testified and stated that he is a Police Officer for the Village of Malone, New

York and resides at [REDACTED] with his wife. He testified that one day while at Smith's Towing he noticed petitions in the car and that some unknown person pointed out that they had seen the petitions. He remembered Scott Smith signing the petitions, however, he can't remember who asked him to do so. That he believes the petitions were brought up during a general conversation with Mr. Smith. He denied that he asked Ed Ritzmann to sign the petition and stated that Ritzmann lied under oath in this matter. He further testified that he was questioned by the Chief of Police in his office on March 17, 1994 for a number of hours in the presence of Acting Chief Moll, a stenographer, and Patrolman Fountain, who represented the PBA. He states that he was questioned about the petitions, traffic arrests, and Alco-sensor tube that was discarded during an arrest, why he ate breakfast at a certain restaurant, about a traffic stop outside the Village, and other matters. In his testimony, he admitted that he had spoken to the Mayor concerning his interview with a news reporter from Channel 5 and that the Mayor had told him that he was still a Village Police Officer and that he should review Article 11.5 of the Rules and Regulations. He stated that he knew what the Rules and Regulations were and he could not remember at that time if he reviewed them or not, but he did admit that he talked to the news reporter from Channel 5 concerning the DARE program but did not discuss any other matters.

After the closing arguments, the Respondent's attorney, Mr. Halley, advised the Hearing Officer that he would like to have the opportunity to provide a brief and legal arguments prior to rendering a decision. Mr. Stewart, attorney for the Village, advised that he did not have an objection, however, he was not sure what the legal issue at stake was. I advised Mr. Halley at that time that I would be in contact with him regarding this matter. I subsequently had communications with Mr. Halley that I would not entertain a brief or legal arguments from either side and that the testimony in this matter spoke for itself.

During the testimony, the objections made by both counsels were generally overruled, due to the fact that the Hearing Officer wanted all available information relevant to this case in order to objectively make a decision on the issue of facts. Both counsels were advised that the procedures used were necessary to obtain the truth in this matter, even if some of the testimony was not relevant.

ANALYSIS OF TESTIMONY

Those issues regarding the information given to the news media by Officer Nichols without permission from the Chief of Police are not challenged by the Respondent. In the Respondent's testimony, he did not deny that he spoke to the media without the Chief's permission or make those statements to the press that were attributed to him.

In the issue of speaking with the television news reporter after being contacted by the Mayor, the Respondent readily admits that he was contacted by the T.V. news media and spoke with them regarding the DARE program after receiving a telephone call from Mayor Feeley advising him that he was on suspension but still a member of the Malone Police Department, and he should review Article 11.5 of the Rules and Regulations.

There is credible testimony that Police Officer Nichols, while at Scott's Towing in Malone, New York, did approach four persons and asked them to sign the petition which was to be used to influence the opinions and votes of the members of the Village Board of the Village of Malone. Sworn testimony by Scott Smith, owner of Smith's Towing, and Edward Ritzmann, a retired New York State Police Officer, is credible and was given substantial weight in my decision in this matter. The claim of Officer Nichols' insubordination of his superiors on March 17, 1994, while being questioned by Chief Phillips and Assistant Chief Moll again goes to the credibility of Officer Nichols as to his truth and veracity.

There is substantial evidence to indicate that Officer Nichols can no longer operate within the Malone Police Department in a professional and effective manner. There is substantial and compelling evidence that Officer Nichols continually rebels against authority and operates on his own without regard to the Rules and Regulations of the Department. It is further apparent by his past actions and the testimony of other Police Officers

that if Officer Nichols returns to the Malone Village Police Department, a small department of 18 members, that the effect he would have within the Department would be devastating to morale and have a permanent negative impact on the relationship between the Department and the public it serves.

FINDINGS OF THE FACTS

From the evidence submitted, I find the following:

- (a) Charge 1 - During the first part of September 1993, Police Officer Patrick Nichols, while on suspension, did knowingly and intentionally solicit persons to sign a petition, the object of which was to influence the opinions and votes of the Board members of the Village Board of Malone.
- (b) Charge 2 - That on March 17, 1994, while being questioned by Chief Phillips and Assistant Chief Moll regarding the aforesaid petition being circulated, that Officer Nichols failed to disclose his full activities in this matter, and his answers to direct questions put forth by the Chief and Assistant Chief were less than truthful.
- (c) Charge 3 - That Officer Nichols did criticize the Malone Police Department in the August 17, 1993 Malone Telegram and that he did make the statements to the

Malone Telegram without permission from the Chief of Police.

- (d) Charge 4 - That Officer Nichols did speak for publication to the Plattsburgh Press-Republican which published an article dated August 17, 1993 which criticized the actions of the Malone Police Department by quotes made to them by Officer Nichols. Further, that Officer Nichols had not received approval from the Chief of Police prior to speaking to the Plattsburgh Press-Republican.
- (e) Charge 5 - That Officer Nichols did speak for publication to the Plattsburgh Press-Republican which published an article dated August 18, 1993 which criticized the actions of the Malone Police Department by quotes made to them by Officer Nichols. Further, that Officer Nichols had not received approval from the Chief of Police prior to speaking to the Plattsburgh Press-Republican.
- (f) Charge 6 - That Officer Nichols, after being notified by Mayor Feeley to review Article 11.5 of the Rules and Regulations, prior to speaking to Channel 5 T.V. for news broadcast, did speak to the T.V. news broadcast without receiving prior approval from the Chief of Police.

Therefore:

As to Charge 1, I find the Respondent guilty with regard to violations of departmental rules and regulations 10.1.1, 10.1.77, 10.1.27 and 10.1.34.

As to Charge 2, I find the Respondent guilty with regard to violations of departmental rules and regulations 10.1.4.

As to Charges 3, 4 and 5, I find the Respondent guilty with regard to violations of departmental rules and regulations 11.5, 10.1.27 and 10.1.34.

As to Charge 6, I find the Respondent guilty with regard to violations of departmental rules and regulations 11.5 and 10.1.34. I find him not guilty on Section 11.1.4, insubordination.

RECOMMENDATIONS

The charges against the Respondent, Police Officer Patrick Nichols, if taken individually, can be seen as rather innocuous with the exception of the charge of insubordination. Collectively, however, these charges show a pattern of the Respondent's ongoing disregard for authority. While the Respondent was on suspension for violating his Department's Rules and Regulations he continued his blatant disregard for authority by continuing to violate his Department's rules.

The Respondent's actions in this matter exhibit a total disregard for authority and he obviously is not concerned about the consequences of his actions as they pertain to the overall reputation of his department.

The Respondent does not appear to comprehend that a police department is an organization that must demand respect and loyalty from its members in order to be able to function with authority in the community that it has sworn to serve and protect. The Respondent by his conduct and actions seems more interested in his own image in the community than that of the Department's.

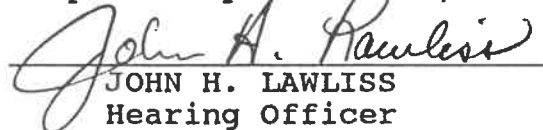
Also taking into consideration in this matter is the testimony of several members of the Police Department that voice their concerns that if the Respondent returns to duty from his present suspension, it would have a serious negative impact on the morale of the Department which would adversely affect its service to the public.

It is further noted that the actions of the Respondent were not made in haste, but with ample time to comprehend the consequences.

In my opinion, consideration as to the consequence of the Respondent returning to duty on the Department's overall effectiveness far outweighs the concern for the individual officer. Therefore, after due consideration, it is my recommendation that the Respondent Officer Patrick Nichols' employment with the Malone Village Police Department be terminated.

Dated: July 28, 1994

Respectfully submitted,


JOHN H. LAWLISS
Hearing Officer

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953 ,

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330
Fax: (518) 483-4005

May 23, 1994

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, New York 12601

**RE: VILLAGE OF MALONE VS
PATRICK NICHOLS**

Dear Tom:

I acknowledge receipt of your letter dated May 10th. I acknowledge your general denial on behalf of Patrick Nichols. I further acknowledge Patrick Nichols request that the hearing be held in a public manner pursuant to §75 of the Civil Service Law.

If you will pardon the informality I will give you in this letter as much of the information which you demanded by bill of particulars as is reasonable and proper.

You asked that the four witnesses be identified. They are, Scott Smith, of Malone, New York, Dale Lamitie, of Malone, New York, Edward Ritzmann, of Malone, New York and Carl Thomas, of Malone, New York. Scott Smith is the owner of Smith's Towing. Dale Lamitie is one of his employees. Carl Thomas is a former employee of Mr. Smith and is currently under indictment for welfare fraud. Edward Ritzmann is a process server and former State Trooper. I have statements from each of the four men, but I consider this material to be prepared for purposes of litigation and I believe that it would be improper to release those statements.

You asked the manner in which Pat did knowingly and intentionally solicit the persons to sign a petition. I am enclosing a copy of the transcript of a question and answer session between the Police Department and Officer Nichols held before a stenographer and notary public on March 17, 1994. The section of the transcript dealing with the petitions extends from page 56-60. Based on my interviews with the witnesses and upon their statements it appears that Mr. Nichols actively circulated the petition in question in an attempt to go over the head of his superior officer and directly influence the decision making process of the Village Board of Trustees with respect of the prior disciplinary proceeding. In particular, Officer Nichols statement on page 57 at lines 21-23 was false. His statement at page 58 lines 20-25 is

false. His statement at page 59 line 7 is false. His statement at page 59 line 25 and continuing on to page 60 at lines 2-9 is false. Mr. Nichols actively sought out my four witnesses and asked them to sign the petition. They did not first inquire of him about the petition. He did not merely concede to their request to sign a petition.

You asked for a copy of the rules and regulations of the Police Department. They have not changed since the last Civil Service hearing. If you would like another copy of the rules please let me know. Otherwise, I will assume that you have a copy in your possession.

Very truly yours,

HUGHES & STEWART, P.C.

A handwritten signature in cursive script, appearing to read "Brian S. Stewart", written over the typed name.

Brian S. Stewart

BSS/mew

cc: Mayor James Feeley
Chief James Phillips



OFFICE
OF
FRANKLIN COUNTY
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MALONE, N.Y. 12953
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M. Gayle Seymour
Special Assistant to
District Attorney

May 20th, 1994

Mr. Patrick Nichols
146 Webster Street
Malone, New York 12953

Dear Sir:

RE: INVESTIGATION

The subject matter of the items provided this office has been the subject of an independent FBI investigation. That being the case, there is no need for a duplicative separate investigation.

If the Federal authorities refer the matter to this office for possible state prosecution, the matter would be reviewed at that time.

Very truly yours,

Richard H. Edwards
Richard H. Edwards
District Attorney

RHE/mgs

OFFICE OF
FRANKLIN COUNTY DISTRICT ATTORNEY
FAX # 518-483-6767 Ext. 545

FROM Richard Edwards
TO Chief Phillips
FAX # 2426
DATE _____
NUMBER OF PAGES 1
PEOPLE V. _____

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE September 24, 1993

PLACE Malone PD

I, Scott Smith am 28 years of age, born on [REDACTED], my address is [REDACTED] my occupation is Businessman, and degree of education is 12.

I would like to state that during the early part of September 1993 I was at my place of business, Smith's 24hr Towing located on 66 West Main St within the Village of Malone NY, when I was approached by Malone Police Officer Patrick Nichols. Pat had a petition with him and he asked me to sign it. I looked at it and found that it stated that: We the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing. Pat went on and explained to me that he felt that there was a cover up going on at the police department and he told me about an incident when they had a person in police custody and Scott Mulverhill had told him that A/C Moll had poured bleach on the floor when the prisoner had urinated on the floor and that the prisoner had broken the window in the holding cell to get air and that he felt that it wasn't a criminal matter. He also told me that ^{he had said} gone to the DA with the same matter and that he felt that the Police Chief Jim Phillips shouldn't be in the position he was in. After he told me his side of the story I signed the petition and gave it back to him. I was the first person to sign it but he went to others under my employ but I don't know if anyone else signed it.

I have read this statement (had this statement read to me) consisting of 1 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

*Affirmed under penalty of Law
this 24 day of Sept, 19 93

witness:

Signed:

witness:

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE Oct 27, 1993 PLACE Malone PD

I, Edward Ritmann, am 50 years old, my address is [REDACTED], my occupation is Retired, and degree of education is 14yrs.

I would like to state that sometime during the early part of September 1993 I was at Smith's 24hr Towing in the Village of Malone N.Y., on the above mentioned time I was in the company of the owner of the business, Scott Smith, A person known to me as Pat Nichols approached us and asked if we would sign a petition that he had. He showed me the petition and I read it over. It said something to the effects that I was in favor of what he was doing and that he should be reinstated to his position on the local police department, after reading his petition I told him that I wasn't in any position to sign until I heard both sides of the story. The only knowledge of the situation was from what I had read or heard through the news media. Pat understood my feelings and went over and talked with Scott Smith.

I have read this statement (had this statement read to me) consisting of 1 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

*Affirmed under penalty of Law
this 27 day of Oct, 19 93

witness: 

witness:

Signed: 

PAGE 1 OF 1 PAGES

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE October 21, 1993 PLACE Malone PD

I, Carl Thomas am 30 years of age, born on [REDACTED] my
address is [REDACTED] my occupation is
Mechanic, and degree of education is 10th grade

I would like to state that sometime during the early part of
September 1993 I was at my place of employment, Smith's 24hr
Towing Service, I believe it was sometime in the morning
hours when I was approached by Pat Nichols. Pat asked me if I
would sign a petition on his behalf. He gave me the petition
and I looked at it. It already had some names on it so I
signed it. I didn't even read it and Pat never went into what
it was about, after I had signed it I gave it back to Pat and
he went over to one of my co-workers, Dale Lamitis [REDACTED]
[REDACTED] Pat and Dale had a brief
conversation but I don't know about what.

I have read this statement (had this statement read to me)
consisting of 1 page(s) and the facts contained herein are
true and correct. I have also been told and I understand that
making a false written statement is punishable as a class A
misdemeanor pursuant to section 210.45 of the Penal Law of
the State of New York.

*Affirmed under penalty of Law
this 21 day of Oct, 1993

witness: [Signature]

witness:

Signed: Carl Thomas

PAGE

1 OF 1

PAGES

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE October 21, 1993 PLACE Malone PD

I, Dale Lamitie am 35 years of age, born on [REDACTED]
my address is [REDACTED] and degree of education
is 9th.

I would like to state that during the early part of
September 1993 I was at my place of employment, Smith's 24hr
Towing Service within the Village of Malone NY. I am a
mechanic at that business. I was working on a car one
afternoon when I was approached by Pat Nichols, Pat handed me
a petition and asked me to sign it. I read it over and it
said something to the effect that I would support his actions
in something that was going on between him and the Malone
Police Department. I knew from what I had read in the
newspapers that Pat has been suspended for something but I
didn't really pay much attention. I signed Pat's petition and
handed it back to him.

I have read this statement (had this statement read to me)
consisting of 1 page(s) and the facts contained herein are
true and correct. I have also been told and I understand that
making a false written statement is punishable as a class A
misdemeanor pursuant to section 210.45 of the Penal Law of
the State of New York.

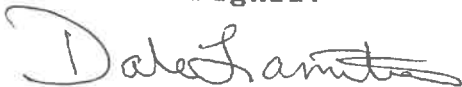
*Affirmed under penalty of Law
this 21 day of Oct , 19 93

witness:



witness:

Signed:



PAGE

1 OF

PAGES

TO: MAYOR JAMES FEELEY
RE: MALONE POLICE DEPARTMENT

If Mr. Nichols can not get along with the members of his department or is disrespectful then clearly the Chief can and should schedule Officer Nichols for duty in a manner that best suits Officer Nichols' talents and best serves the Department as a whole.

I realize that things may not be pleasant at the Police Department. However, not every problem employee can be fired at will. Bringing weak charges against Officer Nichols will only serve to make the problem worse and will make the Department and the Village vindictive in the eyes of the public.

Of all the present charges, I think the charges concerning discrimination against out of town residents are the most serious. If this pattern is clearly opposed to the patterns established by the rest of the Department and if it continues for a period of at least six months and if it continues in spite of the counseling letter that I have recommended, then I think that civil service charges would be warranted.

Very truly yours,

A handwritten signature in cursive script, reading "Brian S. Stewart". The signature is written in dark ink and is positioned above the typed name.

HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw

May 10, 1994
Patrick M Nichols
146 Webster St.
Malone, N.Y. 12953

Sgt. Chris Fountain
Union President
Malone P.B.A.

Chris,

As per our phone conversation on May 10, 1994 I am advising the union in writing that I am not in need of union representation as I have retained my own attorney. I advised the P.B.A. representative Anthony Salfaro by leaving a message on his phone recorder. I would appreciate it if you could fax a copy of this letter to Salfaro.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick M. Nichols", written in dark ink.

Ptl. Patrick Nichols

POLICE DEPT. VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief



POLICE DEPARTMENT Village of Malone

2 Park Place
Malone, New York 12953-1601

(518) 483-2424
(518) 483-2426 FAX

Memo

To: Mayor &
Village

MEMORANDUM

From: James P.
Chief o

To: Chief

Date: October

Subject: Attached
Patrick

On advise from
Chief's of Police A:
charges are preferre
accordance with the
Service Law of the

I have all pape
supporting the charg

I worked on a rough draft of questions, both direct and cross, that might be used. I don't have it ready to pass onto Brian or Jim Feeley. This took over 6 hours and it's going to take a few more hours to put all the evidence together. I didn't have a chance to work on the next couple of schedules. I can work on that when I come back sat. morning.

I think the case looks real strong if we can keep things organized with the evidence. The rough draft is under "Evidence"

A/C

DISCIPLINARY CHARGES CIVIL SERVICE LAW ARTICLE 75

MALONE POLICE DEPARTMENT Complainant

V.

PATRICK NICHOLS Respondent

The Malone Police Department hereby charges Police Officer Patrick Nichols pursuant to Civil Service Law §75 as follows:

- 1) During the first part of September 1993 Police Officer Patrick Nichols while on suspension did actively solicit persons to sign a petition which stated. We, the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing, for the following reasons.
 - 1) He acted in good faith with an honorable intent.
 - 2) He acted in the best interest of the public
 - 3) His actions took courage and fortitude.
 - 4) His motivation was not self-serving.
 - 5) He is an ethical person who believes in justice and fair play.

This action violated the following departmental rules and regulations.

- 10.1.1 Discredit upon Department
- 10.1.27 Public criticism of a member of the department.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.
- 11.5 Disclosing official business of the Department without permission.

- 2) In Malone Telegram publication Vol.88 No. 216 of August 17, 1993, the respondent did criticize the police department stating "There's somebody else who should be suspended for 30 days".

11.5 A member of the Force or Department shall treat as confidential the official business of the police department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall impart information relating to the official business of the department.

10.1.27 Publicly criticizing the official actions of a department member.

- 3) In Plattsburgh Press Republican publication dated August 17, 1993, the respondent did publicly criticize the actions of the police department stating " In June 1988, I took an oath to serve the public. I did what I did because it was in the best interest of the public, and this attempt to shut me up isn't going to work. Does it make sense to take a man out of work for 30 days for doing the right thing"?

11.5 A member of the force shall treat as confidential the official business of the department. He shall not talk for publication.

10.1.27 Publicly criticizing the official actions of a department member.

- 4) In the Plattsburgh Press Republican publication dated August 18, 1993, respondent did publicly criticize the official business of the police department stating that he feared retaliation from the Chief of Police and also stated "Retaliation is the number one reason I waited so long, that is the reason a lot of others are waiting before they say anything. They fear retaliation too. But I made the decision I'd see this through, and I want the public to know what's going on." Respondent also confirmed that he also filed a complaint against another officer earlier in the year regarding another unrelated incident.

11.5 A member of the force shall treat as confidential the official business of the police department. He shall not talk for publication.

10.1.27 Publicly criticizing the official actions of a department member.



POLICE DEPARTMENT

Village of Malone

2 Park Place
Malone, New York 12953-1601

(518) 483-2424
(518) 483-2426 FAX

James E. Phillips
Chief of Police

To: John H. Lawliss



From: Ass't Chief Gerald K. Moll

Date: June 17, 1994

Dear Mr. Lawliss,

As per your request, I'm enclosing a copy of the Malone Village Police Department's Rules and Regulations. I also included the policy on High Speed Pursuit Driving and the Abortion Detail.

Please don't hesitate to contact me if you need any further information.

Sincerely,

Gerald K. Moll
Ass't Chief of Police

Retaliatory

Asst. Chief	due to letter of reprimand
Chief Phillips	Covering up personnel complaint
District Attorney	Wrote three page insubordinate letter
Mayor	Part of cover up with Chief
Hearing Officer	Claimed bias
Brian Stewart	Accusing of forced testimony

Second suspension:

After second suspension filed charges against Mayor, Chief & Ass't Chief.

District Attorney---as noted above

SUPREME COURT
COUNTY OF FRANKLIN : STATE OF NEW YORK

INDEX NO:

In the Matter of the Disciplinary
Charges brought by the Village of
Malone,

Plaintiff,

SUBPOENA

-against-

PATRICK NICHOLS,

Defendant.

THE PEOPLE OF THE STATE OF NEW YORK


TO : STEVE STONE

GREETING:

WE COMMAND YOU, That all business and excuses being laid
aside, you and each of you appear and attend a disciplinary
hearing at Village Hall, Village of Malone, New York at 12 PM
on the 16th day of June, 1994 and at any recessed or
adjourned date to give testimony in this action of on the
part of the PATRICK NICHOLS.

Failure to comply with this subpoena is punishable as a
contempt of Court and shall make you liable to the person on
whose behalf this subpoena was issued for a penalty not to
exceed fifty dollars and all damages sustained by reason of
your failure to comply.

DATED: Poughkeepsie, NY
June 14, 1994


THOMAS P. HALLEY
ATTORNEY FOR DEFENDANT
297 MILL STREET
POUGHKEEPSIE, NY 12601
(914) 452-9120

We, the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing, for the following reasons:

- 1) He acted in good faith with an honorable intent.
- 2) He acted in the best interest of the public.
- 3) His actions took courage and fortitude.
- 4) His motivation was not self-serving.
- 5) He is an ethical person who believes in justice and fair play.

Scott Nesbitt

NAME

ADDRESS

1 Rita Charland

2 Deanne Haralby

3 Anita DeCoste

4 Michelle Langlois

5 Cindy M. Fajny

6 Michael Torgeson

7 Patti Burnett

8 Katherine L. Stender

9 Troy Gutz

10 Brand March

11 Rip Cassavan

12 Ben Bahlman

13 Phil Reed

14 Dale Granthie Sr

15 Carl Thomas

16 Jim Johnson

17 Michael Sel

18 David C. Thorne

19 Scott P. Pove

20 Randy Grant

21 Donell Lawrence

Malone N.Y.
BX 33
Paul Hickey

2

We, the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing, for the following reasons:

- 1) He acted in good faith with an honorable intent.
- 2) He acted in the best interest of the public.
- 3) His actions took courage and fortitude.
- 4) His motivation was not self-serving.
- 5) He is an ethical person who believes in justice and fair play.

	NAME	ADDRESS
1	<u>Seamus J. Smith</u>	<u>Malone N.Y. 12953</u>
2	<u>Kurtis M. Vane</u>	<u>Malone N.Y. 12953</u>
3	<u></u>	<u></u>
4	<u></u>	<u></u>
5	<u></u>	<u></u>
6	<u></u>	<u></u>
7	<u></u>	<u></u>
8	<u></u>	<u></u>
9	<u></u>	<u></u>
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18	<u></u>	<u></u>
19	<u></u>	<u></u>
20	<u></u>	<u></u>

EVIDENCE FOR CHARGE #1

1. Statements:

Scott Smith, Carl Thomas, Dale Lamitie, Ed Ritzman

2. Petitions

3. Certified letter from Elizabeth Bessette on when petitions were submitted to Village Board:
Nichols father and brother submitted petitions

4. Malone Telegram ad that Nichols paid for thanking everyone for their support.

5. Articles after petitions were filed with Village

6. Page #66 & #67 of transcript reflects that Nichols knew and understood 10.1.77 and that only a member can violate that section.

7. Admission to involvement in petitions from transcript

Page #57 line 24 question

Page #58 line 2 answer

Page #59 line 13 question

Page #59 line 15 answer

Page #62 line 19 question & answer

Page #63 line 3 question

Page #63 line 4 answer

Page #67 line 15 question

Page #67 line 18 answer

Page #68 line 22 question

Page #68 line 24 answer

Page #176 Nichols comment on threats with statements

Page #178 Nichols offered to read statements but refused

Page #181 & 182 Nichols comments on involvement

EVIDENCE FOR CHARGE #2

Transcript from page #56 to #70

Transcript from page #169 to END

May want to have some documentation in regards to a Police Officer's training on remembering things.

May want to review the transcript from Nichols first Hearing to find out how detailed he could be about certain events.

May want to show other discrepancies with Nichols comments

EVIDENCE FOR CHARGE #3, 4, 5

Original newspaper articles

Transcript from page #109 to #145

Page #112 Line 22	The only thing I recall about all these is referring to my attorney
Page #114 Line 13	(same thing)
Page #114 Line 22	Admitted to making comments
Page #115 Line 12	(answer any questions) Thats Possible
Page #125 Line 4	Didn't give your side of story?
Page #132 Line 21	Considerable news coverage
Page #133 Line 5	Door to Door campaign
Page #134 Line 1	Public Trust
Page #135	Fair reporting

Nichols Appeal:

Evidence submitted by Nichols pursuant to CPLR 4532 for appeal Section # 26, Exhibit C. This article was submitted as evidence to support his appeal.

No articles during the early stages of the disciplinary charges reflect that Nichols referred reporters to his attorney as quoted on Page 112 Line 22. (check articles)

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

COPY

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330
Fax: (518) 483-4005

October 18, 1995

Michael J. Novack, Clerk of the Court
Supreme Court - Appellate Division
Third Department
P.O. Box 7488, Capitol Station
Albany, New York 12227

RE: In the Matter of Patrick Nichols v. Village of Malone
Case No.: 72779-A and 72779-B

Dear Mr. Novack:

Enclosed please find a Notice of Motion and supporting Affidavit seeking to reject the Record on Appeal filed by the appellant herein as incomplete and seeking a dismissal of appellant's appeal.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/kas

Enclosure

pc: Thomas P. Halley, Esq.

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

COPY

In the Matter of PATRICK NICHOLS,

Petitioner,

against

72779-A

VILLAGE OF MALONE,

Respondent.

(Proceeding No. 1)

NOTICE OF MOTION

In the Matter of PATRICK NICHOLS,

Petitioner,

72779-B

against

VILLAGE OF MALONE,

Respondent.

(Proceeding No. 2)

PLEASE TAKE NOTICE that upon the annexed Affidavit of Brian S. Stewart, sworn to the 17th day of October, 1995 and on all the proceedings previously had in this matter, a motion will be made before a Term of this Court as follows:

PLACE:

Justice Building, South Mall, Albany, New York

DATE:

November 7, 1995

TIME:

1:30 p.m. or as soon thereafter as counsel may be heard

RELIEF REQUESTED:

An Order rejecting the Record on Appeal as filed by petitioner as incomplete and dismissing petitioner's appeal.

PLEASE TAKE NOTICE that this Motion will be submitted on the papers and that personal appearance in opposition to the Motion is neither required nor permitted.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214 b answering affidavits, if any, are to be served at least seven (7) days prior to the return date.

DATED: October 18, 1995

HUGHES & STEWART, P.C.
Attorneys for Respondent
Office and Post Office Address
31 Elm Street
P.O. Box 788
Malone, New York 12953

TO; THOMAS P. HALLEY, ESQ.
Attorney for Petitioner
Office and Post Office Address
297 Mill Street
Poughkeepsie, New York 12601

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

In the Matter of PATRICK NICHOLS,

Petitioner,

against

72779-A

VILLAGE OF MALONE,

Respondent.

AFFIDAVIT IN SUPPORT
OF MOTION TO REJECT
RECORD ON APPEAL AND
TO DISMISS APPEAL

(Proceeding No. 1)

In the Matter of PATRICK NICHOLS,

Petitioner,

72779-B

against

VILLAGE OF MALONE,

Respondent.

(Proceeding No. 2)

STATE OF NEW YORK)

ss.:

COUNTY OF FRANKLIN)

BRIAN S. STEWART, being duly sworn, deposes and says that:

1. I am an attorney, duly admitted to practice in the State of New York and I am the attorney for the respondent herein.
2. On or about October 6, 1995 the petitioner filed with this Court his Record on Appeal and Brief.

3. This is a joint appeal on two related Article 78 proceedings reviewing two Civil Service Section 75 hearings conducted by the Village of Malone involving the petitioner. petitioner was employed as a police officer with the Malone Village Police Department.

4. The first such Article 78 proceeding resulted in an order of transferral from Supreme Court dated March 30, 1994. The time to perfect such transfer has expired. Pursuant to the Decision and Order on motion of this Court, decided and entered August 22, 1995, a copy of which is annexed hereto; the time to perfect the appeal was extended to October 6, 1995 and permission was granted to consolidate the two proceedings.

5. The Record and petitioner's Brief arrived in my office during the afternoon hours of October 10, 1995.

6. The Record is incomplete. All exhibits, except the charges for each hearing, were omitted as exhibits. Petitioner's attorney neither asked nor received deponent's stipulation to omit these exhibits from the Record. Many of the exhibits are relevant to the issue of substantial evidence. It is unclear to deponent whether petitioner, in fact, wishes to raise the issue of substantial evidence. Among the exhibits omitted were the rules and regulations of the Police Department (admitted at Page 10 of the transcript of the first hearing and at Page 416 of the Record in the second hearing); petitioner's personnel file admitted at Page 39 of the Transcript of the first hearing, which is clearly at issue on this appeal; petitioner's response to charges in the first disciplinary matter admitted at Page 4 of the transcript of the first hearing; the petitioner's answer to charges in the second disciplinary proceeding, admitted at Page 406 of the Record; and the transcript of a questioning session held on March 17, 1994 admitted at Page 445 of the Record. Without this information, it is respectfully submitted that this Court will be

unable to resolve the issues posed by the petitioner, particularly if this Court determines that the petitioner has raised the substantial evidence question.

7. Petitioner has failed to include in the Record a copy of the Hearing Officer's report and recommendation from the second disciplinary proceeding and the Village of Malone's determination of guilt and imposition of penalty in the second disciplinary matter. These documents are crucial in light of the fact that the petitioner argues that the Hearing Officer's findings in the second disciplinary proceeding were inadequate.

8. On the afternoon of Friday, October 13, 1995 I called the petitioner's lawyer to inquire as to his position on these matters. I left a detailed message on attorney Halley's answering machine. My office maintains a fax machine, which is on twenty-four hours a day. My fax number is embossed on my letterhead and attorney Halley has previously faxed documents to my office. As of the time of dictation of this Affidavit, I have received no response from attorney Halley by phone or by fax.

9. The Record on Appeal is not complete and is not sufficient for this Court's review and it should, therefore, be rejected. In the event that this Court rejects the Record on Appeal, then this joint appeal should be dismissed for failure to comply with the Court's filing deadlines, as extended by this Court's Order decided and entered on August 22, 1995.

15/ Brian S. Stewart
BRIAN S. STEWART

Subscribed and sworn to before me

this 17th day of Oct, 1995.

15/ Kimberly A. Savage
NOTARY PUBLIC

*Supreme Court - Appellate Division
Third Judicial Department*

Decided and Entered: August 22, 1995

Case #: 72779A
72779B

In the Matter of PATRICK
NICHOLS, Petitioner,
v
VILLAGE OF MALONE, Respondent.
(Proceeding No. 1.)

DECISION AND ORDER
ON MOTION

In the Matter of PATRICK
NICHOLS, Petitioner,
v
VILLAGE OF MALONE, Respondent.
(Proceeding No. 2.)

Motion for extension of time to perfect proceeding and to consolidate proceedings.

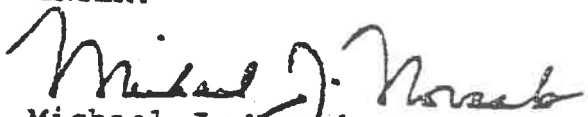
Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion for an extension of time to perfect the proceeding is granted, without costs, and the time to perfect the appeal is extended to October 6, 1995, and it is further

ORDERED that the motion to consolidate the proceedings is granted, without costs, to the extent that the proceedings shall be heard together and may be perfected upon a joint record and brief.

CARDONA, P.J., MIKOLL, MERCURE, WHITE and YESAWICH JR., JJ.,
concur.

ENTER:

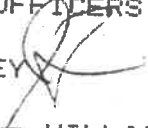

Michael J. Novack
Clerk of the Court

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

MEMO TO: BOARD OF TRUSTEES
POLICE CHIEF PHILLIPS
ACTING POLICE CHIEF MOLL
HEARING OFFICERS MCKEE & LAWLISS

FROM: JIM FEELEY 

RE: NICHOLS vs VILLAGE OF MALONE

DATE: JUNE 7, 1995

GENTLEMEN:

ENCLOSED, FOR YOUR INFORMATION, IS A COPY OF A LETTER FROM BRIAN STEWART.

AS TIME FOR FINAL APPEAL, ON THE FEDERAL LAWSUIT, HAS NOT EXPIRED IT IS STILL IMPORTANT THAT NO PUBLIC COMMENT BE MADE AS IT COULD HURT FUTURE DEFENSE EFFORTS.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330
Fax: (518) 483-4005

June 6, 1995

Mayor James Feeley
16 Elm Street
Malone, New York 12953

RE: NICHOLS VS. VILLAGE OF MALONE

Dear Jim:

As you will recall Judge Plumadore's decision in April was a win for us. We drafted an Order which was entered. A copy of the Order with Notice of Entry was mailed to Tom Halley on April 25th. Tom had thirty-five (35) days to file a Notice of Appeal in the County Clerk's Office and to serve a copy on us by mail. The thirty-five days has expired. I have not received any Notice of Appeal in the mail. Today I have checked with the County Clerk's Office and no Notice of Appeal has been filed in this matter.

It appears as though the State Appeal on the second Article 78 Proceeding is now dead.

You may also recall that Mr. Halley received permission from the Appellant Division to file a late brief in the appeal of the first Article 78 Proceeding. No specific date for filing that brief was established by the Court. However Mr. Halley indicated that his intent was to file the brief with a brief from the second Appeal and that he planned to appeal the two (2) matters jointly. It therefore appears that the first appeal is dead as well.

I should point out that the Courts will sometimes allow late filing if not too much time has gone by. Nevertheless, at the moment things look good.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew

cc: James Brooks

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330
Fax: (518) 483-4005

June 9, 1995

James Phillips
2 Park Place
Malone, New York 12953

RE: NICHOLS VS. FEELEY, ET AL

Dear Jim:

A copy of Judge McAvoy's decision in this matter arrived in my office on June 8th and I thought you would be interested in reading it. A copy is enclosed.

You may also be interested to learn that Mr. Nichols' time to appeal Judge Plumadore's most recent decision against him has expired and no such appeal has been taken.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew
Encl.

STATE OF NEW YORK

SUPREME COURT

COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

*
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*
*
*
*
*

Index #94-589
CC #16-1-94-0224.P
Our File #P-1775

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

DECISION

Petitioner filed the instant petition challenging the results of a Civil Service Law §75 disciplinary hearing. The Hearing Officer found he had violated a variety of police departmental rules with respect to soliciting signatures on a petition seeking to influence the Village Board concerning his employment status, lying about same when questioned by Chief Phillips and Assistant Chief Moll, criticized the Malone Police Department in three newspaper interviews given without permission and gave a television interview without permission. Petitioner challenges:

- the Hearing Officer's impartiality;
- the admission of evidence of uncharged acts and Petitioner's statements to Chief Phillips and Assistant Chief Moll;
- the omission by permission from Chief Phillips' testimony of the names of the officers who would not work with Petitioner;
- the apparent inconsistency of the Village Board's adopting the finding of guilt for lying concerning the solicitation but not the guilt finding as to the solicitation itself.

The Hearing Officer demonstrated no partiality. While he overruled virtually all of Mr. Halley's objections, he properly observed that strict rules of evidence did not apply and did on at

least one occasion (transcript p. 21) rein in Mr. Stewart's course of inquiry.

The Hearing Officer had no particular acquaintance with anyone in the Police Department or Village government (unlike, as it later developed, the Hearing officer from the 1993 proceedings and Chief Phillips). His on-the-record statement that Petitioner's return to duty would "raise havoc" in this small police force was adequately explained (p. 76) and standing alone is indicative of no "bias" sufficient to overturn the result.

The uncharged and unparticularized incidents testified to by Chief Phillips should not have been admitted, except perhaps on the question of the penalty to be imposed. Is that sufficient to overturn the result: it is not. It was not arbitrary or capricious for the Village to adopt the Hearing Officer's finding that Petitioner lied concerning soliciting signatures, a pure credibility (and thus substantial evidence) question. None of the uncharged events concerned Petitioner's credibility or dealt with matters of moral turpitude, only poor professional judgment, and none dealt with his relations with the media.

The Hearing Officer's failure to force Chief Phillips to divulge the names of officers who had complained about Petitioner's conduct is also of little consequence as it later came out via various witnesses that most of the officers distrusted Petitioner.

The fact that Petitioner received no warnings before being interviewed on March 17, 1994 by Chief Phillips and Assistant Chief Moll might prevent criminal charges from being brought, but it does not effect civil disciplinary proceedings (Matter of Matt v. LaRocca, 71 NY2d 154, 159-160).

Dismissal, harsh though it may seem, is appropriate, particularly where a police officer is found guilty of lying (Eberhart v. Robbins, 25 N.Y.S.2d 336, 339; Matter of Zazycki v.


City of Albany, 94 AD2d 925; see also Winn v. Eschweiler, 149 AD2d 716), and is even available for instances of disruptive speech (Waters v. Churchill, 114 S.Ct. 1878, 128 L Ed2d 686, 703). The Village Board was aware of Waters, supra and its convolutions before voting on the Hearing Officer's findings, and Mr. Halley did not provide them with any citations which would mandate some other result. It was thus entitled to only adopt the finding that Petitioner lied about soliciting signatures so as to avoid the Waters free speech thicket.

As with the Court's March 14, 1994 Decision, however, the within discussion only demonstrates that Respondent is not entitled (here) to dismissal nor Petitioner to judgment on the law. There is squarely a question of substantial evidence concerning whether Petitioner lied to Phillips and Moll about soliciting signatures, and, as before, that must by statute be decided by the Appellate Division.

Mr. Halley to submit order on notice.

ENTER:

DATED: March 14, 1995
Chambers, Saranac Lake, New York


HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

Verified Answer

- against -

Index No.: 94-589

Village of Malone,

Respondent.

The respondent, The Village of Malone, answering the petition herein states as follows:

- 1) Admits each and every allegation contained in paragraphs 1, 2, 3, 5, 7, 17, 22, 24, 26, 32 and 33.
- 2) Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 18 of the petition.
- 3) Denies each and every allegation contained in paragraphs 8, 12, 20, 27, 28, 29, 30, (denominated 29) and 31.
- 4) With respect to the allegations contained in paragraph 4 of the petition, Respondent admits that Petitioner was directed to appear before the Chief of Police by memo and admits that such session took place on March 17, 1994. Respondent denies that Petitioner was first notified of the meeting on March 17, 1994.
- 5) With respect to the allegations contained in paragraph 6 of the petition, Respondent admits that Petitioner was never read any "Miranda" rights on March 17, 1994 and denies that such failure is a bar to civil or criminal action taken as a result of perjury committed by the Petitioner on March 17, 1994.
- 6) With respect to the allegations in paragraphs 9, 10, 11, 13, 14, 15 and 16 of the petition, Respondent states that the transcript of the Civil Service Hearing speaks for itself.
- 7) With respect to the allegations in paragraph 19 of the petition, Respondent denies that the Hearing Officer found Petitioner guilty of all charges and admits that the Hearing Officer recommended termination.

- 8) With respect to the allegations contained in paragraph 21 of the petition, Respondent admits inviting Petitioner and Petitioner's attorney to submit a written response to the Village Board and denies that the purpose of such response was to do anything other than address matters contained in Petitioner's personnel file.
- 9) With respect to the allegations contained in paragraph 23 of the petition, Respondent admits meeting in Executive session on August 22, 1994, admits making a decision to find the Petitioner guilty of one of the charges and to terminate him and denies knowledge or information sufficient to form a belief as to the length of time the said Board was in Executive session.
- 10) With respect to the allegations contained in paragraph 25 of the petition, Respondent denies knowledge or information sufficient to form a belief as to the amount of time it took for the Petitioner to read aloud his statement and admits the rest of the paragraph.
- 11) With respect to the allegations contained in paragraph 28 of the petition, Respondent denies all allegations contained therein and affirmatively states that it made no finding of guilt or innocence regarding Petitioner's solicitation of signatures on petitions.
- 12) Respondent denies each and every allegation not specifically admitted or denied above.

WHEREFORE, Respondent respectfully requests that the petition herein be dismissed together with such other and further relief as to the Court may seem just and proper.

Date: October 26, 1994



JAMES FEELEY
MAYOR OF VILLAGE OF MALONE

Hughes & Stewart, PC
Attorneys for Respondent
31 Elm Street, PO Box 788
Malone, New York 12953
(518) 483-4330

To: Thomas P. Halley, Esq.
Attorney for Petitioner
297 Mill Street
Poughkeepsie, New York 12601

State of New York
County of Franklin

Patrick Nichols,
Supreme Court

Petitioner,

-against-

Village of Malone,

Respondent's Statement
of
Pertinent and Material Facts

Index No.: 94-589

Respondent.

The Respondent, The Village of Malone, sets forth the pertinent and material facts of this matter as follows:

- 1) In September, 1993 Officer Patrick Nichols, while on suspension, knowingly and intentionally solicited four (4) persons to sign a petition, the object of which was to influence the opinions and votes of the Board members of the Village Board of the Village of Malone with respect to a personnel matter then pending in front of the Board involving Office Nichols.
- 2) On March 17, 1994, while being questioned under oath by superiors regarding the solicitation of signatures of the aforesaid petition, Officer Nichols lied.
- 3) The Petitioner spoke to the Malone Telegram for publication on August 17, 1993, while a member of the Malone Village Police Department, and spoke disparagingly of the Police Department without authority or permission as required by the Police Department Personnel Regulations.
- 4) The Petitioner spoke to the Plattsburgh Press Republican for publication on August 17, 1993, while a member of the Malone Village Police Department, and spoke disparagingly of the Police Department without authority or consent as required by the Personnel Policy Manual.
- 5) The Petitioner spoke to the Plattsburgh Press Republican on August 18, 1993, while a member of the Malone Village Police Department, and spoke disparagingly of the Police Department without authority or consent as required by the Personnel Policy Manual.

- 6) On October 21, 1993, Petitioner spoke to a representative of Channel 5 WPTZ News for broadcast despite having been previously warned by the Mayor of the Village of Malone to comply with Police Personnel Rule 11.5 before doing so. Police Personnel Rule 11.5 forbids speaking for publication without the permission of the Police Department. Officer Nichols did not obtain the permission of the Chief of Police or any other member of the Police Department before speaking for publication and spoke as a representative of the Police Department's DARE Program even though it was publicly known that he was on suspension at the time that he gave such interview.
- 7) On or about April 20, 1994 the Petitioner, Patrick Nichols, was served with charges relating to the incidents set forth above.
- 8) A hearing was held pursuant to Civil Service Law §75 before designated Hearing Officer John H. Lawliss on June 16, 1994.
- 9) Hearing Officer Lawliss issued his report and recommendations on or about July 28, 1994, finding that Petitioner had engaged in the conduct specified above, upholding all of the Village's charges against the Petitioner except one (1) and recommending that the Petitioner be terminated.
- 10) Immediately thereafter Petitioner's attorney was notified of the time and place that the Village Board would meet to consider the Hearing Officer's report and recommendation and he was further notified that at such meeting the Village Board would reserve the right to review Petitioner's personnel file. Further, notice was given to Petitioner's attorney that the Petitioner would have the right to submit a written report challenging the accuracy of anything contained within the personnel file or offering evidence and litigation of anything contained within the personnel file.
- 11) Petitioner did submit a written report on the day that the Village Board of Trustees meet to consider the Hearing Officer's report and recommendation. The Petitioner's written submission addressed issues of fact within the Article 75 action and did not address any matters contained within Petitioner's personnel file. Nevertheless, Petitioner's statement was reviewed by the Village Board in Executive session.

- 12) On August 22, 1994, the Village Board of the Village of Malone determined that Officer Nichols gave misleading and false information to his superiors on March 17, 1994 while under oath and was therefore guilty of insubordination pursuant to Departmental Rules and Regulations §10.1.4 and further the Village Board of the Village of Malone determined that the appropriate penalty would be to terminate Officer Nichols' position with the Village Police Department. The Village Board made no finding with respect to any of the other charges for the announced reasons that it felt that a finding of guilty of those charges under the circumstances presented in this matter would give rise to serious and difficult issues concerning Officer Nichols' constitutional right of free speech.

Date: October 26, 1994


JAMES FEELEY
MAYOR OF VILLAGE OF MALONE

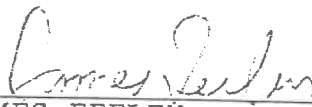
Hughes & Stewart, PC
Attorneys for Respondent
31 Elm Street, PO Box 788
Malone, New York 12953
(518) 483-4330

To: Thomas P. Halley, Esq.
Attorney for Petitioner
297 Mill Street
Poughkeepsie, New York 12601

VERIFICATION

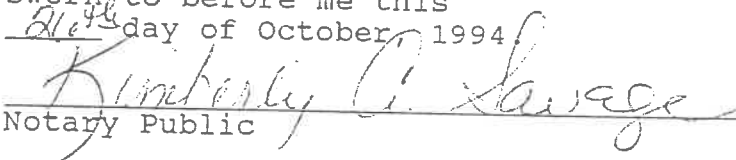
I have read the foregoing Verified Answer subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

Dated: October 26, 1994



JAMES FEELEY
MAYOR OF VILLAGE OF MALONE

Sworn to before me this
26th day of October, 1994



Notary Public

KIMBERLY A. SAVAGE
Notary Public, State of New York
No. 4956826
Qualified in Franklin County
Commission Expires October 2, 1995

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

July 30, 1995

TO: Trustees, Chief Phillips, A.C. Moll, Brian McKee and Jack Lawliss

FR: Jim Feeley

RE: Nichols v. Village of Malone

Gentlemen, enclosed is a copy of a Notice of Motion, in which Nichols is asking the Appellate Division to extend time, passed an already expired deadline, to perfect his appeal of the Civil Service hearings.

Also enclosed is Brian Stewart's answer in opposition to the motion.

When the Appellate Division rules I will forward the same to you.

*Supreme Court - Appellate Division
Third Judicial Department*

Decided and Entered: August 22, 1995

Case #: 72779A
72779B

In the Matter of PATRICK
NICHOLS, Petitioner,
v
VILLAGE OF MALONE, Respondent.
(Proceeding No. 1.)

DECISION AND ORDER
ON MOTION

In the Matter of PATRICK
NICHOLS, Petitioner,
v
VILLAGE OF MALONE, Respondent.
(Proceeding No. 2.)

Motion for extension of time to perfect proceeding and to consolidate proceedings.

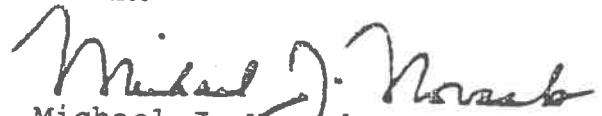
Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion for an extension of time to perfect the proceeding is granted, without costs, and the time to perfect the appeal is extended to October 6, 1995, and it is further

ORDERED that the motion to consolidate the proceedings is granted, without costs, to the extent that the proceedings shall be heard together and may be perfected upon a joint record and brief.

CARDONA, P.J., MIKOLL, MERCURE, WHITE and YESAWICH JR., JJ.,
concur.

ENTER:


Michael J. Novack
Clerk of the Court

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330
Fax: (518) 483-4005

July 27, 1995

Appellate Division Third Department
State of New York
P.O. Box 7288
Capital Station
Albany, New York 12224

VIA: OVERNIGHT MAIL

RE: PATRICK NICHOLS VS. VILLAGE OF MALONE
INDEX NO.: 93-755 AND INDEX NO.: 94-589

Dear Sirs:

Enclosed herewith please find the Respondent's Affidavit in Opposition to the Petitioner-Appellate's motion to extend his time to perfect this proceeding. We understand that this matter is scheduled to be heard by the Court at its August 7th term.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew
Encl.

cc: Thomas Halley, Esq.
Mayor James Feeley

Appellate Division : Supreme Court
Third Judicial Department

PATRICK NICHOLS,

Petitioner-Appellant,

- against -

VILLAGE OF MALONE,

Respondent-Respondent.

PATRICK NICHOLS,

Petitioner-Appellant,

- against -

VILLAGE OF MALONE,

Respondent-Respondent.

Affidavit
in Opposition To Motion
To Extend Time
To Perfect Proceeding

Index No.: 93-755
CC #16-1-93-0275.P

Index No.: 94-589
CC #16-1-94-0224.P

State of New York)
County of Franklin) ss.:

Brian S. Stewart being duly sworn deposes and says that:

- 1) I am the attorney for the Respondent, the Village of Malone.
- 2) This Affidavit is made in opposition to Plaintiff-Appellant's motion to extend his time to perfect a transfer in the action bearing Franklin County Index No. 93-755.
- 3) The Order of Transfer to be perfected was entered in the Franklin County Clerk's Office on April 22, 1994 on a form drafted by Petitioner-Appellant's attorney.
- 4) On or about December 29, 1994 Petitioner-Appellant moved for permission to extend his time to perfect the proceeding.
- 5) On February 7, 1995 this Court issued its Order denying the motion to extend the time to perfect the proceeding without prejudice to renewal supported by an Affidavit of Merit as required by § 800.12 of the Rules of Practice.
- 6) Plaintiff-Appellant's current motion is dated July 7, 1995, five (5) months after this Court's prior decision.

- 7) No explanation has been offered for the additional delay of five months. All the information contained in the affidavits attached to Petitioner-Appellant's motion was known to Petitioner-Appellant at the time of his original motion.
- 8) The Affidavit of Merit offered by movant is authored and signed by movant's attorney, not the movant himself. It is somewhat rambling, but appears to be based on the following matters: a) The Hearing Officer is alleged to have been biased; b) The Hearing Officer made an evidentiary ruling refusing to admit the content of an investigation into another police officer's performance; c) The Hearing Officer made an evidentiary ruling refusing to admit notes made by the Chief of Police relating to an investigation of the other officer's performance; d) The hearing Officer erred in allowing the Petitioner-Appellant's personnel record to be admitted into evidence and; e) The Hearing Officer failed to make any specific findings with respect to Petitioner-Appellant's defense under Civil Service Law § 75-b.
- 9) After a two day public hearing at which the Petitioner-Appellant was represented by counsel and which was conducted before a Hearing Officer outside of the employment of the Village Police Department, the Petitioner-Appellant was found guilty of 7 out of 9 charges, including a charge that he filed charges against a superior officer which were without substantial basis and which charges, according to the Hearing Officer, "gives every indication of being retaliatory in nature." He was acquitted of one charge and one charge was withdrawn.
- 10) The legal effect of the Hearing Officer's friendship with the Chief of Police was examined by Supreme Court below, and found to be of little effect. A copy of that Decision is attached as Exhibit A. The Village of Malone took pains to acquire the services of a Hearing Officer who was not an employee of the Village. These grounds were previously offered to this Court on Petitioner-Appellant's last motion to extend his time to perfect.
- 11) The Hearing Officer refused to admit certain evidence concerning an investigation into certain conduct of Petitioner-Appellant's superior, the Assistant Chief. The Village's objection to this evidence was proper due to the fact that the hearing was conducted in public, at the insistence of the Petitioner-Appellant. The hearing room was filled to capacity and the matter was being covered by the press, the radio and television. Under the circumstances it was important to preserve the Assistant Chief's rights under Civil Rights Law § 50-A. That section makes personnel records confidential, except pursuant to court order. Petitioner-Appellant never obtained such a court order. Moreover Petitioner-Appellant does not appear to argue that those evidentiary rulings, affected the substantial evidence supporting the charges against him.
- 12) The Hearing Officer did allow Petitioner-Appellant's personnel record to be admitted into evidence. Supreme Court held correctly that Petitioner-Appellant's failure to object at the hearing resolved any possible error.

- 13) Contrary to the allegations contained in the Affidavit of Merit, the Hearing Officer did indeed make findings with respect to Petitioner-Appellant's asserted defense under Civil Service Law § 75-b. Much of the hearing was devoted to the merits of this defense. The Hearing Officer's Analysis of Testimony, Findings of Fact and Recommendations are attached as Exhibit B. The Analysis of Testimony and Recommendations clearly contain findings that the alleged defense was without merit.
- 14) Petitioner-Appellant makes no allegation that he is innocent of any of the charges of which he was found guilty. He has made no showing or offer of proof that any of the alleged errors, if corrected, would have made any difference in the outcome of the proceeding.
- 15) The penalty imposed, two months suspension without pay, was light in view of the penalty sought: termination.
- 16) It is respectfully submitted that fifteen (15) months to perfect a proceeding is too long and that there are no merits in Petitioner-Appellant's case which would justify such a delay.

Dated: July 26, 1995

BRIAN S. STEWART

Sworn to before me this
_____ day of July, 1995.

Notary Public

STATE OF NEW YORK

SUPREME COURT

COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

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Index #93-755
CC #16-1-93-0275.P
Our File #P-1545

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

DECISION

Petitioner filed the instant petition challenging the results of a Civil Service Law §75 disciplinary hearing. The Hearing Officer found he had violated a variety of police departmental rules with respect to his reporting, investigation and discussion of an incident involving the treatment of a prisoner and Petitioner's termination as a DARE instructor. Petitioner challenges:

- the Hearing Officer's impartiality;
- the failure of Respondent and the Hearing Officer to provide him with the results of the Malone Police Chief's investigation regarding the prisoner incident via Civil Rights Law §50-a;
- the prevention of his inquiry into alleged "other cover-ups" in and by the Malone Police Department;
- the Hearing Officer's application of Civil Service Law §75-b's "whistleblower" provisions to these charges and the facts underlying them;
- Petitioner's own personnel file was used against him without notice or an opportunity to be heard as to its contents.

There has been no showing of partiality by the Hearing Officer sufficient to overturn the results of the hearing. The fact that two years earlier the Hearing Officer praised members of the Malone Police Department generally for their response to an alarm at his business and inappropriately offered them free accommodations does not mean he had an interest or conflict sufficient to preclude him from presiding. There has been no showing of the extent of his friendship with the Police Chief nor how, in a community the size of Malone (village population 6,777), that alone would require disqualification under the Code of Judicial Conduct (see, e.g., Grant v. Senkowski, 146 AD2d 948). Indeed, the Hearing Officer arguably could still have heard the case even if Petitioner had pending a separate legal proceeding directly against him (H.O.) (People v. Muka, 72 AD2d 649; Judiciary Law §14, Washington County Cease, Inc. v. Persico, 120 Misc.2d 207; King v. United States, 434 F.Supp. 1141, 576 F.2d 432, cert. denied 439 U.S. 850).

The Petitioner has also not persuasively argued that he was entitled to the results of Chief Phillips' investigation into the prisoner mistreatment allegations as a matter of law. If he had made application to a court pursuant to Civil Rights Law §50-a subdivisions 1.-3. he may well have been granted access to the material sought (Becker v. City of New York, 162 AD2d 488), but he did not. The instant result may seem to be inequitable given that the Village Attorney could have obtained and/or released the computer memo and notes in question under the authority of §50-a subdivision 4. and that the results thereof (exoneration of the Assistant Chief) had already been made public, but that is the state of the law in this area.

The alleged "other cover-ups" were irrelevant to the proceedings challenged here.

The Hearing Officer considered Petitioner's "whistleblower" (Civil Service Law §75-b) arguments and proof,


except as he excluded it supra, and made findings with respect thereto. The challenge to these findings, and to those not directly related to the "whistleblower" defense, raise questions regarding whether they were supported by substantial evidence. Since, as set forth supra, there are no dispositive objections in point of law akin to affirmative defenses raised herein (CPLR 3211 (a); Hop-Wah v. Coughlin, 118 AD2d 275, rev'd on the other grounds 69 NY2d 791), this matter will be transferred to the Appellate Division Third Department pursuant to CPLR 7804(g).

Finally, Petitioner's own personnel file was offered and received into evidence without objection. He cannot be heard to challenge its admission now.

Mr. Halley to submit order on notice. Counsel are hereby notified that the Appellate Division will not hear this matter based solely on any physical transfer of the papers before this Court (see 22 NYCRR §800.4 and attachment hereto).

ENTER:

DATED: March 14, 1994
Chambers, Saranac Lake, New York



HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

ANALYSIS OF TESTIMONY

Respondent does not challenge the charges as they relate to Police Officer Nichols meeting with non-members of the Malone Village Police Department to discuss the charges relating to the 2 April 1993 incident involving Scott Mattimore and Assistant Chief Moll; nor does he deny that he failed to apprise Assistant Chief Moll's immediate senior, Chief James Phillips, of his receipt of what he perceived to be a complaint by Scott Mattimore against Assistant Chief Moll or of his intention to personally conduct a criminal investigation of what he believed to be mistreatment of Mattimore while he was in custody (holding room) at the Malone Village Police Department Headquarters on the night of 2 April 1993. In addition, Police Officer Nichols acknowledges that he waited until 13 July 1993 to file said charges with Chief Phillips; that act following immediately Police Officer Nichols being awarded a letter of reprimand for misconduct in a separate and unrelated incident. The investigation of that personnel complaint was conducted by Assistant Chief Moll and there is no evidence submitted to suggest that the investigation was not fairly and impartially conducted. It is noted that the Chief of Police, after discussion with the Mayor, downgraded the punishment recommended by Assistant Chief Moll for Police Officer Nichols.

Police Officer Nichols does not contest the charge that he suspected Chief Phillips of engaging in a "cover-up" and there is testimony from various members of the Department, supervisory and non-supervisory, that he made comments to this effect to them and to others.

While there is evidence that Police Officer Nichols met with former Chief Richard Brown; the only evidence provided is that he questioned Brown on the chain of command. There is no evidence introduced that he discussed the alleged incident of 2 April 1993; that he engaged in unsubordination or disrespect, except possibly by innuendo.

Police Officer Nichols does not contest the charge that he met with Scott Mattimore on more than one occasion to discuss the 2 April 1993 incident or that he was conducting a criminal investigation of the Assistant Chief of Police without formally notifying the Chief of Police prior to 13 July 1993.

Police Officer Nichols does not contest the charge that he met with the Mayor, in direct violation of departmental rules and regulations, of which he indicated complete awareness and understanding, with the District Attorney or with the Federal Bureau of Investigation to further his investigation of the Assistant Chief of Police and his reassignment to duties other than that of the DARE instructor.

I do not find convincing the claim of Police Officer Nichols that he engaged in the aforementioned prohibited conduct because he suspected that the Chief of Police might engage in a "cover up" and fail to take appropriate action regarding suspected wrongdoing by the Assistant Chief of Police. This position by Police Officer Nichols is further weakened by the fact that he waited until 13 July 1993, just after he was disciplined for another offense, to raise charges against the investigating officer (Moll) for alleged conduct on 2 April 1993 and then waited only a few days before bypassing the chain of command and making unauthorized contacts and disclosures outside the department - despite being assured, in writing, by the Chief of Police that he was conducting an investigation of the charges made by Police Officer Nichols concerning Assistant Chief Moll and would take disciplinary action where warranted by the facts.

Police Officer Nichols' personnel file reflects laudatory conduct as the department's DARE instructor and a series of incidents involving his failure to follow established departmental procedures. Police Officer Nichols further testified as to his departure from a prior place of employment because of "problems" with superiors.

There is testimony by members of the department, supervisory and non-supervisory, that they counselled Police Officer Nichols not to violate departmental rules and regulations in his quest to investigate and charge the Assistant Chief of Police with misconduct. In fact, each testified that Police Officer Nichols declined their recommendations/suggestions and moved forward to engage in the prohibited conduct.

There is adequate testimony to believe that return of Police Officer Nichols to full duty within the department would be disruptive and lead to additional confrontation of established departmental authority by Police Officer Nichols.

FINDINGS OF FACT

From the evidence submitted, I find the following:

- (a) Charge 1 - that Police Officer Nichols failed to report his concern relative to the alleged actions of Assistant Chief Moll to competent authority within the Police Department or to allow Chief Phillips sufficient time to conduct his investigation of the allegations. As a result, his laying of charges against Assistant Chief Moll gives every indication of being retaliatory in nature.
- (b) Charge 2 - that Police Officer Nichols, fully aware that his actions were contrary to departmental rules and regulations, made unauthorized contacts with non-departmental personnel, including a known criminal, to discuss his intentions to levy charges against Assistant Chief Moll, whose conduct of an unrelated internal investigation resulted in a letter of reprimand being awarded to Police Officer Nichols.
- (c) Charge 3 - withdrawn by the Village of Malone.
- (d) Charge 4 - that Police Officer Nichols, without reasonable grounds, publicly accused Chief Phillips of engaging in a "coverup" in his investigation of the allegations made by Nichols against Assistant Chief Moll.
- (e) Charge 5 - As previously stated, there is insufficient evidence introduced to show that Police Officer Nichols discussed the alleged incident of 2 April 1993 with former Police Chief Brown.

(f) Charge 6 - that Police Officer Nichols met with Mr. Scott Mattimore, a known criminal, to discuss the 2 April 1993 incident for the purpose of conducting an unauthorized investigation.

(g) Charges 7, 8 and 9 - that Police Officer Nichols, aware that his actions were not authorized, met repeatedly with the Mayor to discuss the 2 April 1993 incident and his termination as the department's DARE instructor.

Therefore:

As to Charge 1, I find Respondent guilty with regard to violations of departmental rules and regulations 6.2.33, 10.1.1 and 10.1.4.

As to Charge 2, I find Respondent guilty with regard to violations of departmental rules and regulations 10.1.1, 10.1.4, 10.1.27 and 10.1.28, 10.1.40, 10.1.77 and 11.5.

As to Charge 4, I find Respondent guilty with regard to violations of departmental rules and regulations 6.2.7, 10.1.4 and 10.1.17.

As to Charge 5, I find Respondent Not Guilty with regard to all aspects of the charge.

As to Charge 6, I find Respondent guilty with regard to violations of departmental rules and regulations 8.1, 10.1.1, 10.1.4, 10.1.27, 10.1.28 and 11.5. I find the Respondent Not Guilty of violation of section 10.1.77.

As to Charges 7, 8 and 9 - I find Respondent guilty of violations of departmental rules and regulations 10.1.1, 10.1.4, 10.1.28, 10.1.77 and 11.5. I find the Respondent not guilty of violation of section 10.1.78.

RECOMMENDATIONS

The Respondent has knowingly, and without good cause, violated the rules and regulations of the Malone Village Police Department; accused supervisors and co-workers of misconduct which was not proved by subsequent investigation; thereby brought unwarranted discredit upon the Department

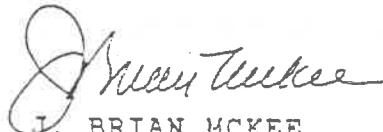
I am convinced that the misconduct of Police Officer Nichols requires serious disciplinary action, but this is tempered, to a degree, by his obvious excellent performance as a DARE instructor for the department. I am not convinced of his ability to perform adequately as a full-time patrol officer and give due consideration to the fact that the department can not afford a full-time DARE instructor.

The claim by Respondent, through his counsel, that he violated the rules and regulations cited in the charges and is protected under Section 75-b of the Civil Service Law (Retaliatory Actions by Public Employers) is not convincing due to the lengthy delay in filing of the complaint by Police Officer Nichols and because of his failure to make a good faith effort to provide the allegations to competent authority and to give "reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety."

While Police Officer Nichols alone is fully responsible for his misconduct, I must stress for the record that Sergeants Marlow, Ritchie and Fountain appear to have been fully aware, or at least highly suspect, of Police Officer Nichols openly stated intent to violate the departmental rules and regulations cited in this case. They could have, and should have, taken positive supervisory action long before the matter resulted in the filing of allegations by Police Officer Nichols on 13 July 1993. They must share in the criticism for the misconduct of Police Officer Nichols reaching the point that it did. In addition, Police Officer LaChance, by his actions, only incited Police Officer Nichols to further misconduct; must be made aware through appropriate disciplinary action of his improper actions in improperly disclosing police information to Police Officer Nichols.

In view of the foregoing and with full consideration to all aspects of this matter, I respectfully recommend that Police Officer Nichols be demoted in grade and title and reassigned to duties within the government of the Village of Malone and outside the Malone Village Police Department. If this is not possible due to an inability to place Police Officer Nichols elsewhere in Village Government, then I recommend that he be discharged from employment by the Village of Malone.

13 October 1993

A handwritten signature in cursive script, appearing to read "J. Brian McKee".

J. BRIAN MCKEE
Hearing Officer

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330
Fax: (518) 483-4005

July 17, 1995

Mayor James Feeley
16 Elm Street
Malone, New York 12953

RE: NICHOLS VS. VILLAGE OF MALONE

Dear Jim:

Enclosed herewith please find a copy of some papers that I received today from Pat Nichols' attorney. He is once again seeking permission from the Appellate Division for an extension of time to perfect his appeal on the first Article 78 matter.

As you may recall, he made this motion on December 29, 1994 and the Court decided in February that his application would be denied without prejudice provided that his next application should contain an Affidavit of Merit. This application contained something called an Affidavit of Merit although it is executed by the attorney and not by Mr. Nichols himself. I haven't had a lot of time to look at the documents today but it appears that all of the issues where his "merit" lies are issues which do not go to the substantial evidence upon which Mr. Nichols' punishment was based in the first proceeding.

It further appears that all of the issues where he says the merit lies are issues which were finally decided by Judge Plumadore. My file contains no Notice of Appeal from Mr. Nichols regarding that portion of Judge Plumadore's Order and there is no such Notice of Appeal filed in the Franklin County Clerk's Office. Therefore, I think one of our arguments will be that the Affidavit of Merit is meaningless because it speaks to issues which were finally decided and as to which no appeal has been taken.

If you or Jim Brooks have any other thoughts please let me know.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart / mew
Brian S. Stewart

SIGNED IN THE ABSENCE OF
TO AVOID DELAY IN MAILING

BSS/mew
Encl.

cc: James M. Brooks, Esq.

APPELLATE DIVISION : SUPREME COURT
THIRD JUDICIAL DEPARTMENT

PATRICK NICHOLS,

INDEX NO: 93/755
CC #16-1-93-0275.P

Petitioner-Appellant,

-against-

NOTICE OF MOTION

VILLAGE OF MALONE,

Respondent-Respondent.

PATRICK NICHOLS,

Petitioner-Appellant,

INDEX NO: 94/589
CC # 16-1-94-0224.P

-against-

VILLAGE OF MALONE,

Respondent-Respondent.

Please take notice that upon the annexed affirmation of Thomas P. Halley duly sworn to the 7th day of July 1995 on the Order of the Honorable Jan H. Plumadore dated March 30, 1994, on the Order of the Honorable Jan H. Plumadore dated April 24, 1995, and on all proceedings previously had in this matter, a motion will be made before a term of this Court to be held at the Justice Building, South Mall, Albany, New York on the day of 7th day of August 1995 at 1:30 o'clock in the afternoon, or as soon thereafter as counsel can be heard, for an order pursuant to Section 800.12 of the Rules of Practice of the Third Department, granting an extension of time to prosecute this appeal, and granting a consolidation of this appeal with a subsequent appeal by and between the same

parties relating to a subsequent disciplinary action,
pursuant to Section 602 of the CPLR and such other and
further relief as the Court may deem just and proper.

Please take notice that this motion will be submitted on
papers and that personal appearance in opposition to the
motion is neither required nor permitted.

Please take further notice that pursuant to CPLR 2214b,
answering affidavits, if any, are to be served at least seven
(7) days prior to the return date.

DATED: Poughkeepsie, New York
July 7, 1995

THOMAS P. HALLEY
ATTORNEY FOR PETITIONER-
APPELLANT
297 MILL STREET
POUGHKEEPSIE, NY 12601
(914) 452-9120

TO: Brian S. Stewart, Esq
Hughes & Stewart PC
31 Elm St
POB 788
Malone, NY 12983

APPELLATE DIVISION : SUPREME COURT
THIRD JUDICIAL DEPARTMENT

PATRICK NICHOLS,

Petitioner-Appellant,

-against-

VILLAGE OF MALONE,

Respondent-Respondent.

INDEX NO: 93/755
CC #16-1-93-0275.P

AFFIRMATION

PATRICK NICHOLS,

Petitioner-Appellant,

-against-

VILLAGE OF MALONE,

Respondent-Respondent.

INDEX NO: 94/589
CC # 16-1-94-0224.P

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

THOMAS P. HALLEY being an attorney at law, duly admitted to practice in the State of New York, affirms the following under penalties of perjury:

1. He is the attorney for the Appellant herein and is fully familiar with the facts and circumstances herein.

2. He makes this affirmation in support of an application for an extension of time to perfect this appeal pursuant to Section 800.12 of the Court Rules.

3. He further makes this affirmation in support of an application for consolidation of these two appeals pursuant to CPLR Section 602.

4. Both underlying proceedings are Article 78 proceedings challenging the results of Civil Service disciplinary hearings conducted pursuant to Civil Service Law Section 75.

5. An administrative hearing as to the first set for charges resulted in the Appellant being suspended for 60 days without pay.

6. By order of the Supreme Court of the County of Franklin, made March 30, 1994, a portion of the petition was denied, and remaining issues were referred to the Appellate Division Third Department pursuant to CPLR 7804(g). A copy of said order dated March 30, 1994, is annexed hereto, made a part hereof and designated Exhibit A.

7. Thereafter, a new set of Civil Service charges were preferred against this Appellant by this Respondent, pursuant to Civil Service Law Section 75.

8. An administrative disciplinary hearing with regard to those Civil Service charges resulted in a determination that the Appellant should be terminated from his employment with Respondent Village.

9. Pursuant to an order of the Hon. Jan H. Plumadore dated April 24, 1995, said second petition was again transferred for disposition to the Appellate Division of the Third Department. A copy of said order is annexed hereto made a part hereof and designated Exhibit B.

10. An affirmation of merit with regard to the earlier proceeding resulting in the order of the Franklin County Supreme Court dated March 30, 1994, is submitted simultaneously herewith.

11. Several of the issues involved in the first proceeding will be addressed in the appeal from the second proceeding. Similarly, there are issues which arose in the second proceeding which directly relate to the first proceeding.

12. The most specific example of these interlocking issues came from testimony which was heard during the second Civil Service hearing conducted on June 14, 1994.

13. During the second Civil Service hearing, the Chief of Police stated under oath that the Administrative Hearing Officer in the first disciplinary hearing had been asked by him, the Chief, to be the best man at the Chief's wedding.

14. The Chief of Police was the primary complainant in both Civil Service proceedings, and was a witness against the Appellant herein in both proceedings.

15. The issue of partiality on the part of the hearing officer in the first proceeding was raised in the first proceeding in the underlying petition. It was not, however, until the second disciplinary hearing that the full nature of this partiality was revealed.

16. The issues in both administrative proceedings are interrelated. The penalty in the second proceeding constitutes a form of progressive discipline against this employee, resulting from the penalty in the first hearing.

17. The parties in both Article 78 proceedings are identical. The attorneys in both proceedings are the same.

18. Pursuant to CPLR Section 602(a) this court may order these proceedings consolidated or may make such other orders concerning these proceedings as may tend to avoid unnecessary costs or delay.

19. It is respectfully submitted that a consolidation of these two appeals is appropriate for the reasons set forth herein.


20. Accordingly, your affirmant respectfully requests that this court grant an extension of time with regard to the perfection of the first proceeding, and grant a further order consolidating these proceedings.

21. Your affirmant and the appellant fully intend to perfect these appeals forthwith now that a determination has been rendered on the second proceeding.

22. As is set forth in the accompanying affirmation of merit, a prior application was made to the extend the time, to perfect the first appeal, which application was denied without prejudice to renew.

WHEREFORE, your affirmant respectfully requests the court grant the relief set forth herein along with such other and further relief as it may deem just and proper.

DATED: Poughkeepsie, NY
July 7, 1995



THOMAS P. HALLEY
ATTORNEY FOR PETITIONER-
APPELLANT
297 MILL STREET
POUGHKEEPSIE, NY 12601
(914) 452-9120

TO: Brian S. Stewart, Esq
Hughes & Stewart PC
31 Elm St
POB 788
Malone, NY 12983

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

APR 25 1994

PATRICK NICHOLS,

Petitioner,

INDEX NO.: 93/755
CC #16-1-93-0275.P

-against-

ORDER

VILLAGE OF MALONE,

Respondent.

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

Petitioner having filed a petition pursuant to Article 78 of the CPLR challenging the results of a Civil Service Disciplinary Hearing conducted pursuant to Civil Service Law Section 75, said petition having been verified the 18th day of December, 1993; and the respondent having answered said petition by answer verified the 11th day of January, 1994, with an accompanying affidavit sworn to the 11th day of January, 1994, and the petitioner having submitted a reply by his attorney verified the 19th day of January, 1994 and the matter having come before this court for decision and determination, and the court having rendered a decision dated March 14, 1994;

NOW UPON DUE DELIBERATION IT IS,

ORDERED, ADJUDGED, and DECREED, that portion of the petition which alleges partiality on the part of a hearing


original was
FILED
APR 22 1994

EXHIBIT *A*

officer, a failure on the part of the respondent and hearing officer to provide petitioner with the results of a certain prisoner incident investigation, the prevention of petitioner's inquiry into other alleged cover ups by the Malone Police Department, the hearing officer's application of Section 75-b of the Civil Service Law, and the use of the petitioner's personnel file in the hearing be in the same hereby be dismissed; and it is further

ORDERED, ADJUDGED, and DECREED, that as to the remaining issues set forth in the petition, which raise questions regarding whether they were supported by substantial evidence, said matters be and they hereby are transferred to the Appellate Division, Third Department, pursuant to CPLR 7804(G).

DATED: MARCH 30, 1994
SARANAC LAKE, NEW YORK


JON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

COPY

At a Special of Supreme Court
held in and for the
County of Franklin at Chambers,
Saranac Lake, New York on

9 April 1995

PRESENT: HON. JAN H. PLUMADORE, J.S.C.

PATRICK NICHOLS,

Petitioner,

ORDER

- against -

INDEX NO.: 94-589
CC NO.: 16-1-94-0224.P
JUDGE'S FILE NO.: P-1775

VILLAGE OF MALONE,

Respondent.

The Petitioner having duly brought on his Article 78 Petition challenging the results of the Civil Service Law § 75 Disciplinary Hearing and upon all the pleadings and proceedings had herein and all parties having been duly heard and the Court having issued its written decision dated March 14, 1995, it is

ORDERED that all questions raised by the Petition under CPLR § 7803 (1)(2) and (3) are denied and as to such questions the Petition is dismissed, and it is further

ORDERED that all questions of substantial evidence under CPLR § 7803(4) are transferred for disposition to a term of the Appellate Division of the Supreme Court in the Third Judicial Department in accordance with the provisions of CPLR § 7804(g) and all applicable rules and regulations.

Signed this 24th day of April, 1995 at Saranac Lake, New York.

ENTER:

Jan H. Plumadore
JAN H. PLUMADORE, J.S.C.

The parties to this proceeding hereby consent to the Entry of the above Order and waive Notice of Settlement thereof.

ORIGINAL
WAS FILED OR
RECORDED

FILED

APR 25 1995

FRANKLIN COUNTY
CLERK'S OFFICE

Thomas Halley
THOMAS HALLEY, ESQ.
Attorney for Petitioner
Brian S. Stewart
BRIAN S. STEWART
Attorney for Respondent

EXHIBIT B

HUGHES & STEWART, P.C. ATTORNEYS AT LAW 31 ELM ST. MALONE, NEW YORK 12953

APPELLATE DIVISION : SUPREME COURT
THIRD JUDICIAL DEPARTMENT

PATRICK NICHOLS,

Petitioner-Appellant,

-against-

VILLAGE OF MALONE,

Respondent-Respondent.

PATRICK NICHOLS,

Petitioner-Appellant,

-against-

VILLAGE OF MALONE,

Respondent-Respondent.

INDEX NO: 93/755
CC #16-1-93-0275.P

AFFIRMATION OF
MERIT

INDEX NO: 94/589
CC # 16-1-94-0224.P

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

THOMAS P. HALLEY, being an attorney at law, duly admitted to practice in the State of New York, affirms the following under penalties of perjury:

1. He is the attorney for the appellant herein and makes this affirmation of merit in support of an application for an extension of time to perfect an appeal pursuant to Section 800.12 of the Court Rules.

2. By motion returnable on the 23rd day of January, 1995, your affirmant previously moved for an extension of time pursuant to Section 800.12 of the rules of practice of the Third Department due to an anticipated judgment in the second Article 78 proceeding.

3. That motion for extension of time was denied without costs and with prejudice to renewal, by decision of this court of February 7, 1995, a copy of which is annexed hereto made a part hereof and designated Exhibit A.

4. The court, in denying said motion, required an affidavit of merit to the proceeding.

5. This affirmation of merit is now submitted pursuant to Section 800.12.

6. Your affirmant has been admitted to practice of the law in the State of New York since 1977. He has served an attorney in dozens of civil service disciplinary hearings, on the part of both public employers and public employees. He has served as a disciplinary hearing officer in civil service hearings.

7. Your affirmant is also a member of the New York State Bar Association Labor and Employment Law Section and Municipal Law Sections.

8. Your affirmant also serves as retained counsel for the NYS Federation of Police and is responsible for civil service disciplinary proceedings on behalf of that origination, and their affiliated unions.

9. The first proceeding arises from an order of transfer from the Franklin County Supreme Court dated March 30, 1994. This proceeding has merit for the reasons set forth herein.

10. A substantial portion of the defense on the part of the appellant in the first hearing related to the provisions of Section 75-b of the Civil Service Law of the State of New York.

11. During the course of the Civil Service hearing, the appellant attempted to introduce into evidence a computer memorandum prepared by the Chief of Police regarding the incident which the appellant was investigating. The appellant believed that such memorandum constituted an attempt to cover up alleged mistreatment of a prisoner on the part of the Assistant Chief of Police.

12. The hearing officer refused to allow this document into evidence.

13. The appellant testified that he had reported the matter to the District Attorney's office and the District Attorney indicated that if the facts shown were proven to be true, then he, the District Attorney, believed that a crime had been committed.

14. The appellant further testified that he had discussed the alleged mistreatment of the prisoner on the part of the Assistant Chief of Police with the Mayor of the Village.

15. Shortly after discussions with the Mayor, the disciplinary charges were preferred against the petitioner.

16. Section 75-b of the Civil Service Law provides that when a defense of retaliatory action is raised in a civil service hearing, "the merits of such defense shall be considered and determined as part of the arbitration award or hearing officer decision of the matter." (emphasis added). The hearing officer did not consider this defense or make any determination with regard to it.

17. In addition, as was demonstrated during the administrative hearing, and as set forth in the Petition, the Village Board, prior to the disciplinary hearing, received a report from the Chief of Police which cleared the Assistant Chief, and the Mayor of the Village was quoted as saying "the Board reviewed the investigation and is in full agreement with its finding." It further appeared that the Assistant Chief of Police was brought into the executive session to discuss the report prior to its release to the public.

18. Petitioner argued that such a finding on the part of the Village Board, prior to the initiating to the disciplinary hearing, effectively settled the case against him, and in favor of an alleged wrong doer whom the appellant was investigating.

19. In simple terms, it would be logically and factually impossible to clear the Assistant Chief of any wrong doing and thereafter find the appellant not guilty of any wrong done in regard to his investigation of the Assistant Chief. However, all attempts to have the exculpatory finding put in evidence were denied.

20. During the course of the hearing, the Appellant argued that the hearing officer was biased and, in his Supreme Court petition, introduced a letter from the hearing officer, in which said hearing officer promised "courtesy accommodations" to any member of the police department who wanted to stay at his motel, and further promising "free lodging" to those outside the department to whom police would like to extend such a benefit.

21. The Appellant argued that he was faced with a situation in which his fate was being determined by a hearing officer who not only a friend of the police department, but had also offered free lodging to the police department and their friends.

22. Thereafter, during the course of the second administrative disciplinary hearing, the Police of Chief

admitted under oath that he, the Chief of Police, had asked the hearing officer in the first hearing to be the Chief's best man at the Chief's wedding.

23. The Hearing Officer in the first proceeding was further quoted in an October 19, 1993 edition of a newspaper that "that the Hearing Officer didn't think his being an honorary member of the police department and a friend of [Chief Phillips]," affected his judgment.

24. It is respectfully submitted that the bias or partially on the part of the Hearing Officer in the first proceeding needs to be reviewed by this Court, and, upon such review, it will be found that the Petitioner was not granted a fair and impartial hearing.

25. With regard to the provisions of Section 75-b of the Civil Service Law, there were, as noted, matters of evidence which were not admitted into the hearing.

26. The Petitioner testified during the hearing, that he spoke not only to the District Attorney of the County, but also to the FBI and to the Mayor.

27. The Petitioner attempted to prove as part of his direct case, that he had a reasonable belief of a cover up, as is required by Section 75-b.

28. To that extent, the Petitioner called a witness who was asked during the course of the administrative hearing whether said witness had a conversation with the Petitioner, several months prior to the incident involving the mistreatment of the prisoner.

29. When it was revealed that the witness advised the Petitioner that said witness believed that there was a cover up in the Police Department, all further testimony was objected to and not allowed into evidence.

30. The Hearing Officer refused to accept into evidence any testimony with regard to prior cover ups and the Petitioner's knowledge of them by stating "I can't accept the prior cover ups, it's not directly related."

31. It is respectfully submitted that the failure to permit the Petitioner to establish this defense is, by itself, a violation of his statutory rights under Section 75-b of the Civil Service Law.

32. Every attempt on the part of your affirmant to cross examine the Chief on the "clearing" of the Assistant Chief in the mistreatment of the prisoner was objected to on

the part of the Village, and the objections were sustained by the Hearing Officer.

33. The Hearing Officer stated that he would "uphold any objection to the specifics of the Chief's investigation" of the Assistant Chief, even though such investigation was previously disclosed to the newspaper as indicated.

34. Your affirmant further attempted to the cross-examine the Chief of Police as to the substance of his investigation into the prisoner of mistreatment, the conversations he had with the prisoner or the appellant, and the actions or inactions of any other police personnel involved in the prisoner mistreatment. All of these questions were objected to, and the objections were sustained.

35. As a result of the foregoing, the Appellant was not permitted a full and thorough cross examination of his primary accuser.

36. During the cross-examination of the Appellant on the part of the Village, the contents of the Appellant's personnel file were disclosed, and were used against him for the purpose of painting him as an undesirable employee. Among the matters revealed in this opening of the Petitioner's personnel file, were his army discharge record, his past employment history, and prior uncharged activities.


37. All of the foregoing constitute sound and valid reasons for a reversal of the determination on appeal.

38. It is the considered opinion of your affirmant, that there is great merit to this appeal.

39. It is respectfully requested that the Court permit an extension of time for filing the appeal, so as to permit the Petitioner full review of his claims.

WHEREFORE, your affirmant respectfully requests the Court grant the relief set forth herein, along with such other and further relief as the Court may deem just and proper.

DATED: Poughkeepsie, NY
July 10, 1995



THOMAS P. HALLEY
ATTORNEY FOR PETITIONER-
APPELLANT
297 MILL STREET
POUGHKEEPSIE, NY 12601
(914) 452-9120

TO: Brian S. Stewart, Esq
Hughes & Stewart PC
31 Elm St
POB 788
Malone, NY 12983

*Supreme Court - Appellate Division
Third Judicial Department*

February 7, 1995

72779 - In the Matter of PATRICK
NICHOLS, Petitioner,
v
VILLAGE OF MALONE, Respondent.

FEB 8 1995

Motion for extension of time to perfect proceeding
denied, without costs and without prejudice to renewal
supported by an affidavit setting forth facts showing
merit to the proceeding as required by section 800.12 of
the Rules of Practice.

CARDONA, P.J., MIKOLL, CREW III, CASEY and YESAWICH JR., JJ.,
concur.

EXHIBIT A

AFFIDAVIT OF SERVICE BY MAIL

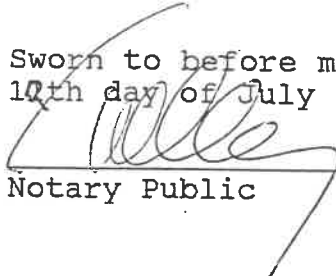
STATE OF NEW YORK, COUNTY OF DUTCHESS

I, Donna Erts, being sworn, say; I am not a party to this action, am over 18 years of age and reside at Poughkeepsie, New York.

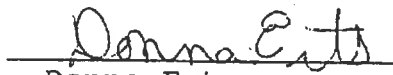
On 7/12/95 I served the within:
Affirmation and Affirmation of Merit
by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Brian S. Stewart, Esq
Hughes & Stewart PC
- 31 Elm St
POB 788
Malone, NY 12983

Sworn to before me this
12th day of July 1995


Notary Public

THOMAS P. HALLEY
Notary Public in the State of New York
Resident In And For Dutchess County
Commission Expires 4/30/95


Donna Erts