IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	
MICHELLE PREVITE,	:	**OF ERIE COUNTY, PENNSYLVANIA**
Appellee/Requester	:	
	:	
VS.	:	
	:	
ERIE COUNTY BOARD OF ELECTIONS,	:	
Appellant/Respondent	:	**No.: 12720 – 2022**
	:	

COMMON PLEAS COURT
ERIE, PA
2022 DEC -5 PM 3:35
PROTHONOTARY

MOTION FOR HEARING *DE NOVO*

AND NOW, comes the Appellant, Erie County Board of Elections, by and through its counsel, **CARNEY & GOOD**, and files this Motion for Hearing *De Novo*, averring as follows:

1. On August 1, 2022, the Appellee, Michelle Previte, filed a request with the Appellant, Erie County Board of Elections, ("County" herein) pursuant to the Right to Know Law, 65 Pa. C.S. §67.101 *et seq.*, seeking:

   a. Electronic copies of the images of all mail-in ballots, (including absentee ballots) from the November, 2020 election;

   b. An electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots, (including absentee ballots) from the November, 2020 election, and;

   c. An electronic copy of the images of all polling place ballots from the November, 2020 election.

RECEIVED
DEC 08 2022
OFFICE OF OPEN RECORDS

2. The County denied the request, and Ms. Previte appealed the decision to the Office of Open Records.

3. The Pennsylvania Office of Open Records is authorized to hear appeals for all Commonwealth and local agencies. 65 Pa. C.S. §67.503(a).

4. An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 Pa. C.S.§67.1102(a)(2).

5. An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. Id.

6. Here, Ms. Previte sought a hearing but that request was denied. *See* Final Determination, In re: Michelle Previte v. Erie County, OOR Docket No. AP 2022 – 2191 of October 20, 2022.

7. The County timely filed a Notice of Appeal with this Court on November 18, 2022 from the Office of Open Record's October 20, 2022 Final Determination.

8. Erie County Local Rule of Civil Procedure 311 (c) directs that in cases where a party is entitled, as a matter of right, to have either a *de novo* evidentiary hearing or to supplement the record made in administrative proceedings, any party so entitled shall request, within twenty (20) days of docking of the appeal, judicial assignment and submit an appropriate motion to the assigned judge for a hearing. Such motion shall set forth with particularity the basis on which the movant claims a right to submit further evidence and shall contain a certificate that the motion has been served on all other parties.

9. The County, as Movant, sets forth a right to submit further evidence as follows:

   a. The Office of Open Record's appeals officer did not conduct a hearing in this matter.

   b. 65 Pa. C.S. §67.1302 (a) directs that when a petition for review or other document as required by rule of court is filed with the court of common pleas for the county where the local agency is located the decision of that court shall

contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

c. 65 Pa. C.S. §67.708, Burden of Proof, directs that the burden of proving that a record of a local agency is exempt from public access shall be on the local agency receiving a request by a preponderance of the evidence.

d. The Courts of Common Pleas are the ultimate finders of fact and they are to conduct full *de novo* reviews of appeals from decisions made by R.T.K.L. appeals officers, allowing for the adoption of the appeals officer's factual findings and legal conclusions when appropriate. Bowling v. Office of Open Records, 75 A. 3d 453 at 474 (Pa. 2013).

10. The County will be prejudiced in presenting its defenses and identified exceptions to Ms. Previte's requests if an evidentiary hearing is not held in this matter.

11. In order to comply with the above-cited statutory sections, an evidentiary hearing must be held in this matter.

WHEREFORE, the Appellant, Erie County Board of Elections, respectfully requests this Honorable Court to schedule a *de novo* evidentiary hearing in this matter.

Respectfully submitted,

CARNEY & GOOD

By: _____

Jay R. Stranahan, Esquire
Attorney I.D. #92658
Attorney for Appellant/Respondent
254 West Sixth Street
Erie, Pa. 16507-1398
Ph. (814) 453-5004
Fax: (814) 453-3506

IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	
MICHELLE PREVITE,	:	**OF ERIE COUNTY, PENNSYLVANIA**
Appellee/Requester	:	
	:	
VS.	:	
	:	
ERIE COUNTY BOARD	:	
OF ELECTIONS,	:	
Appellant/Respondent	:	**NO.: 12720 – 2022**

CERTIFICATE OF SERVICE

I, Jay R. Stranahan, Esquire, counsel for Appellant/Respondent, hereby certify that a true and correct copy of Motion for Hearing *De Novo* was served this 6th day of December, 2022, upon the following in the following manners:

First Class Mail and Certified Mail, Return Receipt Requested:

Michelle Previte
210 West 37th Street
Erie, Pennsylvania 16508

First Class Mail and Certified Mail, Return Receipt Requested and email:

Lyle Hartranft, Esq.,
Appeals Officer
Office of Open Records
333 Market Street
16th Floor
Harrisburg, Pennsylvania 17101-2234
lhartranft@pa.gov

By: _____
Jay R. Stranahan, Esquire
Counsel for Appellant/Respondent
Attorney I.D. #92658
254 West Sixth Street
Erie, Pa. 16507-1398
(814) 453-5004 (v)
(814) 453-5006 (f)

IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	
MICHELLE PREVITE,	:	**OF ERIE COUNTY, PENNSYLVANIA**
Appellee/Requester	:	
	:	
VS.	:	
	:	
ERIE COUNTY BOARD	:	
OF ELECTIONS,	:	
Appellant/Respondent	:	**NO.: 12720 – 2022**

VERIFICATION

I, Mary Rennie, Chairwoman, Erie County Board of Elections, verify that the statements made in this Motion for Hearing *De Novo* are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to penalties under 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Mary Rennie

Mary Rennie, Chairwoman
Erie County Board of Elections

Dated: 12-3-22

IN THE MATTER OF	:	**IN THE COURT OF COMMON PLEAS**
	:	
MICHELLE PREVITE,	:	**OF ERIE COUNTY, PENNSYLVANIA**
Appellee/Requester	:	
	:	
VS.	:	
	:	
ERIE COUNTY BOARD	:	
OF ELECTIONS,	:	
Appellant/Respondent	:	**NO.: 12720 – 2022**

RULE TO SHOW CAUSE

AND NOW, to-wit, this day of December, 2022 upon presentation of the foregoing Motion for Hearing *De Novo* it is hereby **ORDERED, ADJUDGED and DECREED** that a Rule is issued upon the Appellee/Requester, Michelle Previte, to show cause why the relief requested should not be granted.

Said Rule returnable on the _____ day of _____, 20____ at _____ .m. in Court Room _____, Erie County Court House, Erie, Pennsylvania before the Honorable _____.

BY THE COURT:

_____

J.