

IN THE COURT OF CLAIMS OF OHIO

**ORIGINAL**

LYNDSEY HOWELL

Plaintiff

-v-

THE OHIO UNIVERSITY  
POLICE DEPARTMENT

Defendant

Case Number: 2013-00001

Judge: McGrath

Magistrate: Shaver

2013 NOV 12 AM 11:26

FILED  
COURT OF CLAIMS  
OF OHIO

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

PLAINTIFF'S MOTION FOR SANCTIONS

Now comes the Plaintiff by and through her Trial Attorney of Record and hereby Moves the Court for appropriate Orders as follows:

1. For an Order requiring the Defendant to provide discovery in the form of ethical, professional, and lawful Answers to the attached Interrogatories in compliance with he Ohio Civil Rules forthwith.
2. For an Order requiring the Defendant to provide discovery in the form of ethical, professional, and lawful Answers to the attached Requests for Admissions, in compliance with he Ohio Civil Rules forthwith.
3. For an Order requiring Defendant's Counsel Christopher Conomy to personally pay financial sanctions to Plaintiff's Counsel in an amount

**ON COMPUTER**

that justly compensates him for the work done to compile collate the attached Appendix to this Motion, and for Mr conomy's prior failure to obey the Civil Rules of Procedure, the Cannons of Ethics, and the scheduling order of this Court.

4. For such other and further relief as may be just, reasonable, and proper.

RESPECTFULLY SUBMITTED,

  
VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OH 43212  
(614) 298-8200 S.C. # 0013227  
ATTORNEY FOR LYNDSEY HOWELL

#### SUPPORTING MEMORANDUM

See attached Appendix to Court of Claims Motion.

Financial sanctions cannot be imposed against the State and the actions of Counsel are his on individual actions for which he should stand responsible and not hide behind the immunities of his employer when he has violate the public trust.

Paying financial sanctions will get his attention and bring his conduct into line.

  
VINCENT DePASCALE  
ATTORNEY FOR LYNDSEY HOWELL

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this 7<sup>th</sup> day of November, 2013, by regular U.S. Mail.

  
VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWEL

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL :  
 :  
 Plaintiff : Case Number: 2013-00001  
 :  
 -V- :  
 : Judge: McGrath  
 THE OHIO UNIVERSITY :  
 POLICE DEPARTMENT : Magistrate: Shaver  
 :  
 Defendant :

PLAINTIFFS' FIRST SET OF INTERROGATORIES  
TO  
DEFENDANT OHIO UNIVERSITY POLICE DEPARTMENT

Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, Plaintiff requests that Defendant respond, within twenty-eight (28) days of service hereof, to the following interrogatories.

DEFINITIONS

1. "Person" shall mean any individual, firm, partnership, association, corporation or other legal, business or governmental entity.
2. "Document" shall mean all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody or control, regardless of where located, including without limiting the generality of the following: punch cards, printout sheets, movie films, slides, phonograph records, photographs, microfilm, notes, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, correspondence, telegrams, drafts, data processing discs or tapes, and computer-produced interpretations thereof, instructions, announcements, schedules, price lists, and mechanical or electrical sound recordings and transcripts thereof, whether handwritten, typewritten, printed, faxed, xeroxed or thermographed, of whatever kind,

- nature, medium, manufacture, composition, material or description, however named, identified, or delineated, whether you consider it important or not. In all cases where originals and/or non-identical copies are not available, document also means identical copies of original documents and copies of non-identical copies.
3. Each request for documents seeks production of all documents described, including all drafts, of whatever date, and all non-identical copies.
  4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
  5. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
  6. "Identify" means, with respect to a document, to state all of the following information relative to such document:
    - a) Nature of document;
    - b) Date thereof;
    - c) Author thereof;
    - d) Addressee;
    - e) Title;
    - f) File number or other identifying mark or code;
    - g) Subject matter of document;
    - h) Location of document by room, building, address, city and state, and identity of custodian. This may be omitted with respect to each document supplied pursuant to defendants document request;
    - i) Whether or not it is claimed that such document is privileged and, if so, the type of privilege claimed and a statement of all the circumstances which will be relied on to support such claim or privilege.
  7. "Identify" shall mean, with respect to any act, to describe the act, so set forth the date (or inclusive dates) when it occurred, to set forth the place or places where it occurred; and to identify each person whose activities resulted in the act.
  8. "Identify" means, with respect to any individual person, to state to the extent known: the person's full name and any nicknames or aliases, the person's present home address, present home telephone number, present or last known business address, job description, business telephone number, employer, title and the individual's employment history by date, job description and title, and his position and business affiliation at the time in question.
  9. "Identify" shall mean, with respect to any entity other than a natural person, to

- set forth the full name, address and telephone number of such entity.
10. "Tax return" shall mean, unless otherwise specified, returns for federal income tax, state income tax, state personal property tax, state business and occupation tax, real estate tax, duplicates, and any locally imposed taxes.
  11. "Business", "business entity" or "business enterprise" shall mean any activity, arrangement, occupation or employment into which time or capital is invested or which is entered into either for the production of income, or for the securing of an investment, or for beneficial tax consequences and shall include, but not be limited to, associations, partnerships, joint ventures, proprietorships, and corporations.
  12. "Communication," shall mean any statement or utterance, whether written or oral, made by one person to another or in the presence of another, or any document delivered to or sent from one person to another.
  13. "You", and "Your", or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
  14. "Or" is both conjunctive or disjunctive, and the singular includes the plural and the plural includes the singular, except as the context may otherwise ambiguously require.
  15. "Copies" shall mean all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control, regardless of where located. In all cases where originals and/or non-identical copies are not available, copies also means identical copies of original documents and copies of non-identical copies.

#### INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged, which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing, under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.

4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page. The space provided is not intended to limit your response in any way.
5. You are under a continuing duty, seasonably, to supplement your response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as a witness at trial, and the subject matter on which he or she is expected to testify and to correct any response which you know or later learn is correct.

#### PLAINTIFF'S FIRST SET OF INTERROGATORIES

1. Explain in detail how the Plaintiff failed to file the lawsuit in this action within the proper time frame, or within the appropriate Statue of Limitations.
2. Explain in detail how Plaintiff's damages are not the direct and proximate result of having her thumb broken.
3. Explain in detail how the Doctrine of Latches bars this Complaint and/or lawsuit.
4. List every intervening force or act over which Defendant had no control and which caused Plaintiff's injuries.

5. List every intervening force or act over which Defendant had no duty to control and which caused Plaintiff's injuries.
  
6. List every superceding force or act over which Defendant had no control and which caused Plaintiff's injuries.
  
7. List every superceding force or act over which Defendant had no control and which caused Plaintiff's injuries.
  
8. Explain in detail every reason Plaintiff's Complaint fails to state a cause of action upon which relief can be granted or fails to state a claim for relief.
  
9. Explain in detail how the damages alleged by the Plaintiff are the result of her own sole negligence.



RESPECTFULLY SUBMITTED,

VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS OH 43212  
S CT #0013227 (614) 298-8200  
ATTORNEY FOR LYNDSEY HOWELL

POSITIVE VERIFICATION / JURAT

STATE OF OHIO,

SS

COUNTY OF \_\_\_\_\_:

\_\_\_\_\_, being duly sworn, says that the answers to the foregoing Request for Admissions are true and accurate based upon his/her personal knowledge and information.

On the \_\_\_\_\_ day of \_\_\_\_\_ 2013 \_\_\_\_\_  
\_\_\_\_\_ appeared before me, swore that his/her answers to these Request for Admissions are true and signed here above, in my presence.

\_\_\_\_\_  
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing by attaching same to a Motion to Compel, upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this 7<sup>th</sup> day of November, 2013, by regular U.S. Mail.

VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWEL

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL	:	
	:	
Plaintiff	:	Case Number: 2013-00001
	:	
-V-	:	
	:	Judge: McGrath
THE OHIO UNIVERSITY	:	
POLICE DEPARTMENT	:	Magistrate: Shaver
	:	
Defendant	:	

REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Ohio Rules of Civil Procedure, Plaintiff/Defendant hereby propounds the following Requests for Admissions to be answered in writing by Defendant or Defendant’s Attorney. Requests not answered or objected to within twenty-eight (28) days of the date of service hereof will be deemed admitted.

A Party may not give lack of information or knowledge as a reason for failure to admit or deny unless they state that they have made reasonable inquiry and that the information known or readily obtainable by them is insufficient to enable them to admit or deny. A denial shall fairly meet the substance of the requested admission, and when good faith requires qualification or partial denial of an answer, Defendant shall specify which parts of the request are true and define why the remainder is not true.

REQUEST NUMBER 1:

Admit that Officer Haskinson was trained and certified in accordance with the requirements of the Ohio Peace Officer Training Council, the standards set by the Ohio Attorney General, and the Ohio Revised Code.

ANSWER

REQUEST NUMBER. 2:

Admit that Officer Haskinson received training and instruction on proper handcuffing techniques.

ANSWER

REQUEST NUMBER. 3:

Admit that no injuries were visible on Plaintiff's hands at the time that she was arrested.

ANSWER

REQUEST NUMBER. 4:

Admit that no injuries were visible on Plaintiff's hands prior to being handcuffed by Officer Haskinson.

ANSWER

REQUEST NUMBER. 5:

admit that after being handcuffed Plaintiff requested that the handcuffs be removed because they were painful.

ANSWER

REQUEST NUMBER. 6:

Admit that during the entire Field Sobriety Testing procedures Plaintiff made no complaints about injuries to her hand.

ANSWER

REQUEST NUMBER. 7:

Admit that after Plaintiff made repeated complaints about pain in her hands  
Officer Haskinson made no personal effort to ascertain if she was injured.

ANSWER

REQUEST NUMBER. 8:

Admit that after Plaintiff made repeated complaints about pain in her hands  
Officer Haskinson made no effort to assess or provide for her injuries.

ANSWER

RESPECTFULLY SUBMITTED,

VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OHIO 43212  
(614) 298-8200 S.C. #0013227  
ATTORNEY FOR PLAINTIFF

POSITIVE VERIFICATION / JURAT

STATE OF OHIO,

SS

COUNTY OF \_\_\_\_\_:

\_\_\_\_\_, being duly sworn, says that the answers to the foregoing Request for Admissions are true and accurate based upon his/her personal knowledge and information.

On the \_\_\_\_\_ day of \_\_\_\_\_ 2013 \_\_\_\_\_ appeared before me, swore that his/her answers to these Request for Admissions are true and signed here above, in my presence.

\_\_\_\_\_  
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing by attaching same to a Motion to Compel, upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this 7<sup>th</sup> day of November, 2013, by regular U.S. Mail.

VINCENT DEPASCALE  
ATTORNEY FOR LYNDSSEY HOWEL

## APPENDIX TO COURT OF CLAIMS MOTION

### A: INTRODUCTION

Every lawyer has an absolute right, and a duty to the client, to represent the interests of the client in the best manner available under the law, and the Rules of Court, whether those rules be the Civil Rules of Procedure or the Rules of Evidence. All must be done within the confines of the Cannons of Ethics, however.

Every lawyer has the absolute right to view their side of the case in the manner most beneficial to the client.

Every lawyer has the absolute right and duty to argue legitimate facts and inferences in the light most favorable to their side of the case.

Every Lawyer has an absolute duty to the law, and the Court, to abide by the Rules of Court, the law pertinent to the case, and the Cannons of Ethics.

No lawyer has the right to deceive, inveigle, or obfuscate. No lawyer has the right to admit nothing, deny everything, and make counter allegations, which is the mantra of at least one well known federal law enforcement agency. No lawyer has the right to misrepresent anything, at any time, in any proceeding, any pleading, or any document, not to the Court or to opposing counsel..

Christopher Conomy should suffer no penalty or sanction for taking the position in this case that the Plaintiff should recover nothing, and that is not my purpose here.

Additionally, any of the individual actions taken by Mr Conomy do not necessarily amount to the basis for a sanction. Any one of them could be justified or explained in an appropriate manner, if justified by the facts. When taken together, however, a pattern of frivolous, unethical, unprofessional, and legally inappropriate conduct clearly arises.

Note should be taken that Mr Conomy was able to respond to every requirement, such as responding to requests for admissions or filling responsive memoranda, that would have caused him trouble if he had not done so in a timely manner, but failed to respond in a timely manner to any requirement where the Plaintiff would be prejudiced and leave of Court could grant him leniency.

Other than the failure to file the Answer in a timely manner, which would be reasonably and satisfactorily explained were it not for the multitudinous other infractions by Mr Conomy, there is no good faith basis for any of his conduct.

Without question Mr Conomy is not stupid or he would not be a lawyer; he is not inept or he would not be Principle Assistant Attorney General or Senior Assistant Attorney General, depending upon how he signed his various letters and pleadings. All that is left is a willful and wanton disregard for the natural and probable consequences of actions that are frivolous, unethical, unprofessional, and legally inappropriate.

This conduct is clearly exemplified by one, of more than 20, examples delineated herein, where:

1. Mr Conomy pleads in his Answer (Exhibit 6, [4]) an Affirmative Defense that the injuries suffered by the Plaintiff were the result of an intervening and superceding acts over which Defendant had no control, which is an issue to be resolved at trial when legitimately raised and the subject of appropriate discovery;
2. Plaintiff sends an Interrogatory (Number 4, Exhibit 11) requesting that the Defendant list every such intervening force or act;
3. Mr conomy responds with "OBJECTION: Vague, grammatically incomprehensible, and calls for a legal conclusion. Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Defendant is not aware of how plaintiff was injured but such injury was not the proximate result of defendant's actions or failure to act."

Misrepresentations to the Court are clearly exemplified in Exhibit 17, Mr Conomy's response to Plaintiff's Motion to Compel Discovery, wherein Mr Conomy makes frivolous and misleading statements. See Argument Section for specificity.

B: FACTS

1. Lyndsay Howell (Howell) was stopped by Officer Eric Hoskinson who was a member of the Ohio University Police Department and arrested for the crime of Operating a Motor Vehicle while Impaired. She was not convicted of that offense in the local Municipal Court, or in the University Student Court (Exhibit 23), but that is not relevant here.
2. The traffic stop, and the injury to Howell, occurred on 21 January 2012.
3. Prior to being handcuffed Howell made no complaints of any injury to Hoskinson when he asked if she had any injuries (Exhibit 21).
4. After being handcuffed by Hoskinson Howell complained of pain in her hand and Hoskinson ignored her complaints.
5. After she was booked on the charge for which she had been arrested Howell was taken to the hospital by the medics for the then obvious injury to her left hand.
6. Medical treatment and x-rays showed that Howell had a broken thumb, and that her hand and fingers were swollen (Exhibit 22).
7. As a result of these injuries Howell incurred medical expenses of approximately \$5,000.00.
8. Only two possibilities exist as to the injury:
  - a. Either Hoskinson broke Howell's thumb while in the process of improperly handcuffing Howell; or,
  - b. He handcuffed a person with an obviously broken thumb in violation of established procedures, and aggravated the injury she suffered.
9. Due to the injury Howell was required to go through her Bachelor of Science in Nursing course work at the University and her in-hospital training, with the loss of the use of one of her hands for the entire period that she was required to wear a cast.

10. The University refused to negotiate a settlement for the injuries suffered by Ms Howell, as is their right, (Exhibits 18 and 19), and suit was filed in a timely manner.
11. The Complaint (Exhibit 1) was filed on 2 January 2013, and was filed well within the applicable statute on limitations of actions, and that fact is obvious on the face of the document itself.
12. The Clerk of the Court of Claims sent Summons and a copy of the pleadings to the Ohio Attorney General who acknowledged receiving same on 3 January 2013, and to the Ohio University Police Department who signed for such documents on 4 January 2013, all within the applicable statute on limitations of actions. (Exhibit 2).
13. Defendant, and the Attorney General, were served with summons and a copy of the Complaint by the Clerk of the Court of Claims by at least 4 January 2013, all within the applicable statute on limitations of actions.
14. The Clerk of the Court of Claims sent Plaintiff's Counsel a Statement of the Existence of Connected Actions, Exhibit 3, which was completed, returned to the Clerk, served upon the Ohio Attorney General, and filed with the Clerk on or by 7 January 2013, all within the applicable statute on limitations of actions.
15. Without question the Ohio Attorney General had notice of the action and a copy of the pleadings in a timely manner.
16. Nothing occurred on the case until 11 March 2013 when Howell filed a Motion for Default Judgment on liability and a request for a Damages Hearing. (Exhibit 4)
17. The Ohio Attorney General was not served with a copy of the Motion for Default Judgment as they had never made an appearance and service was not required by the Civil Rules.

18. On 19 March 2013, which would have been the last day for a responsive pleading if he had been served, Mr Conomy files a Memorandum in Opposition to Plaintiff's Motion for Default Judgment, a Motion to file an Answer Instanter, (Exhibit 5) and a tendered the Answer.
19. On 26 March 2013 Plaintiff filed a Motion to Strike Frivolous Pleadings, a Reply Memorandum, and a Memorandum Contra Defendant's Motion for leave to plead instanter. (Exhibit 7)
20. On 1 April 2013, again within the time allowed by the Civil Rules Mr Conomy filed a Memorandum in Opposition to Plaintiff' Motion to strike frivolous pleadings.
21. Defendant was granted leave to plead, the tendered Answer was filed and considered to be timely filed.
22. On 9 APR 2013 Defendant served interrogatories upon the Plaintiff which were answered in a timely manner.
23. On 10 May 2013 Plaintiff submitted discovery demands of Requests for Admissions (Exhibit 9); request for the production of documents (Exhibit 10); and Interrogatories (Exhibit 11).
24. Although several answers are spurious, Mr Conomy provided responses to the Requests for Admissions (Exhibit 16) within Rule so that no admission against his interest would be deemed admitted due to the failure to do so.
25. The Interrogatories and Documents, for which there is no penalty against interest, were not provided in a timely manner and no requests for delay were made either through the Court or to Counsel herein.
26. Exhibits 12, 13, and 14 constitute letters sent over a period of almost 2 months, beginning when the discovery was already 30 days overdue, attempting to secure compliance.

27. Exhibit 15 is the Motion to compel Discovery filed by Plaintiff on 26 September, at which time the discovery was 117 days overdue.
28. On 2 October 2013 the balance of the purported discovery arrived at the office of Plaintiff's Counsel.
  - a. The answers to interrogatories were a list of objections unfounded in law or fact, and unsupported by even a pro-defense reading of the available evidence.
  - b. The response to the production of documents consisted of a stack of paper approximately 1 1/2 inches high without an index, tabs, or any form of hint or indication as to which document request applied.
29. On 18 OCT 13 Defendant's response to Plaintiff's Motion to compel and for sanctions arrived at the office of Plaintiff's Counsel. (Exhibit 17)
30. An analysis of the dates and the Exhibits attached hereto clearly show that:
  - a. Whenever there was a time limitation that would put Mr Conomy in a position where his case would be prejudiced by the application of a Civil Rule or he would not be allowed to be heard on an issue he met the deadline.
  - b. Whenever Mr Conomy could delay discovery, or frustrate the legal process, he did so and then, at least in Exhibit 17, misrepresented the reasons why.

C: ARGUMENT

I FAILING TO ANSWER:

Christopher Conomy represents himself as being either a Senior Assistant Attorney General or a Principal Assistant Attorney General, in the Court of Claims Defense Section of the Office of the Ohio Attorney General. This clearly implies that he is at least a supervisor in that office, if not in fact the Chief of Section. Certainly he has other attorneys working under his supervision, with secretaries and possibly paralegals being managed and/or supervised by him.

As a result of the forgoing, a delay of a total of 77 days after service and 49 days after the appropriate Answer date seems excessive. However, as previously stated, this factor in and of itself, could be justified under the proffered explanation if it were supported by fact.

Sometimes things just fall through the cracks, it happens to all of us if we do this long enough. In that case, however, you just bite the bullet and admit that. In my 46 of litigation practice in State, Federal, and Military Courts I have never seen a single Judge penalize the client for a faux pas on the part of the lawyer who stood tall and admitted an honest mistake. In fact, I have no memory of any sanction more severe than: "Counsel, you need to pay better attention in the future" for a lawyer who admitted his/her mistake.

However, this factor must be considered under a totality of circumstances with all of the other elements relevant to this Document.

THE ANSWER ITSELF:

In the Answer, Mr Conomy makes a number of admissions and denials. The Denials are proper if they are justified by the facts of the case, and that cannot be determined at this time since discovery is not complete and depositions certainly have not been held. Additional allegations of impropriety may arise at a later time depending upon whether the denials are substantiated.

However, in the Affirmative Defenses section of the Answer, Mr Conomy states and alleges:

1. *The complaint fails to state a claim for relief.*
  - a. In fact, the Complaint states quite clearly that Plaintiff suffered a physical injury (a broken thumb), by being improperly handcuffed, while being arrested by Eric Hoskinson, who was at the time employed by the Ohio University Police.
  - b. The Complaint states that Plaintiff suffered physical pain.
  - c. The Complaint states that Plaintiff needed a cast on her hand and was required to participate in her on-site training with the use of only one hand.

- d. When Plaintiff was taken to the hospital by the Medics, after Hoskinson was finished with her, the hospital records (Exhibit 22) show a broken thumb and treatment therefore including a cast.
  - e. This is a clear statement of a claim for relief and any allegation that it does not is specious, unfounded in law or fact, and frivolous.
2. *The complaint is barred by the expiration of the applicable Statute of Limitations.*
- a. The arrest and injury occurred 21 January 2012 and the Complaint was filed 2 January 2013, less than one calendar year (346 days) after the incident.
  - b. The most stringent reading of the Limitations of Actions provisions in Ohio law, relative to cases of this nature has a one year cut-off date and a relaxed reading has a two year requirement.
  - c. A filing in less than 365 days is within the applicable law and any allegation that it is not is specious, unfounded in law or fact, and frivolous.

3. *The complaint is barred by the doctrine of Laches.*
  - a. The doctrine of Laches only applies under circumstances where a Plaintiff waits so long to file a claim that the Defendant is so severely prejudiced that such Defendant cannot present a proper and legitimate defense solely due to the lapse of time, the destruction of evidence, or the death or incapacity of witnesses; and, not the absence of any legitimate defense.
  - b. The Defendant was put on notice that Plaintiff had a lawyer on 12 June 12, (Exhibit 18), and the lawyer for the University sent a letter refusing to negotiate, (Exhibit 19), so the Defendant was on notice of the pending lawsuit within Six months of the incident and had ample time to marshal a defense and ensure the preservation of any documentary evidence.
  - c. The allegations of the applicability of the Doctrine of Laches is specious, unfounded in law or fact, and frivolous.
4. *The damages alleged by the Plaintiff were the result of intervening and superceding acts over which Defendant had no control.*
  - a. The only person in control was the one with the badge, the gun, the legal status of Police Officer, and probably: the nightstick/tactical baton, the mace, pocket knife, and possibly a back-up firearm.

- b. No one other than Hoskinson was in control of anything.
  - c. Certainly Plaintiff was not free to leave or cause anything contrary to the wishes and intentions of Hoskinson to happen.
  - d. Only two persons were present, the arresting officer and the arrested civilian (Plaintiff) and no act of nature occurred so there was no intervening or superceding act, at least none appear in the police report prepared by Hoskinson and oriented in his best interests.
  - e. The allegations of superceding or intervening acts which clearly did not occur is specious, unfounded in law or fact, and frivolous..
5. *The damages alleged by the Plaintiff were the result of intervening and superceding acts over which Defendant had no duty to control.*
- a. See 4 a through d above.
  - b. This is another intentional mis-statement. The law is clear that once a police officer takes a person into custody that the arresting officer has a responsibility/duty to secure the safety of the prisoner, and to protect the person from harm from outside sources.

- c. The allegations of superceding or intervening acts which Hoskinson had no duty to control is specious, unfounded in law or fact, and frivolous.
6. *The damages alleged by the Plaintiff are the result of the sole negligence of the Plaintiff.*
- a. This allegation falls somewhere between the ridiculous and absurd.
  - b. Hoskinson handcuffed the Plaintiff by his own choice after telling her she was under arrest, and she did nothing other than submit to his authority, which is a legal requirement.
  - c. No rational person can envision submission to the obvious authority of a police officer to be a negligent act.
  - d. Any allegation that doing otherwise is negligent is specious, unfounded in law or fact, and frivolous..
7. *The damages alleged by the Plaintiff were the result of Plaintiff's assumption of known risks.*
- a. Again this is absurd and totally unsupported by any known fact, particularly anything in the police report; no one takes the risk of having their hand broken by the unresisting submission to the authority of police officer.

- b. The Assumption of Risk Doctrine has never been applied to circumstances where the injured party had no ability to prevent the injury, including being handcuffed by an incompetent.
- c. The claim of the application of the Doctrine of Assumption of Risk is specious, unfounded in law or fact, and frivolous.

The allegation of defenses unsupported by any factual or good faith basis is frivolous and unethical. Even a First Year law student knows that a claim or defense must have factual basis. Raising claims that have no basis in law or fact requires a person who is stupid, which Mr Comony is not or he would not be a licensed attorney; a person who is incompetent, which Mr Comony is not or he would not be a Senior Assistant Attorney General or a Principal Assistant Attorney General; or a person who fully intends to raise frivolous, unjustified, and unethical claims for the purpose frustrating the legal process without just case.

As previously stated, the viability of some of the denials in the body of the Answer will depend upon the facts elicited at trial, but the forgoing affirmative defenses are without merit and any Senior Assistant Attorney General or a Principal Assistant Attorney General knows that.

The arguments in Plaintiff's Exhibit 7 are incorporated here.

## II PLAINTIFF'S DISCOVERY DEMANDS:

### A REQUESTS FOR ADMISSIONS:

Plaintiff's Requests for Admissions was served upon Mr Conomy on or about 13 MAY 2013, depending upon the United States Postal Service.

The Civil Rules are clear that the response date on such Requests for Admissions is a hard date and that unless the Responses to the Requests for Admissions are timely made, or an extension is granted by agreement or the Court, the Admissions are deemed Admitted.

The Responses to Plaintiff's Requests for Admissions were mailed back to Plaintiff's Counsel on 7 June 2013, well within Rule and prior to any requirement that any of the Admission be deemed Admitted due to a violation of the Civil Rules mandating same. The ability of Mr Conomy to meet this deadline, which carries serious penalties for the breach, is both relevant and indicative of the conduct and intentions of Mr Conomy. He can do whatever needs to be done if failing to do so will prejudice his side of the case.

In the responses to the Requests for Admissions, which pursuant to Rule are fact intensive, Mr conomy decides to argue his case:

1. Request Number 3: Asked Hoskinson to admit that no injuries were visible on Plaintiffs hands at the time she was arrested.

See Request Number 4 for analysis.

2. Request Number 4: Asked Hoskinson to admit that no injuries were visible on Plaintiff's hands prior to her being handcuffed.
  - a. Every police officer conducting field sobriety tests asks the driver if they have any injuries.
  - b. Plaintiff denied any injuries at that time.
  - c. It is virtually impossible under normal circumstances to handcuff a person without looking at their hands.
  - d. Every police officer has a duty to not injure a person in their custody unless that person is attacking the officer or actively resisting arrest, which according to the Police Report (Exhibit 21) did not happen here.
  - e. Consequently, Hoskinson certainly looked at the hands of Plaintiff when he handcuffed her and would have seen any swelling or discoloration.
  - f. Mr Conomy could have merely stated that Hoskinson did not pay any attention to Plaintiff's hands, but that carries its own inherent problems.



- e. A Request for Admission cannot be denied because the Party disagrees with the net effect of the admission of the fact.
4. Request Number 6: Asked Hoskinson to admit that the Plaintiff made no complaints as to the injury to her hand during the entire filed sobriety testing procedure.
- a. Mr Conomy answered with a denial which is blatantly false. We know it is false because of the explanation as to why Plaintiff did not complain.
  - b. The explanation is that Plaintiff was so intoxicated that she did not know she was injured until later.
  - c. The problem with this lie is that the "later" is when she was handcuffed. See Mr Conomy's answer to Number 5 on Exhibit 16.
5. Request Number 7: Asked Hoskinson to admit that Plaintiff made repeated complains about pain in her hands and that Hoskinson made no personal effort to ascertain if she was injured.
- a. Again Mr Conomy answered with a denial that is blatantly false.
  - b. Following his usual practice of ignoring the truth and attempting to structure the responses as an argument as to what his

version of the facts means, in his "Further Answering" Mr Conomy:

- (1) Admits that Plaintiff complained of pain;
- (2) Admits that Plaintiff requested that the handcuffs be removed;
- (3) Denies that the pain was caused by the Officer's conduct or the handcuffs;
- (4) Claims that Plaintiff was so intoxicated that she was likely to be unaware of pre-existing injury until later, which "later" means when she was handcuffed.

6. Request Number 8: Asks Hoskinson to admit that after Plaintiff made repeated complaints about pain in her hands Hoskinson made no effort to assess or provide for her injuries.

- a. Again Mr Conomy answered with a denial that is blatantly false.
- b. See b., and b (1), (2), (3), (4) above.

In each of the above responses Mr conomy makes an untruthful and obviously false response, in violation of the Ohio Civil Rules of Procedure and the Cannons of Ethics, by denying requested admissions that are obviously founded in fact. We know this as because his explanations argue what a response of

"Admitted" should mean. What these facts mean is an issue for the Court and not Counsel for the Defendant.

**B REQUEST FOR THE PRODUCTION OF DOCUMENTS:**

In response to this discovery demand Mr Conomy delivered a stack of paper approximately 1 ½ inches thick, without any order, index, or notation as to which demand the documents related.

Admittedly, this is not an ethics violation, and technically may not be a Civil Rules violation, but it certainly is unprofessional, beneath the dignity of the Office of the Ohio Attorney General, and no excuse whatever for the delay of 145 days in providing discovery which was due in 28 days. The actual time lapse from the date of submission of the discovery demand to production of the purported responses was 117 days past the due date.

**C INTERROGATORIES:**

Interrogatory Number 1:

In his Answer Additional Defenses (2) Exhibit 6, Mr Conomy specifically pleaded an affirmative defense of a failure to file the instant case within the time provided by law, by claiming that the lawsuit was "barred due to the expiration of the applicable statute of limitations..."

Interrogatory Number 1 asked the Defendant to explain in detail how the Plaintiff failed to file within the appropriate Statute of Limitations.

Irrespective of the fact that blowing the Statute should have been handled by an O CIV R 12 Motion, the answer would be a simple recitation of fact: the applicable statute of limitations is X days, the lawsuit was filed in Y days, Y is greater than X, Plaintiff failed to file within the appropriate time limits.

However, in response to that question Mr Conomy responds:

“OBJECTION: Calls for a legal conclusion. Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time.”

At the time that Mr Conomy provided this specious and frivolous response:

1. The date of the arrest was known. (Exhibit 21)
2. The date of Ms Howells medical treatment was known. (Exhibit 22)
3. The date of filing the lawsuit was known.(Exhibit 1)
4. Those are all the facts a Lawyer would need to prepare an O CIV R 12 Motion to dismiss, and all the Court would find necessary to rule on a Motion to Dismiss for a failure to file within the applicable statute of limitations.

A party cannot object to an interrogatory which asks the Party to explain or justify a statement or allegation made in a pleading. Interrogatories, like depositions, may ask anything that constitutes admissible evidence or may lead to admissible evidence. Certainly either can address any issue relevant to trial or Jurisdiction.

Being unwilling, or unable, to admit that the statute of limitations claim in his Answer was spurious, Mr Conomy compounds his frivolous conduct by interposing an improper Objection and claims that further evidence, on which issue there is none and about which he is seriously obstreperous and clearly evasive, will be produced in such discovery.

Bottom line: Mr Conomy has no ethical and proper response to the interrogatory, as his claim in his Answer is frivolous and unfounded in law or fact. He had a duty to admit that the Complaint was timely filed, that his Affirmative Defense was unfounded, and to discontinue his frivolous conduct.

Interrogatory Number 2:

In his Answer Additional Defenses (3) Exhibit 6, Mr Conomy specifically pleaded that "Plaintiffs alleged damages are not a direct and proximate result of the incident alleged in Plaintiff's Complaint."

Interrogatory Number 2 asked Defendant to explain in detail how the Plaintiff's damages were not the result of having her thumb broken.

This interrogatory does not ask the Defendant to admit that he broke the Plaintiff's thumb, it asks how medical treatment, a cast, pain, and inhibition of hands-on-medical-training cannot be the result of a broken thumb. The interrogatory asks the Defendant to delineate the factual basis for the statement in the Affirmative Defense.

In response to that question Mr Conomy responds:

“OBJECTION: Vague and calls for a legal conclusion. Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant’s actions or failure to act”.

A request to explain in detail is certainly not vague. It also does not call for a legal conclusion, it calls for a recitation of claimed fact. The question merely requests the factual basis for the claim in the Affirmative Defense.

The only legal conclusion anywhere in the Interrogatory is the one raised by Mr Conomy himself and that is whether the injury resulted from an action or failure to act on the part of the Defendant, which is not stated anywhere in the Interrogatory.

The duty of Mr Conomy in this and other Interrogatories was:

1. To have his client sign the Answers to Interrogatories under oath, which he failed to do;
2. To provide truthful and factual responses to the questions, which he failed to do; and,
3. To not argue his case as part of the responses, which he did do.

Bottom line: all of the damages which Plaintiff alleges are clearly the direct and proximate result of having her thumb broken, irrespective of how it was broken, which is a legal issue not addressed in the Interrogatory; and, Mr Conomy had a duty to state the factual basis for his claim in his Answer. Since the claim in the Answer was unfounded in fact Mr Conomy elected to continue his frivolous conduct and to argue his case with an obstruction at an inappropriate time in an inappropriate document in derogation of the discovery process.

INTERROGATORY NUMBER 3:

In his Answer Additional Defenses, Exhibit 6 (2) , Mr Conomy specifically pleaded an affirmative defense by claiming that the lawsuit was "barred due to the ...Doctrine of Laches."

Interrogatory 3 asked for an explanation in detail how the Doctrine of Laches bars the Complaint and/or the lawsuit.

In law the Doctrine of Laches protects a Defendant from a miscarriage of justice resulting from a delay on the part of the Plaintiff in filing the lawsuit which delay is so onerous that the Defendant is unable to properly defend against the claim due to the loss or destruction of evidence, or the death or incapacity of essential witnesses.

In his response to Mr Conomy responded:

“OBJECTION: Calls for a legal conclusion. Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time.”

In this case the arrest/injury/medical treatment date is 21 January 2012 (Exhibits 21 and 22); the Defendant was put on notice that a claim was being presented on 12 June 2012 (Exhibit 18) less than 6 months later, and elected to not negotiate a settlement on 20 June 12 (Exhibit 19), which was still within the 6 months window; the Complaint was filed on 2 January 2013, which date is 19 days short of 1 calendar year from the date of incident.

The entire case file exists. No essential witnesses have died prior to the filing. The Defendant had adequate advance notice of the lawsuit well within the time to preserve evidence. The Defendant has suffered no prejudice due to the expiration of time caused by the Plaintiff. At all times Mr Conomy has known this.

First, all of the relevant evidence necessary for an O CIV R 12 Motion bases on Laches was known at the time the Complaint was filed. Second, Defendant had more than enough time in the 77 days Mr Conomy took to file his Answer to address the issue which is waived by failing to do so. Third, no such facts exist. Fourth, such facts certainly would not be produced in discovery which Mr Conomy has been diligently and unethically avoiding in violation of the O CIV R relevant thereto.

Bottom line: Mr Conomy has no proper response to the interrogatory as his claim of Laches in his Answer is unfounded in law or fact. He had a duty to admit that he had improperly pleaded an inappropriate affirmative Defense and to not continue his frivolous conduct.

INTERROGATORY NUMBER 4:

In his Answer, Mr Conomy claimed ( Exhibit 6 [4]) that the damages alleged by Plaintiff were the result of :

- intervening acts over which Defendant had no control;
- intervening acts which Defendant had no duty to control;
- superceding acts over which Defendant had no control;
- superceding acts which Defendant had no duty to control.

Interrogatory Number 4 asked the Defendant to list every intervening force or act over which Defendant had no control caused Plaintiff's Injuries.

The response to the Interrogatory by Mr Conomy was:

"OBJECTION: Vague, grammatically incomprehensible, and calls for a legal conclusion. Without waiving objection," *(leave a word out here Mr Conomy?)*" further evidence may be produced in the course of discovery and will be provided at that time. Defendant is not aware of how plaintiff was injured but such injury was not the proximate result of defendant's actions or failure to act."

From the time that Hoskinson initiated the traffic stop until he delivered Ms Howell to the medics at the police station, only two people were present, Hoskinson and Plaintiff. No one else appeared in any form from anywhere, and nothing else happened, and such is reflected in the police report (Exhibit 21) prepared by Hoskinson himself

Nothing happened outside of the arrest.

As a matter of fact and of law, the one with the badge, obvious Police authority, gun, nightstick, mace, body armour, and whatever else Hoskinson brought, was in control. Certainly not the unarmed 115 pound girl with the bad cold.

Perhaps the typing in the Interrogatory could have been better but Counsel herein has a great deal of arthritis in his hands and one finger has been fused; also, there is no paralegal or secretary to proofread what those hands produce. However, the interrogatory is not incomprehensible. Certainly a law school graduate with a doctorate degree should have been able to ascertain the meaning of the interrogatory in light of the Answer he himself signed and filed, and the prior interrogatories asking similar questions relevant to his unfounded, frivolous, unethical, and unprofessional assertions therein.

This response is a piece of work even for Mr Conomy. Ignoring for the moment that further discovery certainly will not be produced in the discovery which

Mr Conomy has been diligently and unethically avoiding, in violation of the O CIV R relevant thereto, let us examine the last sentence in the frivolous denial:

*Defendant is not aware of how plaintiff was injured but such injury was not the proximate result of defendant's actions or failure to act.*" How on earth can a rational Hoskinson, who claims to be NOT aware of how an injury happened, truthfully, sanely, and rationally deny that the injury is not the proximate result of an act or a failure to act by Hoskinson, who was the only other person present.

There were no intervening forces or acts which occurred; the arrest report (Exhibit 21) prepared by Hoskinson himself categorically proves that. The claim of intervening and superceding acts is unfounded in law or fact, is frivolous, is unethical, and is in violation of the O CIV R relevant to discovery.

INTERROGATORIES 5, 6, 7:

These Interrogatories fall into the same categories as Interrogatory Number 4 for the same reasons and the arguments are identical. A cut-and-paste reprinting serves no further purpose and provides no further elucidation.

INTERROGATORY NUMBER 8:

In his Answer, Exhibit 6, Additional Defenses (1), Mr conomy stated that "The Complaint fails to state a claim for relief."

Interrogatory Number 8 asked Defendant to explain in detail why Plaintiff's Complaint (Exhibit 1) fails to state a cause of action or claim upon which relief can be granted.

In his response to the Interrogatory Mr Conomy writes:

"OBJECTION: calls for a legal conclusion. Without waiving objection further evidence may be produced in the course of discovery and will be provided at that time."

Obviously the interrogatory asked for the factual basis for such an allegation.

Since the Complaint alleges that Plaintiff was injured by Hoskinson when he improperly handcuffed her in violation of the proper procedures, and sets out jurisdiction, venue, the elements of authority, the Complaint clearly states a cause of action. (See 1. *The complaint fails to state a claim for relief @* pages 2 & 3 above, which are not repeated here but are incorporated verbatim.)

Also obviously and clearly from the contents of all exhibits, and this document, Mr Conomy has no intention of providing any further discovery at any time as he is intense in his refusal to participate in the discovery process.

The bottom line here is that: (1) the Complaint did in fact state a claim upon which relief can be granted if the allegations are proved to be true; (2) the claim in the Affirmative Defense that the Complaint fails to state a claim upon which relief can be granted is without merit or foundation and is unsupported by law and/or

fact; (3) the claim in the Affirmative Defense that the Complaint fails to state a claim upon which relief can be granted is frivolous; (4) the claim in the Affirmative Defense that the Complaint fails to state a claim upon which relief can be granted violates the ethical duties of a lawyer to participate in the legal process in a professional and ethical manner; (5) the claim in the Affirmative Defense that the Complaint fails to state a claim upon which relief can be granted violates the Civil Rules.

INTERROGATORY NUMBER 9:

In his Answer Additional Defenses, Exhibit 6 (5) Mr Conomy specifically pleaded an affirmative defense that the damages alleged by the Plaintiff were the result of the sole negligence of the Plaintiff.

Interrogatory Number 9 asked the Defendant to explain in detail how the damages alleged by the Plaintiff are the result of her own sole negligence.

In his response to Interrogatory Number 9 Mr Conomy writes:

“OBJECTION: calls for a legal conclusion. Without waiving objection further evidence may be produced in the course of discovery and will be provided at that time.”

According to the Police Report prepared by Hoskinson (Exhibit 21) no accident occurred, no other persons engaged Plaintiff at the scene, she did not hit/attack or attempt to hit/attack Hoskinson or anyone else, no one hit/attacked

her, she did not slip and fall onto the ground due to the icy conditions. In fact, nothing happened other than that Ms Howell submitted to the authority of the officer, Ms Howell was arrested, and Ms Howell was handcuffed.

Unless Mr Conomy claims that Plaintiff was negligent in submitting to the apparently lawful authority of the police, which he specifically chose not to do, any claim that Plaintiff's injuries were the result of her own sole negligence is unfounded in law or fact, is frivolous, is unethical, and is in violation of the O CIV R with respect to the duty of the Trial Attorney/Attorney of Record in a pending case to respond to discovery demands.

This response, like the rest, is without merit, is designed to frustrate the legal process, and should be the basis for sanctions against Mr Conomy for all of the reasons previously and subsequently stated.

**INTERROGATORY NUMBER 10:**

In his Answer Additional Defenses Exhibit 6 (5) Mr Conomy pleaded what is defined in Ohio law as the defense of Contributory Negligence, by stating that Plaintiff committed some undefined acts of negligence which caused her injury.

Interrogatory Number 10 asked the Defense to delineate every act of negligence committed or perpetrated by the Plaintiff during the Traffic Stop.

In his response to Interrogatory Number 10 Mr Conomy writes:  
"OBJECTION: calls for a legal conclusion. Without waiving objection further evidence may be produced in the course of discovery and will be provided at that time."

See the analysis of Interrogatory Number 9.

INTERROGATORY NUMBER 11:

In his Answer Additional Defenses, Exhibit 6 (5) Mr Conomy specifically pleaded an affirmative defense that the damages alleged by the Plaintiff were the result of the sole negligence of the Plaintiff.

Interrogatory Number 11 asked Hoskinson to list every reason why Lyndsay Howell was negligent in the handcuffing procedure.

In his response to Interrogatory Number 11 Mr Conomy writes:  
"OBJECTION: vague and calls for a legal conclusion. Without waiving objection further evidence may be produced in the course of discovery and will be provided at that time."

Hoskinson handcuffed Plaintiff, Plaintiff did not handcuff Hoskinson; ipso facto, the facts of the Affirmative Defense need delineation and are the subject of legitimate discovery. Discovery was demanded, None was provided.

See the analysis of Interrogatory Number 9.

INTERROGATORY NUMBER 12:

In his Answer, Exhibit 6, (6) Mr Conomy stated that "the damages alleged by the Plaintiff were the result...of Plaintiff's assumption of known risks."

Interrogatory Number 12 asked the Defense to list every known risk which Plaintiff assumed during the incident.

In his response to Interrogatory Number 12 Mr Conomy writes:

"OBJECTION: vague and calls for a legal conclusion. Without waiving objection further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failures to act."

There is no evidence whatever that Ms Howell was injured by a puck at a hockey game, or a fly ball or broken bat at a baseball game. She was not struck by an errant golf ball at a golf course. No similar but comparable event occurred (Exhibit 21). The claim of the application of the Doctrine of Assumption of Risk is ludicrous.

No one, not by any rational or reasonable stretch of the imagination, assumes the risk of having their thumb broken by submitting to the authority of the police.

The irrelevant addition of the additional *final argument at trial comment* that the damages of Plaintiff were not the proximate cause of Hoskinson actions or

failures to act is just another example of Mr conomy's apparent failure grasp reality which is but really is a ruse covering his unethical abuse of the discovery process.

Again, the spurious answer to the Interrogatory, which interrogatory was generated by the unfounded Affirmative Defense, clearly exemplifies Mr conomy's unethical, irresponsible, and unprofessional conduct in violation of the Ohio Civil Rules of Procedure, the Cannons of Ethics, and the responsibilities of an attorney engaged in litigation.

**INTERROGATORY NUMBER 13:**

In his Answer, Exhibit 6, (7) Mr conomy stated that "The Plaintiff has failed to mitigate Plaintiff's alleged damages."

Interrogatory 13 asked the Defense to list every reason who or how Plaintiff failed to mitigate her damages.

Interrogatory 13 was generated by the Affirmative Defense pleaded in the Answer.

In his response to Interrogatory Number 13 Mr Conomy writes:

"OBJECTION: vague and calls for a legal conclusion. Without waiving objection further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failures to act."

The Interrogatory is not vague, it does not call for a legal conclusion, it clearly asks for the factual basis supporting an Affirmative Defense of a failure to mitigate damages. This is a legitimate issue for trial and a proper subject for discovery and due diligence investigation.

According to the police report (Exhibit 21), nothing occurred at the scene of the traffic stop which Plaintiff could have done to keep from being injured. According to the medical records, (Exhibit 22) Plaintiff was taken to the Oblesness Memorial Hospital by the EMS people, *not by Hoskinson*, where she arrived and was first seen at about 0430; she was released with a cast on her hand and pain medication consisting of Vocodin.

The Vicodin prescription is relevant, and telling here, as everyone knows (particularly the medical community) that Vocodin is contraindicated for a person under the influence of alcohol; so obviously, the medical people at the hospital did not find Ms Howell to be under the influence of alcohol. However, that is a different issue for a different time and place.

Again, the Interrogatory asks Mr conomy to explain/justify/factually support an allegation in his Answer, which would constitute an issue at trial, which is legitimate discovery. Again, the allegation is unfounded in law or fact, is frivolous, is unethical, is unprofessional, is in violation of the Civil Rules, and is spurious.

INTERROGATORY 14:

In his Answer, Exhibit 6, (7) Mr Conomy stated that "The Plaintiff has failed to mitigate Plaintiff's alleged damages."

Interrogatory 14 is a corollary to Interrogatory 13 and asks what Defendants claim the Plaintiff should have done to mitigate her damages from the broken thumb. The interrogatory asks for the facts supporting the claim that Plaintiff failed to mitigate her damages. Even a good faith belief should have had an intelligent opinion as to what Ms Howell could or should have done.

In his response to Interrogatory Number 14 Mr Conomy writes:

"OBJECTION: vague and calls for a legal conclusion. Without waiving objection further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failures to act."

Since there was nothing that Plaintiff could have done, other than seek medical treatment which occurred, get on with her life, and continue her education without dropping out of school until she had recovered from her injuries thereby losing the education (tuition, et c.) and living expenses money already spent, Defendants had no realistic answer. Since there was no realistic answer the affirmative defense in Exhibit 6, (7) is spurious.

See Interrogatory 13 for additional explanation.

### III MISREPRESENTATIONS TO THE COURT:

Misrepresentations to the Court are clearly exemplified in Exhibit 17, Mr Conomy's response to Plaintiff's Motion to Compel Discovery, wherein Mr Conomy makes the statements:

1. "The discovery responses sought in the Motion to Compel were served on Plaintiff's Counsel just as the Motion was served."

While this is untrue the lie is probably not provable.

2. "The Motion also seeks to revisit matters that have already been decided by this Court."

A reading of the attached Exhibit 15 clearly addresses the demand that Answers to Interrogatories and Documents previously demanded be produced, and that sanctions be imposed on Mr Conomy personally. None of this had been previously addressed by the court so this is another lie.

3. Furthermore, the trial of this matter is not until the end of March, 2014, and Plaintiff will have time to conduct ample discovery in this *uncomplicated (emphasis added)* matter.

This is an intentional misdirection because ample discovery cannot be conducted when the at-fault party does not respond

for months at a time while the clock is running and when they finally do respond the response are deceitful, unprofessional, unethical, and in violation of the Civil Rules of Procedure.

This is not the only example, but it is indicative.

#### IV CONCLUSION:

The actions of Mr Conomy in this case constitute an ongoing pattern of corrupt activity consisting of:

1. Ethical violations far beyond "aggressive lawyering" or the former "Zealous" representation which for reasons (probably similar to these) has been removed from the Standards. Conduct which is designed to frustrate, obstruct, or deter the legal process is unethical.
2. Clear and repeated violations of both the spirit and the language of the Ohio Civil Rules of Procedure.
3. Unmitigated unprofessional conduct.

We live in a litigious society where many people sue for the sole purpose of getting something for nothing.

Many lawyers take meritless cases for the costs of defense settlements provided by insurance carriers who find it financially cheaper to pay them far less to go away than it would cost to beat them at trial. There is nothing I can do about

that and it is not my responsibility as they are not my clients. This is my responsibility and my duty to the Courts.

The Legislature in Ohio Revised Code § 2323.51, and the Ohio Supreme Court in O CIV R 11, have enacted Rules to deter such conduct. These Rules are not designed to provide a chilling effect on the conduct of lawyers who are acting in good faith in the interests of their clients, within the bounds of the applicable Civil Rules and Case law, but to deter and chastise the Christopher Conomys who think that jerking around a person who had her thumb broken in an uncomplicated arrest without resistance, is some kind of a game providing him with the ability to further educate her as to the unrestrained might of the State of Ohio and her inability to protest or seek just compensation.

The aberrant conduct of Mr Conomy in this case needs to stop and it needs to stop here.

The legal process in this case needs to move forward in a properly legal manner and it needs to start immediately.

Christopher Conomy is not some baby lawyer fresh out of law school who does not know any better, he is a veteran attorney supervising baby lawyers fresh out of law school and is probably teaching them to act like this. Christopher Conomy needs to be sanctioned personally so that he clearly understands that he cannot act in this manner and is deterred from doing so in the future.

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL  
2829 POLK HOLLOW ROAD  
CHILlicoTHE OH 45601

Plaintiff

-v-

THE STATE OF OHIO --  
OHIO UNIVERSITY  
1 OHIO UNIVERSITY  
ATHENS OH 45701-2979

and

THE OHIO UNIVERSITY  
POLICE DEPARTMENT  
1 OHIO UNIVERSITY  
ATHENS OH 45701-2979

and

ERIC HOSKINSON  
1 OHIO UNIVERSITY  
ATHENS OH 45701-2979

Defendants

2013-00001

Case Number:

Judge:

Jury Demanded Against  
Appropriate Defendants

2013 JAN -2 PM 3:57

FILED  
COURT OF CLAIMS  
OF OHIO

COMPLAINT

1. Pursuant to Statute and Rule the State of Ohio is subject to jurisdiction in this Court.
2. Ohio University is a State University, is subject to all relevant duties pursuant to law, and is subject to jurisdiction in this Court.

3. The Ohio University Police Department is the designated law enforcement agency of Ohio University and at all relevant times was so operating.
4. Eric Hoskinson was at all relevant times a duly authorized and designated Officer of the Ohio University Police Department and at all relevant times claimed to be acting as an Ohio University Police officer.
5. So far as Plaintiff knows, Eric Hoskinson was at all relevant times acting pursuant to his authority as an Officer of the Ohio University Police Department, and the Ohio University.
6. So far as Plaintiff knows, Eric Hoskinson was at all relevant times acting within the scope of his authority as an Officer of the Ohio University Police Department, and the Ohio University, despite the fact that he was doing so in a grossly negligent manner.
7. Lyndsey Howell is a resident of the State of Ohio and on 21 January 2012 was a student at Ohio University.
8. All actions, occurrences, and events occurred in the State of Ohio, County of Athens on 21 January 2012.
9. At all relevant times:
  - a. The State of Ohio was the duly constituted governmental agency for Ohio;

- b. Ohio University was a duly constituted State University;
  - c. The Ohio University Police Department was the law enforcement division of Ohio University;
  - d. Eric Hoskinson was a duly appointed officer of the Ohio University Police Department;
  - e. Eric Hoskinson was acting pursuant to the authority vested in him by the Department, the University, and the State of Ohio.
10. In the early morning hours of 21 January 2012 Ms Howell was driving her motor vehicle within the State of Ohio when she was stopped by Officer Eric Hoskinson .
  11. In the process of arresting Ms Howell Officer Eric Hoskinson broke her left thumb, and severely bruised her fingers, by improperly and wrongfully handcuffing her.
  12. At all relevant times the actions of Officer Eric Hoskinson in causing the physical injuries to Ms Howell were grossly negligent.
  13. At all relevant times the actions of Officer Eric Hoskinson in causing the physical injuries to Ms Howell were willful, wanton, and with a careless disregard for the natural and probable consequences thereof.
  14. The actions and failures of the Defendants were the direct and proximate cause of the injuries suffered by Ms Howell.

15. The injuries suffered by Ms Howell were the direct and proximate result of the actions and failures of the Defendants.
16. As a direct and proximate result of the injuries that she suffered at the hands of the Defendants:
  - a. Ms Howell had her thumb broken and her fingers injured;
  - b. Ms Howell incurred medical expenses for treatment by physicians and medical facilities;
  - c. Ms Howell suffered a great deal of pain;
  - d. The studies of Ms Howell were severely impinged and debilitated as she was required to use a single hand in a course of study that required the use of both hands and was in the "hands on" phase of her training.
17. Police are taught a procedure for handcuffing an arrestee specifically designed to prevent the type of injury suffered by Ms Howell and obviously Officer Eric Hoskinson failed to use such procedure.
18. At all relevant times Officer Eric Hoskinson was either improperly trained or acted improperly.
19. At all relevant times the State of Ohio, the Ohio University Police Department and the Ohio University knew or had just cause to know that Officer Eric Hoskinson would injure persons that he had arrested.

20. At all relevant times the State of Ohio, the Ohio University Police Department and the Ohio University failed to properly train and/or supervise Officer Eric Hoskinson so that he would not injure persons that he had arrested.
21. At all relevant times the State of Ohio, the Ohio University, the Ohio University Police Department and Officer Eric Hoskinson failed in their duties to Ms Howell and she was therefore injured.
22. As a direct result of the forgoing Ms Howell is entitled to fair and just compensation for her injuries from each of the Defendants as their respective liability may dictate.

WHEREFORE: Lindsey Howell demands judgment against the Defendants as may be appropriate and as their interests may appear, in an amount in excess of \$25,000.00 to compensate her for her pain, suffering, medical expenses, medical treatment, and such other and further losses as may be appropriate.

RESPECTFULLY SUBMITTED,

  
VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OH 43212  
(614) 298-8200 S.C. # 0013227  
ATTORNEY FOR LINDSEY HOWELL

JURY DEMAND

Here Plaintiff demands a trial by a Jury as to those Defendants and claims so subject.

A handwritten signature in black ink, appearing to read "Vincent DePascale", written in a cursive style.

VINCENT DePASCALE  
ATTORNEY FOR LINDSEY HOWELL

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL

Plaintiff

-v-

THE STATE OF OHIO -  
OHIO UNIVERSITY, Et Al

Defendants

2013-00001

Case Number:

Judge:

2013 JAN -2 PM 3:57

FILED  
COURT OF CLAIMS  
OF OHIO

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

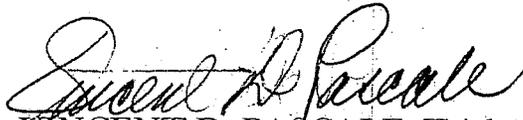
Please make service of Summons and a copy of the Complaint upon the Defendants herein, by Certified Mail, at their address of record:

THE STATE OF OHIO -  
OHIO UNIVERSITY  
1 OHIO UNIVERSITY  
ATHENS OH 45701-2979

THE OHIO UNIVERSITY  
POLICE DEPARTMENT  
1 OHIO UNIVERSITY  
ATHENS OH 45701-2979

ERIC HOSKINSON  
c/o THE O U POLICE DEPARTMENT  
1 OHIO UNIVERSITY  
ATHENS OH 45701-2979

RESPECTFULLY SUBMITTED,



VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OH 43212  
(614) 298-8200 S.C. # 0013227  
ATTORNEY FOR LINDSEY HOWELL



# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

ce

## SUMMONS

LYNDSEY HOWELL

Plaintiff

V.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendant

Case No. 2013-00001

FILED  
COURT OF CLAIMS  
OF OHIO  
2013 JAN -3 AM 9:49

To the following:

Ohio University Police Department  
1 Ohio University  
Athens, Ohio 45701

You have been named as a defendant in a complaint filed in this court (copy attached) by:

Lyndsey Howell  
2829 Polk Hollow Road  
Chillicothe, Ohio 45601

The counsel of record is:

Vincent N. Depascale  
786 Northwest Blvd.  
Grandview Heights, Ohio 43212-3832

You shall appear and defend both by serving a copy of your pleading upon plaintiff's attorney, otherwise upon plaintiff, within 28 days from the date upon which service of this summons was received, and by filing the original of your pleading with this court within three days of the aforementioned date of service upon plaintiff.

MARK H. REED  
CLERK, COURT OF CLAIMS OF OHIO

Date: January 3, 2013

By:   
Assistant Clerk



# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

ce

## CLERK'S SERVICE UPON ATTORNEY GENERAL AND RECEIPT

LYNDSEY HOWELL

Plaintiff

V.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendant

Case No. 2013-00001

2013 JAN -3 PM 3:06

FILED  
COURT OF CLAIMS  
OF OHIO

### SERVICE

I served a copy of the **summons, praecipe, magistrate order and complaint** in this case upon the Attorney General by personally serving it upon the below listed recipient.

MARK H. REED, CLERK

By

Assistant Clerk

### RECEIPT

I received a copy of the items listed above in this case on January 3, 2013, on behalf of the Attorney General.

Recipient

OAG

Title (Sec-Other)

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

2013-00001  
 OHIO UNIVERSITY POLICE DEPARTMENT  
 1 OHIO UNIVERSITY  
 ATHENS OHIO 45701

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *Sharon K Darnell*  Agent  Addressee

B. Received by (Printed Name) C. Date of Delivery  
*Sharon K Darnell* *1/4/13*

D. Is delivery address different from Item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  R.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from) **7002 0860 0006 8255 6216**

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

2013-00001

**FILED**  
 JAN 07 2013  
 COURT OF CLAIMS OF OHIO

**ON COMPUTER**



# COURT OF CLAIMS OF OHIO

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614. 387.9800 or 1.800.824.8263  
www.cco.state.oh.us

## STATEMENT OF THE EXISTENCE OF CONNECTED ACTIONS, REQUIRED BY L.C.C.R. 15(C) MAILED BY THE CLERK OF THE COURT OF CLAIMS ON JANUARY 3, 2013

LYNDSEY HOWELL

Plaintiff

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendant

Case No. 2013-00001

FILED  
COURT OF CLAIMS  
OF OHIO  
2013 JAN -7 AM 11:31

I certify that to the best of my knowledge, the following is a comprehensive statement of the existence of all connected cases, claims, or applications, which are based on essentially the same facts as those alleged in the complaint or petition for removal of the above-captioned Court of Claims case, and which are pending in any other court, bureau, board, commission, or agency.

PART I. Statement of Existence of Connected Court Cases. The following is a statement of the existence of all cases connected to the above-captioned case which are pending in courts other than the Court of Claims of Ohio. (If there are no cases connected to the above-captioned case pending in courts other than the Court of Claims of Ohio, please indicate in blank 7. If more than one case is pending in other courts, please provide all the information requested concerning those cases on an additional sheet.)

1) The name of the court in which the connected case is pending is:

*NONE*

2) The named defendants are:

- A) *N/A*
- B) \_\_\_\_\_
- C) \_\_\_\_\_
- D) \_\_\_\_\_
- E) \_\_\_\_\_

(Any additional defendants should be listed on an additional sheet.)

3) The case number of the connected case is: *N/A*

4) The caption of the connected case is: *N/A*

5) The initial filing date of the connected case was: *N/A*

6) The name of the judge assigned to the connected case is: *N/A*

7) There are no cases connected to the above-captioned Court of Claims case which are pending in any other court. (Check if true)  (Note: This form must be completed and filed even if there are no cases connected to the above-captioned Court of Claims case pending in any other court.)

PART II. Statement of Existence of Connected CLAIMS OTHER THAN COURT CASES. The following is a statement of the existence of all claims connected to the above-captioned case which are pending in any bureau, board, commission, or agency other than a court. (If there are no claims connected to the above-captioned Court of Claims case pending in any bureau, board, commission or agency, please indicate in blank 13 below. If more than one connected claim is pending in any bureau, board, commission or agency, please provide all the information requested concerning those claims on an additional sheet.)

8) The bureau, board, commission, or agency in which the connected claim is pending is:

Name: N/A

Address: \_\_\_\_\_

9) The claim number or other identifying number of the connected claim is: N/A

10) The caption of the connected claim is: N/A

11) The initial filing date of the connected claim was: N/A

12) The nature of the connected claim is: N/A

13) There are no claims connected to the above-captioned Court of Claims case which are pending in any bureau, board, commission or agency. (Check if true)  (Note: This form must be completed and filed even if there are no claims connected to the above-captioned Court of Claims case pending in any bureau, board, commission or agency.)

I certify that I have read and understand L.C.C.R. 15(C) and the contents of this form. I understand that I am charged with a continuing duty to notify the Clerk of the Court of Claims if I file or learn of a case in any other court which is connected to the above-captioned action filed in the Court of Claims, or if I file or learn of a claim, action, or application for relief in any bureau, board, commission or agency which is connected to the above-captioned claim filed in the Court of Claims.)

I further certify that I have served a completed copy of this form to the Attorney General and all other parties pursuant to Civ. R. 5.

Vincent DePascale  
Signature and Date

VINCENT DEPASCALE  
Name

786 NORTHWEST BOULEVARD  
Address

GRANDVIEW HEIGHTS OH 43212

IN THE COURT OF CLAIMS OF OHIO

2013 MAR 11 AM 11:31

LYNDSEY HOWELL

Plaintiff

-V-

THE OHIO UNIVERSITY  
POLICE DEPARTMENT

Defendant

Case Number: 2013-00001

Judge: McGrath

Magistrate: Shaver

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT  
ON  
ALL ISSUES OF LIABILITY

Now comes Lyndsey Howell by and through her Trial Attorney of Record and hereby Moves the Court for Judgment on the issue of liability.

Further Moving Plaintiff requests that the Court set a date for a Damages Hearing as provided by law.

Further Moving Plaintiff requests such other and further relief as may be just, reasonable, and necessary.

RESPECTFULLY SUBMITTED,



VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OH 43212  
(614) 298-8200 S.C. # 0013227  
ATTORNEY FOR LYNDSEY HOWELL

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

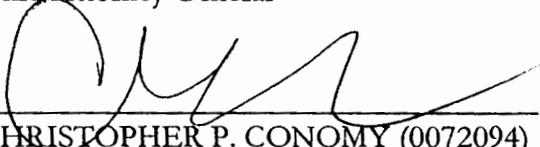
CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR DEFAULT JUDGMENT AND  
MOTION FOR LEAVE TO FILE ANSWER INSTANTER**

Defendant Ohio University respectfully asks this Court to grant it leave to file its Answer to the Complaint instanter and to deny Plaintiff's Motion for Default Judgment. Defendant's counsel prepared to file the Answer in a timely manner and simply failed to present the Answer to the Court just before being out of the office for a week with medical issues, which constitutes excusable neglect under Civ.R. 6(B). Therefore leave to file an Answer instanter should be granted. Furthermore, Plaintiff will not be prejudiced as a default may not be entered against the State without evidence. Civ.R. 55(D). A Memorandum in Support is attached.

Respectfully submitted,  
MICHAEL DEWINE  
Ohio Attorney General

  
CHRISTOPHER P. CONOMY (0072094)  
Senior Assistant Attorney General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130  
Telephone: 614-466-7447  
Facsimile: 866-452-9957  
Christopher.Conomy@OhioAttorneyGeneral.gov  
COUNSEL FOR DEFENDANT

PLAINTIFF'S EXHIBIT 5

## MEMORANDUM IN SUPPORT

Defendant Ohio University failed to timely file an Answer the Complaint through the fault of counsel, who was prepared with an Answer but simply failed to present it to this Court through an administrative oversight. However, Plaintiff cannot be granted a default judgment in this case without presenting evidence under Civ.R. 55(D). Under these circumstances, Defendant should be granted leave to file an Answer instanter.

Under Civ.R. 55(D), “No judgment by default shall be entered against this state, a political subdivision, or officer in his representative capacity or agency of either unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.” Plaintiff’s Motion for Default Judgment presents no evidence, and therefore cannot support a default judgment as to liability as she requests. Because she is required to present evidence in any event, she will not be prejudiced by the University’s request to file an Answer at this time, as very little time has passed since the date on which undersigned counsel should have presented the Answer to this Court.

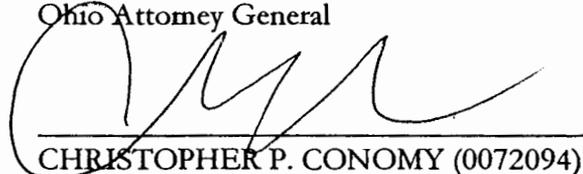
Under Civ.R. 6, this Court has discretion to extend a defendant’s answer date. *State ex rel. Lindenschmidt v. Board of Comm'rs*, 72 Ohio St. 3d 464, 650 N.E.2d 1343 (1995). Though counsel could have handled his schedule better, undersigned counsel was out of the office for a CAT scan on Tuesday Feb. 5 and for abdominal surgery on Feb. 6, which surgery prevented him from driving for a week and left him with restrictions for several weeks. The Answer should have been filed that Monday, Feb.4, but counsel was simply distracted in managing his affairs at that time. Counsel was kept out of work for longer than anticipated as the result of the surgery and failed to realize that the date to file an answer had slipped by, although preparations to file the Answer had been made. Thus, excusable neglect applies in this case and the University should be granted leave to file an Answer instanter under Civ.R. 6(B). “The determination of

whether neglect is excusable or inexcusable must take into consideration all the surrounding facts and circumstances, and courts must be mindful of the admonition that cases should be decided on their merits, where possible, rather than procedural grounds.” *Id.* at 466. Furthermore, the standard for “excusable neglect” under Civ.R. 6(B) is less stringent than that for “excusable neglect” necessary to seek relief after judgment has been entered pursuant to civ.R. 60(B). *Id.*

Given the circumstances in this case, where excusable neglect should allow the untimely filing of an Answer and where Plaintiff is not prejudiced because she is required to present evidence in any event, the University respectfully asks this Court for leave instanter to file the proposed Answer that is presented to the Clerk for filing along with this Memorandum and Motion, and to deny Plaintiff’s Motion for Default Judgment.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



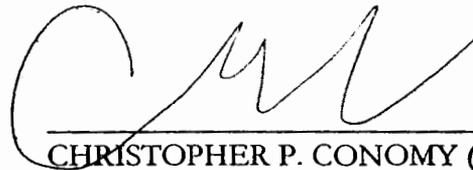
CHRISTOPHER P. CONOMY (0072094)  
Senior Assistant Attorney General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130  
Telephone: 614-466-7447  
Facsimile: 866-452-9957  
Christopher.Conomy@OhioAttorneyGeneral.gov  
COUNSEL FOR DEFENDANT

**CERTIFICATE OF SERVICE**

On March 19, 2013, a copy of this document was served via regular mail on the following:

Vincent DePascale  
786 Northwest Blvd.  
Grandview Heights, Ohio 43212

Counsel for Plaintiff



---

CHRISTOPHER P. CONOMY (0072094)  
Assistant Attorney General

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**DEFENDANT'S ANSWER**

For its Answer to Plaintiffs' Complaint in this matter, Defendant states as follows:

1. Defendant admits the allegations of ¶ 1 of Plaintiff's Complaint.
2. Defendant admits the allegations of ¶ 2 of Plaintiff's Complaint.
3. Defendant admits the allegations of ¶ 3 of Plaintiff's Complaint.
4. Defendant admits the allegations of ¶ 4 of Plaintiff's Complaint.
5. Defendant admits the allegations of ¶ 5 of Plaintiff's Complaint.
6. Defendant denies the allegations of ¶ 6 of Plaintiff's Complaint.
7. Defendant admits the allegations of ¶ 7 of Plaintiff's Complaint.
8. Defendant admits the allegations of ¶ 8 of Plaintiff's Complaint.
9. Defendant admits the allegations of ¶ 9 of Plaintiff's Complaint.
10. Defendant admits the allegations of ¶ 10 of Plaintiff's Complaint.
11. Defendant denies the allegations of ¶ 11 of Plaintiff's Complaint.
12. Defendant denies the allegations of ¶ 12 of Plaintiff's Complaint.
13. Defendant denies the allegations of ¶ 13 of Plaintiff's Complaint.
14. Defendant denies the allegations of ¶ 14 of Plaintiff's Complaint.

PLAINTIFF'S EXHIBIT 6

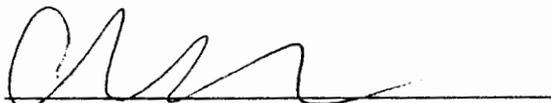
15. Defendant denies the allegations of ¶ 15 of Plaintiff's Complaint.
16. Defendant denies the allegations of ¶ 16 of Plaintiff's Complaint.
17. Defendant denies the allegations of ¶ 17 of Plaintiff's Complaint.
18. Defendant denies the allegations of ¶ 18 of Plaintiff's Complaint.
19. Defendant denies the allegations of ¶ 19 of Plaintiff's Complaint.
20. Defendant denies the allegations of ¶ 20 of Plaintiff's Complaint.
21. Defendant denies the allegations of ¶ 21 of Plaintiff's Complaint.
22. Defendant denies the allegations of ¶ 22 of Plaintiff's Complaint.

#### **ADDITIONAL DEFENSES**

1. The Complaint fails to state a claim for relief.
2. The Complaint is barred due to the expiration of the applicable statute of limitations as well as by the doctrine of laches.
3. Plaintiff's alleged damages are not a direct and proximate result of the incident alleged in Plaintiff's Complaint.
4. The damages alleged by the Plaintiff were the result, if at all, of intervening and superseding acts over which the Defendant had neither control nor any duty to control.
5. The damages alleged by the Plaintiff were the result of the sole negligence of the Plaintiff.
6. The damages alleged by the Plaintiff were the result, if at all, of Plaintiff's assumption of known risks.
7. The Plaintiff has failed to mitigate Plaintiff's alleged damages.
8. Defendant further reserves the right to later assert affirmative defenses that become apparent by further discovery.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



CHRISTOPHER P. CONOMY (0072094)  
Senior Assistant Attorney General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130  
Telephone: 614-466-7447  
Facsimile: 866-452-9957  
Christopher.Conomy@OhioAttorneyGeneral.gov  
COUNSEL FOR DEFENDANT

### CERTIFICATE OF SERVICE

On March 19, 2013, a copy of this document was served via regular mail on the following:

Vincent DePascale  
786 Northwest Blvd.  
Grandview Heights, Ohio 43212

Counsel for Plaintiff



CHRISTOPHER P. CONOMY (0072094)  
Assistant Attorney General

IN THE COURT OF CLAIMS OF OHIO

FILED  
COURT OF CLAIMS  
OF OHIO  
2013 MAR 26 AM 11:08

LYNDSEY HOWELL

Plaintiff

-v-

THE OHIO UNIVERSITY  
POLICE DEPARTMENT

Defendant

:  
:  
: Case Number: 2013-00001  
:  
:  
: Judge: McGrath  
:  
: Magistrate: Shaver  
:  
:

PLAINTIFF'S MOTION TO STRIKE FRIVOLOUS PLEADINGS

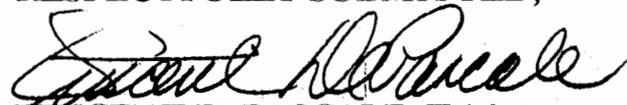
PLAINTIFF'S REPLY MEMORANDUM

MEMORANDUM CONTRA DEFENDANT'S MOTION  
FOR  
LEAVE TO PLEAD INSTANTER

Now comes the Plaintiff by and through her Trial Attorney of Record and hereby Moves the Court for such Orders as may be just and necessary to strike those portions of the Defendant's Answer as are frivolous and without merit.

Further Moving Plaintiff requests such other and further relief as may be reasonable just, and proper.

RESPECTFULLY SUBMITTED,



VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OH 43212  
(614) 298-8200 S.C. # 0013227  
ATTORNEY FOR LINDSEY HOWELL

## SUPPORTING MEMORANDA

No question exists that the Court has the power to extend an answer date. No question exists that the exercise of such power is within the sound discretion of the Court. No question exists that the Court must exercise its discretion and not rubber stamp whatever the Attorney General wants.

Plaintiff's Counsel did not attempt to secure a Default Judgment immediately upon the running of the Answer date, nor did he do so within a week or two of such time. In fact, Plaintiff's Counsel waited 40 days past the Answer date before requesting Judgment by Default.

In the 28 days during which the Answer was due, Defendant's Counsel had knowledge of the identity, address, and telephone number of Plaintiff's Counsel and the opportunity to call or write Counsel herein and request an extension of the Answer date or leave to plead at some other time; this did not occur. There is no evidence that Defendant's Counsel is a sole practitioner, as is Plaintiff's Counsel, and in fact Defendant's Counsel appears to be a chief of section for the Attorney General so there are others who could have performed the above actions if he were unable to do so on any given day. Also, there is no evidence that Defendant's Counsel's medical condition was an emergency so he had notice that he would have been out of the office and had the opportunity for himself or one of his subordinates to perform one of the above actions. Plaintiff's Counsel has been practicing law for some 46 years and comes from

an era where professionalism and accommodation to another attorney were the norm rather than the exception and counsel for the Defendant would have freely been given such time to plead as was necessary had a timely and proper request been made. Defendant's Counsel and/or his staff did nothing required of an Attorney.

A simple telephone call or letter a week after the Answer date had run would have generated the same response. Defendant's Counsel and/or his staff did nothing required of an Attorney.

What we have here, however, is a totally different set of facts:

1. The Answer is not tendered until approximately 50 days after it was due under the law;
2. The Answer is not tendered until after Plaintiff has waited more than a reasonable time and asked for Default Judgment on the issue of liability only, and a date for a damages hearing;
3. The Answer is not tendered until the Court has failed to either grant the Motion for Default, or deny same for a stated reason which Plaintiff could cure, within a 10 day period;
4. The Motion for leave to plead, and the Answer is not tendered, until somehow the Defendant learns that the Motion was filed.

Further, while Defendant's Counsel was reading O CIR R 6, O CIR R 55, and O CIR R 60 he should have read O CIR R 11.

Paragraph 6 of the Complaint which Defendant's Counsel has denied states :

“So far as Plaintiff knows, Eric Hoskinson was at all relevant times acting within the scope of his authority as an Officer of the Ohio University Police Department, and the Ohio University, despite the fact that he was doing so in a grossly negligent manner.”

Counsel herein will be astounded if the evidence in this case would show that:

1. Eric Hoskinson was not at all relevant times a sworn officer with the Ohio University Police;
2. That he did not sign a Criminal Complaint against the Plaintiff alleging that he was a sworn officer with the Ohio University Police;
3. That the Ohio University Police did not provide him with a uniform, a badge, a firearm, and a marked cruiser;
4. That officer Hoskinson did not represent to a Court in Athens County that he was at all relevant times acting as an Ohio Peace Officer in the performance of his duty.

Paragraph 16 of the of the Complaint which Defendant's Counsel has denied states that Ms Howell had her thumb broken, incurred medical expenses, underwent medical treatment, and suffered pain. Hoskinson took Ms Howell to the hospital after he injured her.

Paragraph 17 of the of the Complaint which Defendant's Counsel has denied states:

Police are taught a procedure for handcuffing an arrestee specifically designed to prevent the type of injury suffered by Ms Howell and obviously Officer Eric Hoskinson failed to use such procedure.

Counsel herein will be astounded if the evidence in this case would show that Eric Hoskinson did not go through a Basic Training School as required by the *Attorney General* and that he was not taught basic handcuffing procedures which are specifically designed to avoid and prevent such injuries as were suffered by Ms Howell.

Even more egregious are the "Additional Defenses" termed Affirmative Defenses in O CIV R 8:

1. "The Complaint fails to state a claim for relief." The Complaint states that Officer Hoskinson, acting as an Ohio University Police Officer, broke a bone in the hand of the Plaintiff while handcuffing her in an improper manner, and that such injury caused pain and medical costs. That is a claim for relief and to deny such is frivolous.
2. The Complaint is barred by the Statute of Limitations. The applicable statute or limitations in this case is two (2) years; Plaintiff filed in less than one (1). Such denial is frivolous.

3. The Complaint is barred by the doctrine of laches. The doctrine of laches only applies when a Party waits so long as to prejudice the ability of the opposing Parties to defend themselves before the Courts. On these facts such a denial is frivolous.
4. Plaintiff's alleged damages are not the direct result of the incident alleged in the Complaint. Plaintiff's hand was not broken prior to her arrest, her thumb was broken after she was handcuffed, nothing else occurred. On these facts such a denial is frivolous.
5. The damages of Plaintiff were the result of intervening or superseding acts outside the control or the duty of the Defendant. No one was present but Ms Howell and Officer Hoskinson, no one handcuffed Ms Howell but Hoskinson, and there were no other parties. On these facts such a denial is frivolous.
6. Plaintiff was solely negligent. Plaintiff did not handcuff herself. On these facts such a denial is frivolous.
7. Assumption of Risk. No-one assumes the risk of having bones broken from being improperly handcuffed. On these facts such a denial is frivolous.

From the forgoing the only conclusion is that the Defendant is grasping at straws that have no basis in law or fact. Allowing the Defendant to file an Answer

approximately 50 days out of Rule so that it can allege defenses that are clearly improper is not a proper exercise of the sound discretion of the Court but is a gift to the Defendants at the expense of a Plaintiff who gave the Defendants more than a 30 day extension before asking for justly deserved relief.

Further, Defendants are still entitled to a damages hearing at which they are entitled to appear and present whatever evidence they may have to show that the injuries suffered by Ms Howell:

1. Could not have been caused by being handcuffed.
2. That she did not suffer pain.
3. That she did not incur medical expenses.
4. That her ability to perform the hands-on portions of her training was not hampered or impinged.
5. Should not generate any monetary recovery in any amount for any reason.

In reality, the damages hearing will cure virtually all of the deficiencies that Defendant's Counsel claims.

What denying Defendant's Motion for leave to plead will not prevent is the filing of an O CIV R 56 Motion for Summary Judgment that will be as equally frivolous as the Additional Defenses presently claimed by Defendant.

Counsel for Defendant is probably correct in his assertion that an O CIV R 6 Motion grants him more latitude than an O CIV R 60 Motion but again he wants all of

the benefits of the law and none of the detriments that he has caused and he is not entitled to such benefits simply because he demands them.

I seriously doubt that Plaintiff would be granted such leniency if she missed her response date to an O CIV R 56 Motion for Summary Judgment by 50 days, failed to ask anyone for an extension, and then claimed excuse for problems that only took a week and were known in advance; or failed to respond to a request for admissions by such almost 2 months and then filed pro-forma denials that were as unrealistic as Defendant's Answers.

Plaintiff is entitled to fairness and equity every bit as much as the Defendant.

Certainly the situation would be different if Defendant had tendered an Answer that merely denied that the injuries suffered by the Plaintiff were not as severe as she claims and that her damages, if any, were minimal. Perhaps under such circumstances the attitude of Plaintiff's Counsel would be different and the duty of the Court as to the exercise of its discretion would not be as onerous as it is under these facts.

Not only does the Court not have a duty to allow a Party to raise irrelevant, frivolous, and improper issues, the Court has an affirmative duty to deter such conduct.

On these facts, in this case, under these circumstances, the Court must deny Defendant's Motion for leave to plead, strike Defendant's Answer, and set a date for a damages hearing sufficiently far out to allow Defendants to properly prepare for such hearing.

Failing in such conduct, the Court must strike the obviously improper and frivolous portions of the Answer, and put Defendant's Counsel on notice that further frivolous conduct such as baseless motions for summary judgement will not be tolerated.

Counsel herein raises the motion for summary judgement issue up front as such a motion requires that there be no genuine issue of material fact and that movant be entitled to judgment as a matter of law, and in a case where Plaintiff claims Defendant broke a bone in her hand during an improper performance of a routine handcuffing and Defendant categorically denies the existence of such fact; where Plaintiff claims her injuries are the direct and proximate result of Defendant's conduct and Defendant denies such proximate cause; where no one else was present; there cannot be a lack of a genuine issue of material fact and the existence of a right to judgment as a matter of law.

Defendant should not be permitted to jerk Plaintiff or her attorney around simply because it can. Outside this forum there exist sanctions for frivolous pleadings and other Motions but such will not be granted against the Attorney General so Plaintiff has no remedy therefor.

  
VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWELL

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this 23d day of March, 2013, by regular U.S. Mail.

  
VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWEL

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE FRIVOLOUS PLEADINGS**

Defendant Ohio University respectfully asks this Court to deny Plaintiff's Motion to Strike Frivolous Pleadings because the proposed Answer for which the Defendant sought leave to file is in accordance with the Civil Rules.

Plaintiff Lyndsey Howell asserts that the Answer for which the Defendant sought leave to file violates Civ.R. 11 on the basis that it denies some of the allegations of her Complaint. In essence, she asserts that this Court must presume all of her allegations to be true and sanction the University on that basis. But that would require this Court to decide the facts based on allegations alone, and the Civil Rules simply do not support such a conclusion.

In particular, Ms. Howell asserts that the University had no basis to deny the allegations of ¶¶ 6, 16 and 17 of her Complaint, while demanding that this Court assume all her allegations to be true. In ¶ 6 of her Complaint she asserts that the University's officer acted "in a grossly negligent manner." The University is certainly within its rights to deny that allegation, and is permitted to deny generally the allegations of a paragraph that includes multiple parts and asserts gross negligence as to each. Civ.R. 8. Likewise, all of the injuries catalogued by Ms. Howell in ¶ 16 of the Complaint are alleged to have been the proximate result of the University's negligence.

In ¶ 17 she alleges that the University's officer failed to follow proper procedure, essentially alleging negligence. If Ms. Howell's position is to be accorded validity, then a Defendant would simply be required to admit negligence. But that is not the case.

The University notes that it did admit many of the allegations of the Complaint in its Answer, although Civ.R. 8 would have permitted a general denial. Thus the University has not acted frivolously in denying simply every allegation. Instead, the University has denied that it acted negligently and denied that Ms. Howell's injuries were proximately caused by the University. The University's understanding of the facts is different from Ms. Howell's, but the Civil Rules provide a mechanism for this Court to sort out the facts by trial or other means. The facts are not presumed based simply on the allegations of the Complaint, and therefore Ms. Howell's Motion to Strike cannot be granted.

Accordingly, the University asks this Court to deny the Motion to Strike and grant it leave to file the Answer.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



CHRISTOPHER P. CONOMY (0072094)

Senior Assistant Attorney General

Court of Claims Defense

150 East Gay Street, 18th Floor

Columbus, Ohio 43215-3130

Telephone: 614-466-7447

Facsimile: 866-452-9957

Christopher.Conomy@OhioAttorneyGeneral.gov

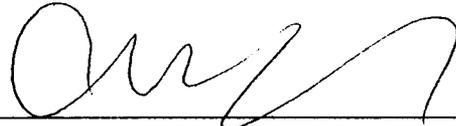
COUNSEL FOR DEFENDANT

**CERTIFICATE OF SERVICE**

On April 1, 2013, a copy of this document was served via regular mail on the following:

Vincent DePascale  
786 Northwest Blvd.  
Grandview Heights, Ohio 43212

Counsel for Plaintiff



CHRISTOPHER P. CONOMY (0072094)  
Assistant Attorney General



REQUEST NUMBER 1:

Admit that Officer Haskinson was trained and certified in accordance with the requirements of the Ohio Peace Officer Training Council, the standards set by the Ohio Attorney General, and the Ohio Revised Code.

ANSWER

REQUEST NUMBER. 2:

Admit that Officer Haskinson received training and instruction on proper handcuffing techniques.

ANSWER

REQUEST NUMBER. 3:

Admit that no injuries were visible on Plaintiff's hands at the time that she was arrested.

ANSWER

REQUEST NUMBER. 4:

Admit that no injuries were visible on Plaintiff's hands prior to being handcuffed by Officer Haskinson.

ANSWER

REQUEST NUMBER. 5:

admit that after being handcuffed Plaintiff requested that the handcuffs be removed because they were painful.

ANSWER

REQUEST NUMBER. 6:

Admit that during the entire Field Sobriety Testing procedures Plaintiff made no complaints about injuries to her hand.

ANSWER

REQUEST NUMBER. 7:

Admit that after Plaintiff made repeated complaints about pain in her hands  
Officer Haskinson made no personal effort to ascertain if she was injured.

ANSWER

REQUEST NUMBER. 8:

Admit that after Plaintiff made repeated complaints about pain in her hands  
Officer Haskinson made no effort to assess or provide for her injuries.

ANSWER

RESPECTFULLY SUBMITTED,

VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OHIO 43212  
(614) 298-8200 S.C. #0013227  
ATTORNEY FOR PLAINTIFF

POSITIVE VERIFICATION / JURAT

STATE OF OHIO,

SS

COUNTY OF \_\_\_\_\_:

\_\_\_\_\_, being duly sworn, says that the answers to the foregoing Request for Admissions are true and accurate based upon his/her personal knowledge and information.

On the \_\_\_\_\_ day of \_\_\_\_\_ 2013 \_\_\_\_\_ appeared before me, swore that his/her answers to these Request for Admissions are true and signed here above, in my presence.

\_\_\_\_\_  
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing using a CD, upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this day of \_\_\_\_\_, 2013, by regular U.S. Mail.

VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWEL





acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, correspondence, telegrams, drafts, data processing discs or tapes, and computer-produced interpretations thereof, instructions, announcements, schedules, price lists, and mechanical or electrical sound recordings and transcripts thereof, whether handwritten, typewritten, printed, faxed, xeroxed or thermographed, of whatever kind, nature, medium, manufacture, composition, material or description, however named, identified, or delineated, whether you consider it important or not. In all cases where originals and/or non-identical copies are not available, document also means identical copies of original documents and copies of non-identical copies.

3. Each request for documents seeks production of all documents described, including all drafts, of whatever date, and all non-identical copies.
4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "Tax return" shall mean, unless otherwise specified, returns for federal income tax, state income tax, state personal property tax, state business and occupation tax, real estate tax, duplicates, and any locally imposed taxes.
6. "State tax return" shall mean all tax returns except the federal income tax return.
7. "Business," "business entity" or "business enterprise" shall mean any activity, arrangement, occupation or employment into which time or capital is invested or which is entered into either for the production of income, or for the securing of an investment, or for beneficial tax consequences and shall include, but not be limited to, associations, partnerships, joint ventures, proprietorships, and corporations.
8. "Communication," shall mean any statement or utterance, whether written or oral, made by one person to another or in the presence of another, or any document delivered to or sent from one person to another.
9. "You", and "Your", or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
10. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
11. "Or" is both conjunctive or disjunctive, and the singular includes the plural and the plural includes the singular, except as the context may otherwise ambiguously require.

12. "Copies" shall mean all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located. In all cases, where originals and/or non-identical copies are not available, copies also means identical copies of original documents and copies of non-identical copies.

**B. DUTY TO SUPPLEMENT RESPONSES**

Your response to this Request for Production of Documents shall be supplemented whenever you become aware of and/or in possession, custody or control of, additional documents falling within the scope of any request set forth herein.

**C. PRIVILEGED MATTER**

If any document is withheld under claim of privilege or work product, you are to furnish a list identifying each document for which such privilege is claimed, together with the following information: date, author, sender, recipient, type (e.g. letter, memorandum, telegram, chart, photograph, etc.), subject matter of the document, the basis on which privilege is claimed, and the paragraph or paragraphs of this request to which the document responds.

**D. DOCUMENTS NO LONGER IN POSSESSION, CUSTODY OR CONTROL**

If any document described in this request was, but no longer is, in your possession, or subject to your custody or control, or in existence, state whether:

- a. It is missing or lost;
- b. It has been destroyed;
- c. It has been transferred, voluntarily or involuntarily, to others, or;
- d. It has been disposed of otherwise.

In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing same, and the date(s) thereof. Identify each document by listing its author, his or her address, type (e.g. letter, memorandum, telegram, chart, photograph, etc.), date, subject matter, present location(s) and

custodian(s), and state whether the document (or copies) is still in existence.

#### E. FORM OF PRODUCTION RESPONSE

All documents produced pursuant to this request are to be produced in the form, order and manner in which they are maintained in your files and are to be organized, identified or produced in such a manner as to indicate which of the following numbered requests they are produced in response to. Documents are to be produced in file folders and file cartons in which they have been maintained or stored and are to be clipped, stapled or otherwise arranged in the same form and manner as they were maintained in your files (whether personal, business, or other files). If identification numbers are assigned to the documents produced pursuant to this request, you are also to produce the key to the numbering system employed.

#### DOCUMENTS TO BE PRODUCED

1. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes the personnel file of officer Eric Hoskinson.
2. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes the Training file of officer Eric Hoskinson.
3. Copies of every file, statement, document, page, paper, report, collation,

writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a list of any and all other persons injured while being arrested, handcuffed or otherwise detained in any form by Officer Eric Hoskinson, to include available contact information.

4. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a use of force by Officer Eric Hoskinson, irrespective of how such report may be named or delineated by the Ohio University Police Department.
5. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a claim of an improper use of force by Officer Eric Hoskinson, irrespective of how such report or claim may be named or delineated by the Ohio University Police Department.
6. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with,

concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a use of force by the Ohio University Police Department, when Officer Eric Hoskinson was involved but was not the primary officer involved, irrespective of how such report may be named or delineated by the Ohio University Police Department.

7. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a claim of an improper use of force by the Ohio University Police Department, when Officer Eric Hoskinson was involved but was not the primary officer involved, irrespective of how such report may be named or delineated by the Ohio University Police Department.
8. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of the arrest of Lyndsey Howell.
9. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium,

manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a disciplinary action against Officer Eric Hoskinson for a use of force of any type.

10. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a disciplinary action against Officer Eric Hoskinson for lying, untruthfulness, or any other form of misrepresentations.
11. List all identifying information concerning any and all lawsuits involving the use of force where Officer Eric Hoskinson was involved as a Party, a Witness, or an involved officer.
12. Every document you intend to offer into evidence at the trial of this case.

RESPECTFULLY SUBMITTED,

VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OHIO 43212  
(614) 298-8200 S.C. #0013227  
ATTORNEY FOR LYNDSEY HOWELL

#### CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing using a CD, upon

Christopher Conomy, Assistant Attorney General as attorney for Defendant, this  
day of \_\_\_\_\_, 2013, by regular U.S. Mail.

VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWEL

## SUPPORTING MEMORANDUM

The Clerk of this Court issued service of Summons and a copy of the Complaint to the Defendant, through the Ohio Attorney General, on 3 January 2013.

The Defendant, by and through the Attorney General of Ohio received a copy of the Complaint and service of Summons on 3 January 2013.

A return receipt showing that the U.S. Post Office delivered documents to the Defendant on 4 January 2013 is filed with the Clerk.

More than 30 days have elapsed since the Defendant was served with Summons and a copy of the Complaint.

As of the filing of this Motion the Defendants:

1. Have not filed an Answer as required by Rule;
2. Have not requested an expansion of time in which to plead from either Counsel by letter or the Court by Motion;
3. Have not filed a responsive pleading in any other form.

Plaintiff is entitled to Judgment on the issue of liability.

A damages hearing is required by law.



VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWELL

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL	:	
	:	
Plaintiff	:	Case Number: 2013-00001
	:	
-V-	:	
	:	Judge: McGrath
THE OHIO UNIVERSITY	:	
POLICE DEPARTMENT	:	Magistrate: Shaver
	:	
Defendant	:	

PLAINTIFFS' FIRST SET OF INTERROGATORIES  
 TO  
 DEFENDANT OHIO UNIVERSITY POLICE DEPARTMENT

Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, Plaintiff requests that Defendant respond, within twenty-eight (28) days of service hereof, to the following interrogatories.

DEFINITIONS

1. "Person" shall mean any individual, firm, partnership, association, corporation or other legal, business or governmental entity.
2. "Document" shall mean all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody or control, regardless of where located, including without limiting the generality of the following: punch cards, printout sheets, movie films, slides, phonograph records, photographs, microfilm, notes, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, correspondence, telegrams, drafts, data processing discs or tapes, and computer-produced interpretations thereof, instructions, announcements, schedules, price lists, and mechanical or electrical sound recordings and transcripts thereof, whether handwritten, typewritten, printed, faxed, xeroxed or thermographed, of whatever kind,

nature, medium, manufacture, composition, material or description, however named, identified, or delineated, whether you consider it important or not. In all cases where originals and/or non-identical copies are not available, document also means identical copies of original documents and copies of non-identical copies.

3. Each request for documents seeks production of all documents described, including all drafts, of whatever date, and all non-identical copies.
4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
6. "Identify" means, with respect to a document, to state all of the following information relative to such document:
  - a) Nature of document;
  - b) Date thereof;
  - c) Author thereof;
  - d) Addressee;
  - e) Title;
  - f) File number or other identifying mark or code;
  - g) Subject matter of document;
  - h) Location of document by room, building, address, city and state, and identity of custodian. This may be omitted with respect to each document supplied pursuant to defendants document request;
  - i) Whether or not it is claimed that such document is privileged and, if so, the type of privilege claimed and a statement of all the circumstances which will be relied on to support such claim or privilege.
7. "Identify" shall mean, with respect to any act, to describe the act, so set forth the date (or inclusive dates) when it occurred, to set forth the place or places where it occurred; and to identify each person whose activities resulted in the act.
8. "Identify" means, with respect to any individual person, to state to the extent known: the person's full name and any nicknames or aliases, the person's present home address, present home telephone number, present or last known business address, job description, business telephone number, employer, title and the individual's employment history by date, job description and title, and his position and business affiliation at the time in question.
9. "Identify" shall mean, with respect to any entity other than a natural person, to

- set forth the full name, address and telephone number of such entity.
10. "Tax return" shall mean, unless otherwise specified, returns for federal income tax, state income tax, state personal property tax, state business and occupation tax, real estate tax, duplicates, and any locally imposed taxes.
  11. "Business", "business entity" or "business enterprise" shall mean any activity, arrangement, occupation or employment into which time or capital is invested or which is entered into either for the production of income, or for the securing of an investment, or for beneficial tax consequences and shall include, but not be limited to, associations, partnerships, joint ventures, proprietorships, and corporations.
  12. "Communication," shall mean any statement or utterance, whether written or oral, made by one person to another or in the presence of another, or any document delivered to or sent from one person to another.
  13. "You", and "Your", or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
  14. "Or" is both conjunctive or disjunctive, and the singular includes the plural and the plural includes the singular, except as the context may otherwise ambiguously require.
  15. "Copies" shall mean all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control, regardless of where located. In all cases where originals and/or non-identical copies are not available, copies also means identical copies of original documents and copies of non-identical copies.

#### INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged, which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing, under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.









RESPECTFULLY SUBMITTED,

VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS OH 43212  
S CT #0013227 (614) 298-8200  
ATTORNEY FOR LYNDSEY HOWELL

POSITIVE VERIFICATION / JURAT

STATE OF OHIO,

SS

COUNTY OF \_\_\_\_\_:

\_\_\_\_\_, being duly sworn, says that the answers to the foregoing Request for Admissions are true and accurate based upon his/her personal knowledge and information.

On the \_\_\_\_\_ day of \_\_\_\_\_ 2013 \_\_\_\_\_  
\_\_\_\_\_ appeared before me, swore that his/her answers to these Request for Admissions are true and signed here above, in my presence.

\_\_\_\_\_  
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing using a CD, upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this day of \_\_\_\_\_, 2013, by regular U.S. Mail.

VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWEL

Vincent DePascale  
Attorney and Counselor at Law

DePascale Law Offices  
786 Northwest Boulevard  
Grandview Heights, Ohio 43212

10 JULY 2013

Office (614) 298-8200  
Nights (614) 481-0555  
No Fax

CHRISTOPHER CONOMY, ESQ.  
COURT OF CLAIMS DEFENSE SECTION  
150 EAST GAY STREET, 18TH FLOOR  
COLUMBUS OH 43215-3130

Re: Howell v O U Police  
2013-00001

Dear Mr Conomy:

As of today I have not received the responses to my Interrogatories or my Demand for the Production of Documents, nor have you requested an expansion of time. This discovery is 30 days overdue.

Please provide the discovery forthwith, or provide an explanation as to the cause of the delay.

Failing that, I shall file a Motion to Compel Discovery.

  
Vincent DePascale

# Vincent DePascale

Attorney and Counselor at Law

DePascale Law Offices

786 Northwest Boulevard

Grandview Heights, Ohio 43212

13 AUGUST 2013

Office (614)298-8200

Fights (614) 481-0555

No Fax & No E-Mail

CHRISTOPHER CONOMY, ESQ.  
COURT OF CLAIMS DEFENSE SECTION  
150 EAST GAY STREET, 18TH FLOOR  
COLUMBUS OH 43215-3130

Re: Howell v O U Police  
2013-00001

Dear Mr Conomy:

As of today I have not received the responses to my Interrogatories or my Demand for the Production of Documents . This discovery is now more than 75 days overdue.

Please provide the discovery forthwith, as failing that, I shall file a Motion to Compel Discovery and for sanctions.

At this point it is obvious that you are delaying the processing of this case without just cause.

Vincent DePascale

PLAINTIFF'S EXHIBIT 13

Vincent DePascale  
Attorney and Counselor at Law

DePascale Law Offices  
786 Northwest Boulevard  
Grandview Heights, Ohio 43212

4 SEPTEMBER 2013

Office (614) 298-8200  
Nights (614) 481-0555  
No Fax

CHRISTOPHER CONOMY, ESQ.  
COURT OF CLAIMS DEFENSE SECTION  
150 EAST GAY STREET, 18TH FLOOR  
COLUMBUS OH 43215-3130

Re: Howell v O U Police  
2013-00001

Dear Mr Conomy:

On 19 August 2013 you called me at my office and advised me that your clients had finally sent you compliance with my discovery demands but that due to your deposition requirements I would receive my discovery on the following Monday, 26 AUG 13.

As of the 19<sup>th</sup> of August, 2013, much less the 26<sup>th</sup> of August, 2013, the discovery was 69 days late.

Today is 4 SEP 13 and I have nothing.

Other than making frivolous denials do you have any idea what the hell you are doing?

Vincent DePascale.

PLAINTIFF'S EXHIBIT 14



4. For such other and further relief as may be just, reasonable, and proper.

RESPECTFULLY SUBMITTED,



VINCENT DePASCALE, Trial Attorney  
786 NORTHWEST BOULEVARD  
GRANDVIEW HEIGHTS, OH 43212  
(614) 298-8200 S.C. # 0013227  
ATTORNEY FOR LYNDSEY HOWELL

#### SUPPORTING MEMORANDUM

On or about the 10<sup>th</sup> day of May, 2013, Plaintiff by and through her attorney submitted Interrogatories and a Demand for the Production of Documents to Defendant by and through its attorney of record, by hard copy and CD, a hard copy of which is enclosed herewith, incorporated herein and made a part hereof.

On or about the middle of June, 2013, counsel herein sent a letter to Mr Conomy (such letter apparently [and erroneously] carried the date of the prior letter concerning the transmittal of the discovery demands) advising him that he had not provided the requested discovery.

Again, on 13 August 2013, Mr Conomy was notified that he had not complied with the discovery demands.

For reasons unknown Mr Conomy makes a habit of not complying with the demands of the law and the Civil Rules. When Defendant was served with the

Summons and a copy of the Complaint Mr Conomy failed to file an Answer for more than 40 days past the Answer date, and then only filed after Plaintiff had filed a Motion for Default Judgment.

On 19 August 2013 Mr Conomy called the office of Plaintiff's counsel and related that his clients had *finally* provided the discovery demanded, but that due to his deposition schedule he would be unable to forward the documents until Monday of the following week. That did not occur.

Counsel herein sent multiple letters to Mr Conomy concerning his failures to provide discovery.

Plaintiff's counsel finds the following set of facts to have specific impact and importance in this issue:

The request for admissions, which were sent to Mr Conomy with the Interrogatories and Demand for the production of documents, were returned to counsel with responses within the time set by the Civil Rules. Many of the Requests for Admission were denied (which will be addressed at another time). The Civil Rules provide that when responses to Admissions are not provided within Rule the Admissions are deemed admitted. Apparently when Mr Conomy will suffer a detriment he does not desire to suffer he is able to comply with the Civil Rules, it is only when he desires to frustrate and impinge upon the rights, remedies, and due process of the Plaintiff that he is unable to comply.

Now, discovery is 90 days overdue and has not arrived.

Plaintiff cannot take depositions or otherwise comply with the Scheduling Order issued by this Court due to the wilful failure of Mr Conomy to follow the Civil Rules and provide discovery.

As Plaintiff's counsel understands the law, financial sanctions cannot be imposed upon the State itself by this Court. However, Mr Conomy is not the State, he is a licensed attorney and is subject to the penalties for his own misconduct. Until Mr Conomy is made to understand that he must comply with the same rules and laws as the rest of the bar he will continue to fail in his responsibilities to the Court and the profession.

Plaintiff should not be required to pay an attorney to do work that should not be necessary, and would not be necessary, if Mr Conomy followed the same rules as all other attorneys in Ohio. Counsel for Ms Howell should not be required to work without compensation simply because Mr Conomy does not believe he is bound by the laws and rules which he does not like or of which he does not approve.

Paying financial sanctions will get his attention and bring his conduct into line.

  
VINCENT DePASCALE  
ATTORNEY FOR LYNDSEY HOWELL

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this 24<sup>TH</sup> day of September, 2013, by regular U.S. Mail.

  
VINCENT DEPASCALE  
ATTORNEY FOR LYNDSEY HOWEL

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS**

REQUEST NUMBER 1:

Admit that Officer Haskinson was trained and certified in accordance with the requirements of the Ohio Peace Officer Training Council, the standards set by the Ohio Attorney General, and the Ohio Revised Code.

ANSWER

Admit.

REQUEST NUMBER. 2:

Admit that Officer Haskinson received training and instruction on proper handcuffing techniques.

ANSWER

Admit.

REQUEST NUMBER. 3:

Admit that no injuries were visible on Plaintiff's hands at the time that she was arrested.

ANSWER

Deny.

Further answering, Defendant states that the circumstances of Plaintiff's arrest did not allow the officer a full view of Plaintiff's hands at the time, nor was he under any duty to inspect for potential injury prior to placing the cuffs on Plaintiff. As a result, injuries may have been present without his knowledge.

REQUEST NUMBER. 4:

Admit that no injuries were visible on Plaintiff's hands prior to being handcuffed by Officer Haskinson.

ANSWER

Deny.

Further answering, please see the response to the preceding request.

REQUEST NUMBER. 5:

admit that after being handcuffed Plaintiff requested that the handcuffs be removed because they were painful.

ANSWER

Deny.

Further answering, Defendant states that Plaintiff indicated that she felt pain and requested that the handcuffs be removed, but denies that any pain or injury was caused by the handcuffs or the officer's conduct.

REQUEST NUMBER. 6:

Admit that during the entire Field Sobriety Testing procedures Plaintiff made no complaints about injuries to her hand.

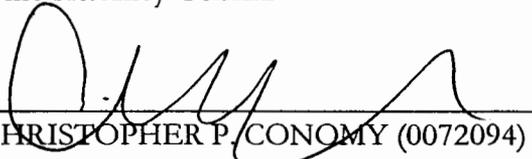
ANSWER

Deny.

Further answering, Defendant states that Plaintiff was intoxicated enough that she likely was unaware of a pre-existing injury until later.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



CHRISTOPHER P. CONOMY (0072094)  
Senior Assistant Attorney General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130  
Telephone: 614-466-7447  
Facsimile: 866-452-9957  
Christopher.Conomy@OhioAttorneyGeneral.gov  
COUNSEL FOR DEFENDANT

### CERTIFICATE OF SERVICE

On June 7, 2013, a copy of this document was served via regular mail on the following  
counsel listed for Plaintiff:

Vincent DePascale  
786 Northwest Blvd.  
Grandview Heights, Ohio 43212

Counsel for Plaintiff



CHRISTOPHER P. CONOMY (0072094)  
Assistant Attorney General

REQUEST NUMBER. 7:

Admit that after Plaintiff made repeated complaints about pain in her hands Officer Haskinson made no personal effort to ascertain if she was injured.

ANSWER

Deny.

Further answering, Defendant states that Plaintiff indicated that she felt pain and requested that the handcuffs be removed, but denies that any pain or injury was caused by the handcuffs or the officer's conduct, and that Plaintiff was intoxicated enough that she likely was unaware of a pre-existing injury until later.

REQUEST NUMBER. 8:

Admit that after Plaintiff made repeated complaints about pain in her hands Officer Haskinson made no effort to assess or provide for her injuries.

ANSWER

Deny.

Further answering, Defendant states that Plaintiff indicated that she felt pain and requested that the handcuffs be removed, but denies that any pain or injury was caused by the handcuffs or the officer's conduct, and that Plaintiff was intoxicated enough that she likely was unaware of a pre-existing injury until later.

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**DEFENDANT'S RESPONSE TO PLAINTIFF'S  
MOTION TO COMPEL**

Defendant Ohio University respectfully asks this Court to deny Plaintiff's Motion to Compel as moot because the requested discovery has been served. The discovery responses sought in the Motion to Compel were served on Plaintiff's counsel just as the Motion was served. As a result, the Motion is moot.

The Motion also seeks to revisit matters that have already been decided by this Court. As this Court is aware, the initial delay in responding to this litigation was the result of medical issues the week that the initial Answer to the Complaint was due, and this court found it to be excusable neglect. It was not, as Plaintiff claims, the result of counsel's alleged disregard of the rules governing this action.

Furthermore, the trial of this matter is not until the end of March, 2014, and Plaintiff will still have time to conduct ample discovery in this uncomplicated matter. There has been no prejudice in this case.

Accordingly, the Motion should be denied.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



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CHRISTOPHER P. CONOMY (0072094)  
Principal Assistant Attorney General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130  
Telephone: 614-466-7447  
Facsimile: 866-452-9957  
Christopher.Conomy@OhioAttorneyGeneral.gov  
COUNSEL FOR DEFENDANT

#### CERTIFICATE OF SERVICE

On October 17, 2013, a copy of this document was served via regular mail on the following:

Vincent DePascale  
786 Northwest Blvd.  
Grandview Heights, Ohio 43212

Counsel for Plaintiff



---

CHRISTOPHER P. CONOMY (0072094)  
Assistant Attorney General

Vincent DePascale  
Attorney and Counselor at Law

DePascale Law Offices  
786 Northwest Boulevard  
Grandview Heights, Ohio 43212

12 JUNE 2012

Office (614)298-8200  
Fights (614) 481-0555  
No Fax & No E-Mail

CHIEF, OHIO UNIVERSITY POLICE  
88 UNIVERSITY TERRACE  
ATHENS OH 45701

RE: Lyndsey Howell  
Eric Hoskinson  
Statute date 20 JAN 13

Chief:

Please be advised that I represent Ms Lyndsey Howell who was injured by Officer Eric Hoskinson during her arrest on 20 JAN 12.

In addition to Ms Howell's medical bills of ± \$5,000.00 and the pain associated with the injury of a broken hand, she was required to wear a cast on her hand and wrist for a number of weeks while she was doing her "hands-on" nurse's training.

We have a one year statute on this so I need to know now whether your Department will be accepting responsibility for the injury and turning the matter over to your insurance carrier (or whomever the University uses for such cases) for negotiation and settlement, or, whether I need to file suit in the appropriate forum.

While I have trouble understanding how something like this can occur during the routine handcuffing of a 115 pound woman, my client and I would prefer not to litigate the multitude of issues that would have relevance in a lawsuit. We will do so rather than walk away, however.

Please advise me as to the position taken by the Department/University by 1 JUL 12 so I know how to proceed.

  
Vincent DePascale

PLAINTIFF'S EXHIBIT 18



**OHIO**  
UNIVERSITY

Legal Affairs

June 20, 2012

Office of Legal Affairs  
Lindley Hall 185  
1 Ohio University  
Athens OH 45701-2979

T: 740.593.2626  
F: 740.593.0200

*Sent via US Mail*

DePascale Law Offices  
Attn: Vincent DePascale, Esq.  
786 Northwest Boulevard  
Grandview Heights, Ohio 43212

Re: Howell, Lyndsey

Mr. DePascale,

Thanks for your recent letter of representation and demand for settlement in connection with Ms. Howell's allegations of injury during her arrest on 1/20/12. Our office does not wish to engage in settlement negotiations at this time. Please forward all future correspondence concerning this potential claim to the Ohio University Office of Legal Affairs. I look forward to working with you to reach an amicable resolution of this matter.

Sincerely,

Tiffany Hill-Smith, Esq.  
hill-smi@ohio.edu

IN THE COURT OF CLAIMS OF OHIO

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

**INTERROGATORIES**

1. Explain in detail how the Plaintiff failed to file the lawsuit in this action within the proper time frame, or within the appropriate Statute of Limitations.

OBJECTION: Calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time.

2. Explain in detail how Plaintiff's damages are not the direct and proximate result of having her thumb broken.

OBJECTION: Vague and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failure to act.

3. Explain in detail how the Doctrine of Latches bars this Complaint and/or lawsuit.

OBJECTION: Calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time.

4. List every intervening force or act over which Defendant had no control caused Plaintiff's injuries.

OBJECTION: Vague, grammatically incomprehensible, and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Defendant is not aware of how plaintiff was injured but such injury was not the proximate result of defendant's actions or failure to act.

5. List every intervening force or act over which Defendant had no duty control caused Plaintiff's injuries.

OBJECTION: Vague, grammatically incomprehensible, and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Defendant is not aware of how plaintiff was injured but such injury was not the proximate result of defendant's actions or failure to act.

6. List every superceding force or act over which Defendant had no control caused Plaintiff's injuries.

OBJECTION: Vague, grammatically incomprehensible, and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Defendant is not aware of how plaintiff was injured but such injury was not the proximate result of defendant's actions or failure to act.

7. List every superceding force or act over which Defendant had no control caused Plaintiff's injuries.

OBJECTION: Vague, grammatically incomprehensible, and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Defendant is not aware of how plaintiff was injured but such injury was not the proximate result of defendant's actions or failure to act.

8. Explain in detail every reason Plaintiff's Complaint fails to state a cause of action upon which relief can be granted or fails to state a claim for relief.

OBJECTION: Calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time.

9. Explain in detail how the damages alleged by the Plaintiff are the result of her own sole negligence.

OBJECTION: Calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time.

10. List every act of negligence committed or perpetrated by the Plaintiff with respect to this incident.

OBJECTION: Calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time.

11. List every reason why Lyndsey Howell was negligent during the handcuffing procedure which occurred.

OBJECTION: Vague and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failure to act.

12. List every known risk which Plaintiff assumed during this incident.

OBJECTION: Vague and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failure to act.

13. List every reason why or how Plaintiff failed to mitigate her damages.

OBJECTION: Vague and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failure to act.

14. List every action Plaintiff should have taken to mitigate her damages.

OBJECTION: Vague and calls for a legal conclusion.

Without waiving objection, further evidence may be produced in the course of discovery and will be provided at that time. Whatever damage plaintiff suffered from a broken thumb was not the proximate result of defendant's actions or failure to act.

## DOCUMENTS TO BE PRODUCED

1. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes the personnel file of officer Eric Hoskinson.

Response:

Officer Hoskinson's personnel file is produced herewith.

2. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes the Training file of officer Eric Hoskinson.

Response:

Officer Hoskinson's training file is produced herewith.

3. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of

record, however named, identified, or delineated, whether you consider it important or not, that constitutes a list of any and all other persons injured while being arrested, handcuffed or otherwise detained in any form by Officer Eric Hoskinson, to include available contact information.

Response:

No such documents exist.

4. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a use of force by Officer Eric Hoskinson, irrespective of how such report may be named or delineated by the Ohio University Police Department.

Response:

Responsive documents are produced herewith.

5. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a claim of an improper use of force by Officer Eric Hoskinson, irrespective of how such report or claim may be named or delineated by the

Ohio University Police Department.

Response:

No such documents exist.

6. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a use of force by the Ohio University Police Department, when Officer Eric Hoskinson was involved but was not the primary officer involved, irrespective of how such report may be named or delineated by the Ohio University Police Department.

Response:

Responsive documents are produced herewith.

7. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a claim of an improper use of force by the Ohio University Police Department, when Officer Eric Hoskinson was involved but was not

the primary officer involved, irrespective of how such report may be named or delineated by the Ohio University Police Department.

Response:

Responsive documents are produced herewith.

8. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of the arrest of Lyndsey Howell.

Response:

Responsive documents are produced herewith.

9. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a disciplinary action against Officer Eric Hoskinson for a use of force of any type.

Response:

No such documents exist.

10. Copies of every file, statement, document, page, paper, report, collation, writing, note, memorandum, communication, instrument, microfiche, microfilm, hard-copy or tape; whether handwritten, typewritten, printed, faxed, xeroxed, or thermographed; of whatever kind, nature, medium, manufacture, composition, material, or description; dealing with, concerning, about, relevant to, or which constitutes any form of record, however named, identified, or delineated, whether you consider it important or not, that constitutes a report of a disciplinary action against Officer Eric Hoskinson for lying, untruthfulness, or any other form of misrepresentations.

Response:

No such documents exist.

11. List all identifying information concerning any and all lawsuits involving the use of force where Officer Eric Hoskinson was involved as a Party, a Witness, or an involved officer.

Response:

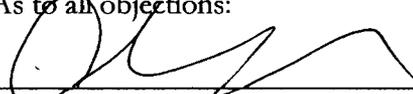
No such documents exist.

12. Every document you intend to offer into evidence at the trial of this case.

Response:

No determination has been made as to what documents might be used at the trial of this matter.

As to all objections:



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CHRISTOPHER P. CONOMY (0072094)  
Senior Assistant Attorney General

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



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CHRISTOPHER P. CONOMY (0072094)  
Senior Assistant Attorney General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130  
Telephone: 614-466-7447  
Facsimile: 866-452-9957  
Christopher.Conomy@OhioAttorneyGeneral.gov  
COUNSEL FOR DEFENDANT

**CERTIFICATE OF SERVICE**

On September 25, 2013, a copy of this document was served via regular mail on the following counsel listed for Plaintiff:

Vincent DePascale  
786 Northwest Blvd.  
Grandview Heights, Ohio 43212

Counsel for Plaintiff



---

CHRISTOPHER P. CONOMY (0072094)  
Assistant Attorney General



HOWELL

LOCATION OF OCCURRENCE / ADDRESS: RICHLAND AVENUE RICHLAND AVENUE, DAIRY LANE  
 DATE / TIME REPORTED: 01/21/2012 00:50  
 CASE NO.: 120082

CODE SECTION	CRIME	CLASSIFICATION	LOSS	RECOVERY
4513.03	LIGHTS	TRAFFIC - EQUIPMENT	0.00	0.00
4511.19A1a	Operating Under the Influence	TRAFFIC	0.00	0.00

FROM: DATE/TIME: 01/21/2012 00:50 TO: DATE/TIME: 01/21/2012 00:50 APPROVED: NO CASE STATUS: CLOSED

ADDITIONAL CATEGORIES:  ALCOHOL RELATED  DRUGS INVOLVED  SENIOR CITIZEN  ARREST OCCURED  TRAFFIC RELATED  GROUP/GANG INVOLVED  WEAPONS INVOLVED  DOMESTIC VIOLENCE

ITEMS IN REPORT:  SUPPLEMENT  PICTURE/IMAGES  FOLLOW UP  PROPERTY/EVIDENCE

COPIES TO:  INVESTIGATIONS  FACILITIES MAN  PROSECUTOR  CLERY  CHIEF  LIEUTENANTS  JUDICIARIES  FIRE

INV D	NAME - LAST, FIRST, MIDDLE	SUFFIX	RACE	ETHNICITY	SEX	AGE	DOB	HT	WT	HAIR	EYE
	HOWELL, LYNDSLEY, N		W		F	20	04/28/1991	5.3	103	BLN	HAZ
SSN	DRIVER'S LIC. NO.		STUDENT ID		TYPE						
	TA017113 OH				Student						

ADDRESS TYPE	STREET NUMBER	STREET NAME	SUITE NUMBER	CITY	STATE	ZIP
Home	2829	Polk Hollow RD		Chillicothe	OH	45601
Off Campus/Local 31		S. Court Street	207	Athens	OH	45701

PHONES: Mobile - Cell: 740-649-5959;

NARRATIVE: On the above date and time, Miss Lyndsey N. Howell was stopped for operating her vehicle without illuminated headlights and taillights. During the stop she was found to be under the influence of alcohol and after performing a series of field sobriety tests, was arrested for the violation. She was transported to the Ohio University Police Department where she was later released.

This case is pending in Athens County Municipal Court on 1-23-12 at 0930 hours.

N.G.  
 2-13-12  
 8AM

PLAINTIFF'S EXHIBIT 21

**POLICE****OHIO**  
UNIVERSITYOhio University  
Police Department  
Supplement Case Report  
Athens, Ohio University, OH, 45701

PHONE: 740-593-1911 FAX: 740-593-0576 police@ohio.edu

Case No.

**120082**

Location of Occurrence / Address

RICHLAND AVENUE/DAIRY LANE/RICHLAND AVENUE,

Cad No.

12-01-21-015033

Date and Time Reported

01/21/2012 00:50

CODE SECTION  
4513.03  
4511.19A1aCRIME DESCRIPTION  
LIGHTS  
Operating Under the InfluenceCLASSIFICATION  
TRAFFIC - EQUIPMENT  
TRAFFIC

Supplement Narrative

On 1-21-12, at approximately 0050 hours, I observed a black vehicle traveling S/B on Richland Avenue without illuminated headlights or taillights. I was sitting stationary at a red traffic signal on S. Shafer Street facing east as the vehicle passed through the intersection and continued S/B on Richland. I immediately pulled behind the vehicle and notified my dispatch center. I activated my overhead emergency lights and the vehicle stopped on Richland Avenue near Dairy Lane. Due to traffic concerns and safety, I briefly made contact with the driver and had her pull forward and onto Dairy Lane. After repositioning my vehicle onto Dairy Lane, I again made contact with the driver and identified her as Miss Lyndsey N. Howell, age 20.

I immediately detected a moderate odor of an intoxicating beverage and noticed her eyes appeared glazed. I asked for her driver's license and asked if she knew why I stopped her. She had no idea and asked if she had made a lane change too soon. I advised her it was not due to a lane violation and informed her she had failed to turn on her headlights. She ventured toward the light switch and stated, "They're on auto." I informed her that may be the case and asked if she had noticed the obvious darkness she was driving through. She stated, "Yes, I pondered." I asked if she had consumed alcohol prior to the stop and she stated she did. She informed me she consumed one drink at approximately 0030 hours at her residence on Court Street. I then had Howell step from the vehicle and accompany me to the front of my vehicle. Once outside the vehicle, I noticed the odor once again on her breath. She was asked to participate in a series of field sobriety tests the results of which have been attached to this report.

At the completion of the field sobriety tests, she was arrested and transported to the Ohio University Police Department where she was read and explained the BMV 2255 and given the opportunity to provide a breath sample. She refused and was advised of her ALS.

While on station, Howell began to complain that her left thumb felt "broken." I had her stand and could not see anything out of the ordinary, with the exception of very limited swelling. I walked her to the dispatch center where CO Barker also looked at the thumb. CO Baker took notice of the tightness of the handcuffs and stated they did not look too tight, nor were any marks visible around the wrist observed from wearing the handcuffs.

Howell did not fall at any time during our contact and was asked if she fell prior to the stop. She stated she did not. She was asked if she wanted EMS personnel to look at her thumb and she stated she did not. I instructed CO Baker to contact EMS personnel anyway and have them come look at Howell's thumb. A short time later Ron Herbert and Zach Cyrus from the Athens County EMS arrived. They advised they also could see the swelling, but informed Howell an x-ray would be needed to determine if it was, "Broken." She requested to be transported to O'Bleness ER and she was.

Prior to her transport, she was provided with a copy of the BMV 2255 and citation.

Reporting Officer  
HOSKINSON, ERICSupplement Date and Time Reported  
01/21/2012 03:24

Reviewed By

Approval Date and Time

Signatures

Print Date and Time  
01/21/2012 05:09Printed By  
HOSKINSON, ERICPage No.  
1 of 2

09



O'BLENESS Memorial Hospital

EMERGENCY PROVIDER RECORD

Hand or Wrist Injury

Occult Scaphoid Fx / Triquetral Fx / Injection Injury / Closed Fist Injury / Infectious Tenosynovitis

TIME SEEN: 0430 ROOM: 6 EMS Arrival

HISTORIAN: patient family EMS

UNABLE TO OBTAIN HISTORY DUE TO:

HPI

chief complaint: injury to: right (left) hand palm wrist forearm elbow arm thumb index finger middle finger ring finger small finger

occurred: just PTA where: home work school police timing: still present gone now worse Other injuries:

severity of pain: mild moderate severe worse / persistent since pain intermittent / lasting

context: fall blow laceration crushed burn human / animal bite became dizzy / fainted seizure high pressure injection: hand cuff capriol

location of injury: upper extremity R/L hand R/L palm R/L fingers R/L

ROS recent illness / fever LNMP preg post-menop vision change / problems neck / back pain nasal drainage / congestion leg / ankle swelling chest pain swollen glands / rash hurts to breathe / short of breath headache cough bloody / productive lost feeling / power abdominal pain wrist / hand / fingers nausea / vomiting blood confusion / memory loss diarrhea / black / bloody stools depression / anxiety painful urination all systems neg except as marked

PAST HX R/L HANDED cardiac disease A-fib AMI hypertension diabetes Type 1 Type 2 immunosuppressed AIDS steroids diet / oral / insulin neuropathy lung disease asthma COPD GI disease hepatitis prior injury old records reviewed / summary:

Tetanus Immun. UTD given in ED Medications none see nurses note ASA clopidogrel warfarin LMWH NSAID Allergies NKDA see nurses note antibiotic

SOCIAL HX smoker drugs alcohol (recent / heavy / occasional) occupation living situation alone family friend group care facility

FAMILY HX reviewed, not relevant

5879646 190930 HOWELL, LYNDESEY

F 04/28/1991 20Y ED 01/21/2012 Family Physician HUDSON HEALTH I



Nursing Assessment Reviewed Initial Vital Signs Reviewed BP 132/88 HR 87 RR 16 Temp 97.4 Pulse O2 49 % RA O2 Interp nml hypoxic

PHYSICAL EXAM EXAM LIMITED BY:

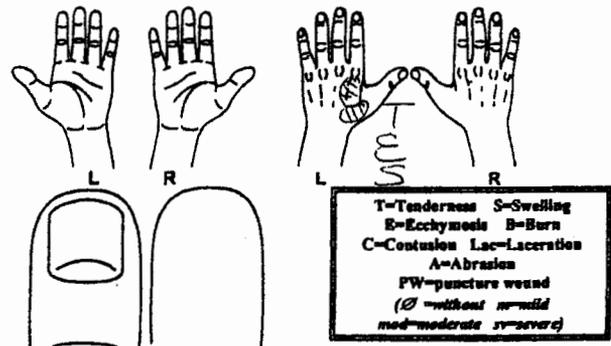
General Appearance mild / moderate / severe distress anxious

EXTREMITIES HAND see diagram tenderness soft-tissue / bony / snuff box swelling / ecchymosis / deformity / laceration limited ROM due to: pain / functional deficit nail injury complete / partial avulsion

WRIST nml inspection tenderness soft-tissue / bony / snuff box non-tender wrist pain on axial thumb load no evidence of FB swelling / ecchymosis / deformity / laceration limited ROM

FOREARM / ELBOW / ARM uninjured see diagram above wrist tenderness soft-tissue / bony swelling / ecchymosis / deformity limited ROM

TENDONS / LIGAMENTS tendon function nml tendon visualized / injury seen nml ligament function extensor flexor complete partial deficit in tendon function limited / painful extension limited flexion abnml adduction of thumb and index finger abnml opposition



digital nerve deficit decreased fine touch abnml 2-point discrim. median nerve deficit sensory deficit- lat. 3 1/2 fingers / lat palm motor deficit- pronation / thumb flexion index & middle finger flexion ulnar nerve deficit sensory deficit- med. palm / med. 1 1/2 fingers motor deficit- thumb adduction / fingers adduct. radial nerve deficit motor deficit- wrist drop / thumb extension

30242400921

PLAINTIFF'S EXHIBIT 22 310111

VASCULAR  
 no vascular compromise

pallor / cool skin / abnormal cap refill  
pulse deficit radial ulnar

SKIN

color nml, no rash  
warm, dry

see diagram  
decubitus

HEENT

head atraumatic  
pharynx nml

tenderness  
swelling / ecchymosis  
scleral icterus

NECK / BACK

nml inspection  
non-tender

tenderness  
swelling / ecchymosis

RESPIRATORY

chest non-tender  
 breath sounds nml

tenderness  
swelling / ecchymosis / abrasions  
crepitus / subcutaneous emphysema  
decreased breath sounds  
wheezes / rales / rhonchi  
tachycardia / bradycardia

CVS

heart sounds nml

ABDOMEN / GI

non-tender  
 no organomegaly

tenderness / guarding

PSYCH

mood / affect nml

depressed mood / flat affect

PROCEDURES

Wound Description / Repair

length \_\_\_\_\_ cm location \_\_\_\_\_  
linear stellate irregular flap into: subcut / muscle  
clean contaminated moderately / heavily  
distal NVT: neurovascular intact no tendon injury  
anesthesia: local digital block topical lidocaine  
marcaine epi / bicarb \_\_\_\_\_ mL

prep: PCMX  
irrigated w/ saline extensively cleaned debrided mod. / extensive  
wound explored wound margins revised  
to base / in bloodless field multiple flaps aligned  
no foreign body identified nail bed repaired  
foreign material removed required instrumentation / extension

repair: Wound closed with: wound adhesive / steri-strips  
SKIN- # \_\_\_\_\_ -0 nylon / prolene / staples  
SUBCUT- # \_\_\_\_\_ -0 vicryl / chromic  
NAILBED- # \_\_\_\_\_ -0

Reduction / Splinting

where: arm splint / cast short / long finger splint Hand  
type: fingers "buddy-taped" ace wrap / tape  
Velcro OCL / Ortho-glass / Plaster Elbow Aluminum-foam  
Volar Thumb-Spica Ulnar Wrist Sugar-Tong Cock-up Colles

applied by: ED Physician / PA / NP  
Provider Assisted / Supervised by: PA / NP / RN / Tech

procedure:  
digital block marcaine 0.25% 0.5% lidocaine 1% 2% without epinephrine  
subungual hematoma drained using electrocautery / drill  
foreign body removed superficial with instrumentation  
nail removed

Closed reduction \_\_\_\_\_  
Moderate sedation \_\_\_\_\_ Follow up required with \_\_\_\_\_

Post Reduction / Splint Exam  
NV intact alignment good deformity reduced

XRAYs

interpreted by ED provider unless noted otherwise  
RTL hand wrist forearm Dr. Dr. Bessler  
nml / NAD no fracture nml alignment no foreign body  
Ist mc nondisplaced fx

Other study: \_\_\_\_\_  
 See separate report

30242400922

58796 190930  
HOWELLYNDSEY

F 04/28/1991 20Y  
ED 01/21/2012  
Family Physician: HUDSON HEALTH.I



PROC

Time \_\_\_\_\_ unchanged improved re-examined  
antibiotics for open fracture / bite wounds

patient ambulating / mentating at pre-event baseline  
Discharge VS: BP \_\_\_\_\_ HR \_\_\_\_\_ RR \_\_\_\_\_ Temp \_\_\_\_\_  
referred to / discussed with Dr. \_\_\_\_\_ Time: \_\_\_\_\_  
will see patient in: ED / hospital / office in \_\_\_\_\_ days

Counseled patient / family regarding: Additional history from:  
lab / rad. results / diagnosis need for follow-up family caretaker paramedics  
prior records ordered \_\_\_\_\_ holding orders written  
 Rx given

CRITICAL CARE (excluding time for other separate services)  
TIME  30-74 min  75-104 min \_\_\_\_\_ min

CLINICAL IMPRESSION

Contusion \_\_\_\_\_ Human Bite / Closed Fist Injury  
Hematoma \_\_\_\_\_ Nerve Injury  
Laceration \_\_\_\_\_ Sprain / Strain  
Game Keeper Thumb R / L Tenosynovitis Infectious  
High Pressure Injection Injury  
Fracture R L radius distal / shaft / proximal  
Dislocation ulna prox / shaft / distal / styloid Colles' Fx  
scaphoid / lunate / triquetrum  
metacarpal # 5 4 3 2 1  
scaphoid / lunate / triquetrum  
phalanx # \_\_\_\_\_ prox / middle / distal tuft  
nondisplaced  
Present On Admission decubitus / UTI w/ Foley \_\_\_\_\_

Disposition Order Time 0600  
DISPOSITION-  home  admitted  OBS  expired  
 AMA (see AMA template #73)  transferred  
CONDITION-  unchanged  improved  stable  
Care transferred to \_\_\_\_\_ MD / DO / MLP Time: \_\_\_\_\_  
\_\_\_\_\_ NP / PA \_\_\_\_\_ MD / DO

IDX Provider # \_\_\_\_\_ Resident  
 Exam / procedure done by: PA, NP, resident under supervision of attending Physician.  
 I saw and personally evaluated the patient, discussed with the MLP and agree with the findings and management.

I personally saw and examined the patient. I have reviewed and agree with the Resident's findings, including all diagnostic interpretations, and treatment plans as written. I was present for the key portions of any procedures performed and the inclusive time noted in any critical care statement.

I have reviewed the nursing documentation and agree with the information documented. ED Physician Maria Strus  
Maria Strus MD / DO  
INX# 99686

IDX Provider # \_\_\_\_\_ Attending  
 Template Complete  Dictated Addendum  Written Addendum



12  
  
**O'BLENESS**  
 Memorial Hospital  
**EMERGENCY NURSING RECORD**  
 General Medicine Complaints

**TRIAGE TIME** 0230 1 2 3 4 5  
**NAME:** Howell, Lyndsey  
**D.O.B.:** 4-20-91 M (F)  
**ARRIVAL MODE:** car EMS police  
**HISTORIAN:** patient paramedics family  
**CHIEF COMPLAINT:** Thumb swelling from Handcuff  
**TIME TO ROOM:** ROOM:  
 Triage RN Signature *Watt*

**INITIAL ASSESSMENT TIME:** 0230  
**TREATMENT PTA** see EMS report IV O<sub>2</sub>  
 last blood glucose \* ASA  
**VITALS** Height Weight kg  
 BP 132/88 P 97 RR 16 temp 97.4 TM @ R Ax  
 SaO<sub>2</sub> 99 RA/O<sub>2</sub>  
**PAIN LEVEL** current: 6/10 max /10 acceptable /10  
 scale used quality location

**COMPLAINTS**  
 started hrs / days ago  
 high blood pressure high / low blood sugar  
 shortness of breath fever / chills  
 cough dry productive problems urinating  
 chest pain back pain  
 nausea / vomiting x diarrhea  
 abdominal pain headache  
 chemical exposure

PCP: none *Compas Care*  
 IMMUNIZATIONS: current / referral  
 Flu (seasonal / H1N1) pneumovax  
**ALLERGIES** NKDA  
 drug - PCN / ASA / sulfa / latex / codeine / iodine  
 food -

**PAST MEDICAL HX** (negative) extensive: see back of sheet  
 heart disease / HTN / diabetes: insulin  
 past surgeries none

**SOCIAL HX**  
 \* have you smoked in past 12 months 0 ppd counseling performed  
 drugs / alcohol  
 TB exposure / symptoms  
 has been physically hurt or threatened by someone close  
 fall risk screen completed  
 LNMP G P Ab pregnant / postmenop / hyst

**GENERAL APPEARANCE**

no acute distress mild / moderate / severe distress  
 ~~anxious~~ anxious / decreased LOC

**FUNCTIONAL / NUTRITIONAL ASSESSMENT**

independent ADL assisted / total care  
 appears well obese / malnourished  
 nourished / hydrated recent weight loss / gain

**RESPIRATORY**

no resp distress mild / moderate / severe distress  
 nml breath snds wheezing / crackles / stridor  
 decreased breath sounds

**CVS**

regular rate tachycardia / bradycardia  
 pulses strong & equal pulse deficit  
 skin warm & dry cool / diaphoretic  
 skin intact pale / cyanotic  
 skin breakdown

**NEURO**

~~disoriented~~ disoriented to person / place / time  
 ~~confused~~ confused  
 ~~pupils unequal~~ pupils unequal R L  
 ~~weakness / sensory loss~~ weakness / sensory loss

**EENT**

~~inspection~~ inspection  
 nml ENT inspection scleral icterus / pale / red conjunctivae  
 epistaxis nasal drainage  
 epistaxis

**ABDOMEN**

nml inspection tenderness / guarding / rebound  
 soft, non-tender rigid / distended  
 bowel sounds nml bowel sounds hyper hypo absent

**EXTREMITIES**

non-tender calf tenderness *Thumb knuckle*  
 moves all extremities limited ROM / contractures  
 no pedal edema pedal edema

ROOM: TIME: REPORT TO:  
 ROOM: TIME: REPORT TO:  
 ROOM: TIME: REPORT TO:  
 ROOM: TIME: REPORT TO:

**INITIAL ACTIONS**

TIME	INIT
ID band applied	ID band verified
disrobed / gowned	blanket provided
bed low position	side rails up x1 x2
call light in reach	head of bed elevated

Nurse Signature *Subramaniam Sel*

\* protocol available \* **DISCLOSED BY OWN**

*3wbs*

5879646 190930  
**HOWELL, LYNDSY**  
 F 04/28/1991 20Y  
 ED 01/21/2012  
 Family Physician: HUDSON HEALTH.I



Permanent Chart Copy

Page \_\_\_\_ of \_\_\_\_

Date	Start Time	Stop Time	IV SOLUTION	RATE	IV Attempts	Site and Gauge	Nurse Signature	D/C Time	Type of dressing	Angio Intact?	Nurse Signature
			<input type="checkbox"/> Heparin <input type="checkbox"/> 0.9 NS <input type="checkbox"/> Other =						<input type="checkbox"/> Bandaid <input type="checkbox"/> gauze + tape <input type="checkbox"/> other	<input type="checkbox"/>	
			<input type="checkbox"/> Heparin <input type="checkbox"/> 0.9 NS <input type="checkbox"/> Other =						<input type="checkbox"/> Bandaid <input type="checkbox"/> gauze + tape <input type="checkbox"/> other	<input type="checkbox"/>	
			<input type="checkbox"/> Heparin <input type="checkbox"/> 0.9 NS <input type="checkbox"/> Other =						<input type="checkbox"/> Bandaid <input type="checkbox"/> gauze + tape <input type="checkbox"/> other	<input type="checkbox"/>	
			<input type="checkbox"/> Heparin <input type="checkbox"/> 0.9 NS <input type="checkbox"/> Other =						<input type="checkbox"/> Bandaid <input type="checkbox"/> gauze + tape <input type="checkbox"/> other	<input type="checkbox"/>	
			<input type="checkbox"/> Heparin <input type="checkbox"/> 0.9 NS <input type="checkbox"/> Other =						<input type="checkbox"/> Bandaid <input type="checkbox"/> gauze + tape <input type="checkbox"/> other	<input type="checkbox"/>	
			<input type="checkbox"/> Heparin <input type="checkbox"/> 0.9 NS <input type="checkbox"/> Other =						<input type="checkbox"/> Bandaid <input type="checkbox"/> gauze + tape <input type="checkbox"/> other	<input type="checkbox"/>	
			<input type="checkbox"/> Heparin <input type="checkbox"/> 0.9 NS <input type="checkbox"/> Other =						<input type="checkbox"/> Bandaid <input type="checkbox"/> gauze + tape <input type="checkbox"/> other	<input type="checkbox"/>	
Notes:											

Date	Time Med Give/Start	Infusing	IV Med Infusion Stop	Medication			First Dose?	Adverse Reaction?	Description of Adverse Reaction	Notification of Adverse Reaction		Nurse Signature
				Drug	Dose	Route				Time	Physician	
1/21/12	0330	<input type="checkbox"/>		Tylenol	16mg po		<input type="checkbox"/>					M. [Signature]
1/21/12	0542	<input type="checkbox"/>		<del>Tylenol</del>	30mg IM		<input type="checkbox"/>					J. [Signature]
		<input type="checkbox"/>					<input type="checkbox"/>					
		<input type="checkbox"/>					<input type="checkbox"/>					
		<input type="checkbox"/>					<input type="checkbox"/>					
		<input type="checkbox"/>					<input type="checkbox"/>					

CLOSED BY OMH



Medication Orders  
Medication Reconciliation Form



<b>ALLERGIES (Reaction):</b>		<b>Height</b>	<b>Weight</b>
<input type="checkbox"/> NKDA	<input type="checkbox"/> Food		kg
<input type="checkbox"/> Medications (List)	<input type="checkbox"/> Iodine	<b>Data Source:</b>	
	<input type="checkbox"/> Latex	<input type="checkbox"/> Patient	<b>Medication Disposition:</b>
	<input type="checkbox"/> Shellfish	<input type="checkbox"/> Family	
	<input type="checkbox"/> Adhesive Tape	<input type="checkbox"/> Other _____	
	<input type="checkbox"/> Contrast Media	<input type="checkbox"/> Medications not brought to hospital	
		<input type="checkbox"/> Medications sent home with family	
		<input type="checkbox"/> Medications sent to pharmacy	
		Page _____	
		Of _____	

Admission		"Home" Prescription and Over-the-Counter Medications				Discharge Orders	
Medication Ordered on Admission	Home Medications Currently Taking	Dosage (mg, ml, number)	Frequency	Route or Topical Site	Date & Time of Last Dose	Resume at Same Dose	DO NOT Resume at Home
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> yes <input type="checkbox"/> no						<input type="checkbox"/>	<input type="checkbox"/>

Vaccine History	Has Pt. Received?	Date Received (if known)
Pneumovax (Ask All Year)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> unknown
Flu Vaccine (Ask Oct.-Feb.)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> unknown

**Discharge Disposition:**

Home

ECF (see Continuity of Care)

Transfer

RN Taking Medication History \_\_\_\_\_ RN Noting Orders \_\_\_\_\_ Date/Time \_\_\_\_\_

Admission Orders faxed to Pharmacy

Physician Signature \_\_\_\_\_ Date/Time \_\_\_\_\_ Initials: \_\_\_\_\_

**Discharge Orders:**

Discontinue IV

Discontinue Foley

Home Dressing Change

Additional Discharge Medication Orders				
Medication	Dosage	Frequency	Route	Script
Vicodin #15	5/325mg	Q4 to PRN	PO	<input checked="" type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

Follow-up: Activity:

Appt: \_\_\_\_\_  Resume Usual

Dr: \_\_\_\_\_  Increase Gradually

Referral:  Limitations: \_\_\_\_\_

Appt: Call AM Monday

Dr: Reed  Regular

See Additional Orders  Other: \_\_\_\_\_

**Discharge Vaccines**

If not marked, vaccines will be given per standing orders.

Do Not Give Pneumovax (all year) (age 65 and older)

Do Not Give Flu Vaccine (Oct.-Feb.) (age 50 and older)

Patient MUST meet policy criteria for administration.

Discharge Orders faxed to Pharmacy Initials: \_\_\_\_\_

Marie Ann 1/21/12 @ 0550  
Physician Signature Date/Time

M. Ann 1/21/12 aad

**ACTIONS**

TIME	INIT
cardiac monitor	
★ pulse oximeter O <sub>2</sub> _____ L via	
Accu-Chek	
ready for Dr eval. notified doctor / seen by Dr	
restraints see documentation	

**PROCEDURES**

TIME	INIT
12-lead EKG performed	
notified	
Foley fr. mL return	
NG fr. mL return	
placement confirmed to suction low / intermittent	
lab drawn / sent by ED tech / nurse / lab	
★ ABG drawn	
★ blood Cx drawn	
results back	
awaiting physician review	
0300 to Xray w/ monitor / nurse / O <sub>2</sub> / tech	ou
0310 return to room	in
to CT w/ monitor / nurse / O <sub>2</sub> / tech	
return to room	
★ to cath lab for PCI / other	

**VITAL SIGNS**

TIME	BP	P	RR	T	SaO <sub>2</sub>	Rhythm	Pain	O <sub>2</sub>	INIT
							/10		
							/10		
							/10		
							/10		
							/10		

**ADDITIONAL NOTES**

0230 - Pt. A+0 x3. O<sub>2</sub> about 2L & in port applied. O<sub>2</sub> patient pulse full & palpable. LUL elevated. on  
 0315 - Dr. Stone in to report. -- a  
 0300 - Dr. Stone in to report. -- a  
 0600 - 7 amb - spine applied, applied to O<sub>2</sub> about 2L. Pt. discharged in instructions.  
 0605 Declined sling

H. CELL, LYNDSEY  
 F 04/28/1991 20Y  
 ED 1/21/2012  
 Physician: HUDSON HEALTH, I



INTAKE \_\_\_\_\_ OUTPUT \_\_\_\_\_  
 IV / saline lock discontinued: Total Amt Infused \_\_\_\_\_  
 Time \_\_\_\_\_ Initials \_\_\_\_\_

PROPERTY TO:  
 patient  family  security  safe  see patient belongings list

**DISPOSITION**  
 discharged home  police nursing home  ME  funeral home  
 verbal / written instructions / RX given to: patient \_\_\_\_\_  
 verbalized understanding  
 learning barriers addressed \_\_\_\_\_  
 accompanied by / driver \_\_\_\_\_  
 admitted / transferred to \_\_\_\_\_  
 report to \_\_\_\_\_ time \_\_\_\_\_  
 transfer documentation completed  
 notified family / police / ME \_\_\_\_\_  
 left AMA / LWBS signed AMA sheet refused \_\_\_\_\_  
 physician notified of: \_\_\_\_\_

**Discharge Vitals**  
 BP 110/64 HR 58 RR 14 Temp 98.6 SoO<sub>2</sub> 100  
 pain level at discharge 0 /10 MEWS Score 0

**CONDITION**  
 unchanged Improved  stable other \_\_\_\_\_  
 Depart Time 0610 Mode:  walk  crutches  W/C  stretcher  ambulance

Discharge Nurse Signature *[Signature]*  
 Continuation Sheet

SIGNATURE	INITIAL
<i>[Signature]</i>	di
<i>[Signature]</i>	MY

**NURSING RECORD**

**Discipline**

**Reprimand** - is an official acknowledgment of unacceptable behavior and a violation of the student code of conduct. Any further misconduct may result in more serious disciplinary sanctions.

**Disciplinary Probation** - is a suspension of all activities during a designated period of time. Further violations of the student code of conduct while on probation will be viewed not only as a violation of the policy for that year, but also as a violation of the original disciplinary action which may require further action up to and including suspension or expulsion. Disciplinary probation may also result in the student's name being suspended.

**Suspension** - is the loss of privileges of attendance at the University for a designated period of time and prohibits a student from being present without permission on the property of any campus-related University.

**Expulsion** - is the permanent loss of privileges of attendance at the University and prohibits a student from ever being present without permission on the property of any campus of the University. Expulsion will be noted on the student's transcript and is not indicated on a student's official academic transcript except for the notation of expulsion.

**Conditions of Sanctions**

As a condition of a disciplinary sanction, the student must agree to conditions that are educational in nature and reflect the nature and gravity of the offense. Conditions of a suspension may include, but are not limited to, completion of a course, withdrawal from a course, loss of access to campus facilities and programs, restriction on campus and off-campus travel, failure to complete a written or oral report, and a written or oral statement of an A-22 (Violation of Disciplinary Probation) or other policy.

**Appealing the Decision**

The student has the right to appeal a disciplinary sanction. The student must file an appeal with the Office of Student Conduct within the time frame of written notification detailing the decision of the case. Appeals may be filed to the University of Mississippi and may include, but are not limited to, the original hearing, number of new witnesses, for details on the appeal process, see the University of Mississippi Student Handbook, or contact the Office of Student Conduct.

Name: WHEEL, Sydney of S. Covey (ID) 7801182352

Offense (number): A-22, A-23, A-24 Date of Incident: 1/21/2012

Date of your disciplinary hearing: \_\_\_\_\_  
 Charges Admitted: \_\_\_\_\_  
 Charges Denied: A-23, A-24, A-18  
 Charges Dismissed: A-23, A-24, A-18

Date of Hearing: 3/12/2012  
 Found in Violation of: \_\_\_\_\_  
 Found not in Violation of: \_\_\_\_\_

Sanctions:  
 Probation: \_\_\_\_\_  
 Suspension: \_\_\_\_\_  
 Expulsion: \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Conditions of Sanctions: \_\_\_\_\_  
  
Not in Violation  
Dismissed

I have read the charges currently pending against me; my rights and the consequences of each charge; and the potential outcomes of each charge as they are explained to me.  
 I have had the opportunity to express my side of the story.  
 I understand the charges of \_\_\_\_\_ and agree to the proposed sanctions of \_\_\_\_\_ (suspension only cases).  
 I understand the University's policies and procedures of sanctions.  
 I understand the consequences of each charge as they are explained to me.  
 I understand the consequences of each charge as they are explained to me.

[Signature] Date: 3/12/12  
[Signature] Date: 3/12/12

**Sanctions**

**Reprimand** - is an official notification of unacceptable behavior and a violation of the student code of conduct. Any future misconduct may result in more serious disciplinary sanctions.

**Disciplinary Probation** - is a conditional status imposed for a designated period of time. Further violation of the student code of conduct while on probation will be viewed not only as a violation based upon the accident, but also as an A-18 (Violation of Disciplinary Probation) which may result in further action up to and including suspension or expulsion. Disciplinary probation may place specific restrictions on the student or student organization.

**Suspension** - is the loss of privileges of enrollment at Ohio University for a designated period of time and prohibits a student from being present without permission on the property of any campus of Ohio University.

**Expulsion** - is the permanent loss of privileges of enrollment at Ohio University and prohibits a student from ever being present without permission on the property of any campus of Ohio University. Expulsion will be noted on the student's permanent record. Judicial sanctions are not reflected on a student's official academic transcript except for the sanction of expulsion.

**Conditions of Sanction**

As a component of a disciplinary sanction, hearing authorities may impose conditions that are educational in nature and reflect the nature and gravity of the offense. Conditions of a sanction may include, but are not limited to, educational seminars, reflective essays, restrictions on right of access to campus facilities and programs, restitution for damage, and room changes. Failure to complete a condition of sanction may result in either a B-3 (Failure to Comply) or an A-18 (Violation of Disciplinary Probation) offense being filed.

**Appealing the Decision**

The accused has the right to file a written appeal to a University appeal board within (3) business days after the receipt of written notification detailing the decision of the case. Appeals may be filed for the following reasons: (a) inappropriate sanction; (b) procedural defect in the original hearing; and/or (c) new evidence. For details on the appeal process, refer to the Code of Conduct Procedures listed on our website at [www.ohio.edu/judiciaries](http://www.ohio.edu/judiciaries)

Name BOWELL, Lyndsey Address 315 Court PID P001192352

Offense (number) A-3b, A-4c, A-18 Date of Incident 1/21/2012

Date of Procedural Interview \_\_\_\_\_  
 Charges Admitted \_\_\_\_\_  
 Charges Denied A-3, A-4, A-18  
 Charges Dismissed A-3, A-4, A-18

Date of Hearing 3/12/2012  
 Found in Violation of \_\_\_\_\_  
 Found not in Violation of \_\_\_\_\_

Reprimand		
Probation, End Date:		
Suspension, End Date:		
Expulsion		<i>Make appointment by:</i>
\$	Fine	Prime For Life: <u>  /  /  </u>
\$	Fee	BASICS: <u>  /  /  </u>
Other:		Prime Solutions: <u>  /  /  </u>

**Introduction:**  
 I understand the charges currently pending against me; my rights and options have been explained to me; the potential outcome of my charges has been explained to me.

**Discussion:**  
 I have had the opportunity to express my side of the story.  
 I hereby ADMIT to the charge(s) of \_\_\_\_\_  
 I hereby DENY the charges of A-3 A-4 A-18 and agree to resolve the pending charges in an (circle one)  
 Administrative Hearing (or)  
 University Hearing Board (suspension only cases)

Conditions or Comments:  
Not in violation  
dismissed

**Resolution:**  
 I understand the sanction and conditions of sanction.  
 I have been provided a copy of "Suspension FAQs."  
 I understand the potential for future consequences in the event of future violations.  
 I understand my right to appeal.

[Signature] 2/23/12  
 PI Staff Signature Date

[Signature] 2/23/12  
 PI Student Signature Date

[Signature] 3/12/2012  
 AH or UHB Staff Signature Date

[Signature] 3/12/12  
 AH or UHB Student Signature Date

**Vincent DePascale**

**Attorney and Counselor at Law**

**DePascale Law Offices**  
786 Northwest Boulevard  
Grandview Heights, Ohio 43212

7 NOVEMBER 2013

Office (614)298-8200  
Rights (614) 481-0555  
No Fax & No E-Mail

CLERK  
COURT OF CLAIMS OF OHIO  
THE OHIO JUDICIAL CENTER  
65 SOUTH FRONT STREET, THIRD FLOOR  
COLUMBUS OH 43215

Re: Howell v Ohio University Police  
Department  
2013-00001

Dear Clerk:

Enclosed is the original of the pleadings that I am filing.

Please file the original.

Due to size and weight of the pleading, and the rules of the Postal Service, you cannot return a complete copy to me in any SASE that you do not need to physically take to the Post Office.

Consequently, just send me a time stamped copy of the enclosed Motion itself and I will attach it to my copy of the Appendix. 

I have sent a courtesy copy to Magistrate Shaver and served Mr Conomy directly.

Thanx.

  
Vincent DePascale

# Vincent DePascale

Attorney and Counselor at Law

DePascale Law Offices  
786 Northwest Boulevard  
Grandview Heights, Ohio 43212

7 NOVEMBER 2013

Office (614)298-8200  
Fights (614) 481-0555  
No Fax & No E-Mail

HON. HOLLY SHAVER, MAGISTRATE  
COURT OF CLAIMS OF OHIO  
THE OHIO JUDICIAL CENTER  
65 SOUTH FRONT STREET, THIRD FLOOR  
COLUMBUS OH 43215

FILED  
COURT OF CLAIMS  
OF OHIO  
2013 NOV 12 AM 11:26

Re: Howell v Ohio University Police  
Department  
2013-00001

Magistrate Shaver:

Enclosed is a courtesy copy of the pleading that I have this day sent to the Clerk for filing.

Please be advised that this is a NEW Motion to Compel proper Discovery and for personal sanctions against Mr Conomy.

My reasons are delineated in the attached Appendix.

  
Vincent DePascale