

At a Special Term, Part 15, of the Supreme Court of the State of New York, held in and for the County of Erie on the 24 day of January, 2024.

PRESENT: HONORABLE MARK J. GRISANTI, J.S.C.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

RICHARD METCALF, SR., as Administrator of the
Estate of RICHARD METCALF, JR.

Plaintiff,

ORDER

v.

Index No.: 803449/2013

COUNTY OF ERIE
ROBERT DEE
MATTHEW CROSS
EDWARD KAWALEK
ROBERT STATES
SCOTT EMERLING

Defendants.

IT IS HEREBY ORDERED, that for the reasons set forth in the transcript incorporated herein as "**Exhibit A**", no media nor any member of the public shall be permitted to be present for jury selection in the above captioned matter.



HON. MARK J. GRISANTI, J.S.C.

ENTER: **JAN 24 2024**

STATE OF NEW YORK : SUPREME COURT
COUNTY OF ERIE : PART 15

RICHARD METCALF, SR., as Administrator of
the Estate of RICHARD METCALF, JR.,

Plaintiff,

vs.

INDEX NO. 803449/2013

COUNTY OF ERIE, ROBERT DEE,
MATTHEW CROSS, EDWARD KAWALEK,
ROBERT STATES and SCOTT EMERLING,

Decision

Defendants.

25 Delaware Avenue
Buffalo, New York
January 24, 2024

B E F O R E:

HONORABLE MARK J. GRISANTI,
Acting Supreme Court Justice.

A P P E A R A N C E S:

DONALD P. CHIARI, ESQ.,
MICHAEL C. SCINTA, ESQ.,
ANDREA N. CONJERTI, ESQ., and
Appearing for the Plaintiff.

JENNIFER C. PERSICO, ESQ.,
JAMES P. BLENK, ESQ., and
BRIAN MAHONEY, ESQ.,
Appearing for the County of Erie and
Defendants Kawalek, States, and Emerling.

JAMES C. DeMARCO, III, ESQ.,
Appearing for the Defendant Cross.

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Official Court Reporter

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1 THE COURT: This is the matter of Richard
2 Metcalf, Sr., as the administrator of the estate of
3 Richard Metcalf, Jr., versus County of Erie, et al., index
4 8034489-2013. Counsel, state your name for the record,
5 and we will start with plaintiff.

6 MR. SCINTA: Michael Scinta for the plaintiff.

7 MR. CHIARI: Don Chiari.

8 MS. CONJERTI: Andrea Conjerti.

9 MR. DeMARCO: James DeMarco on behalf of
10 Sargent Cross.

11 MS. PERSICO: Jennifer Persico, Brian Mahoney,
12 and James P. Blenk on behalf of the County of Erie,
13 Kawalek, States, and Emerling. I will just note for the
14 record that Brian Melber represents Defendant Dee, and he
15 is not present, but I am -- I have been assured that he
16 wants us to go forward.

17 THE COURT: Okay. All right. So prior to jury
18 selection I have talked with Christine Farrell who is the
19 Commissioner of Jurors, and I told Christine Farrell that
20 based on the size and the number of attorneys that I have
21 and the number of jurors that I'm going the need with
22 regards to this particular matter and the fact that it
23 would take at a minimum five days, I asked if I could use
24 a vacant room -- which is an old courtroom but it's
25 vacant, it's not assigned to anybody -- if I could have

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1 that room as an extension of the jury selection room for
2 two reasons. One, to have room for roughly eleven counsel
3 and, two, to be able to separate the jury pool into a
4 number between thirty and forty going into the extended
5 room for jury selection and then keeping thirty to forty
6 people where jury selection normally takes place.

7 I also stated that when it came to my attention
8 that the media wanted to be in the jury selection
9 extension room, I instructed Ms. Farrell to not allow
10 media in, and my understanding is there was a gentleman
11 there from the Buffalo News, I believe on Monday. He
12 understood. He left. There was somebody from the Buffalo
13 News yesterday, and the Court feels at this time it's
14 necessary to make a record and an order and a transcript
15 as to why the Court is not allowing the media in the jury
16 selection room for the process.

17 And I guess I will just ask counsel, just
18 briefly, if you have an objection, say you have an
19 objection. Does anybody have an objection to the Court
20 not allowing the media into the jury selection room while
21 we are trying to pick this jury? Does anybody have an
22 objection to that?

23 MS. PERSICO: No.

24 MR. BLENK: No, Your Honor.

25 MR. SCINTA: No, Your Honor.

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1 THE COURT: Okay. So no counsel has an
2 objection? I take it is that the same for Brian?

3 MS. PERSICO: Yes. We have spoken, and he
4 agrees.

5 MR. DeMARCO: Yes.

6 THE COURT: Okay. The reason, number one, is
7 this is a civil matter. It's a civil matter that is, in
8 my opinion, a high-profile civil matter. It's not a
9 criminal matter where you would have a stenographer and a
10 judge present during selection. This is something where
11 the Court feels that it has very seasoned attorneys to be
12 able to pick this jury. I'm not present during jury
13 selection. There's no stenographer that is down there.
14 There is an individual that works in the Commissioner of
15 Juror's office, and that's for paperwork when a individual
16 juror is let go, they have other jurors sent down, and
17 that's the only basis.

18 If there's ever a problem with regards to jury
19 selection in a civil matter, just like in this matter or
20 any other matter, this Court is available to go down,
21 whether it's in the jury selection room or in this case an
22 extended room which is like a courtroom for -- to resolve
23 any issues that are there, but the Court is not physically
24 sitting watching over this jury selection process, nor is
25 there a stenographer that is down there.

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1 The reason why I did not want the media or any
2 media in for that matter or the public is this is a civil
3 jury selection. I want to protect the privacy and the
4 integrity of the jurors to be able to show up and know
5 that any information that they give any of the attorneys
6 with regards to questioning is going to be something that
7 is not going to be out there in the media or in the public
8 domain.

9 It's something that is for the benefit of
10 counsel when they ask specific questions. They may ask
11 questions regarding health conditions, mental conditions,
12 who their family is, who their spouses are, who their
13 children are, where they work, if they have ever been
14 arrested, things along that avenue as far as questioning I
15 think needs to have protections for the individual jurors
16 and to keep the process moving forward to obtaining a jury
17 in this case.

18 I think otherwise you're going to have a very
19 chilling effect with regards to a juror either not wanting
20 to come forward, number one, to serve or not wanting to be
21 completely honest with regards to answers that counsel is
22 looking for in order to see if that particular juror is
23 someone that they want on the panel or not on the panel.
24 The protections of jurors in that sense for me is the
25 utmost importance, and that is why I do not want to have

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1 the media or any public in the room while the jury
2 selection is taking place.

3 As I said, this is not a criminal trial. I
4 understand what the Supreme Court has ruled regarding
5 criminal trials, but in this case I'm using my discretion
6 in an effort for the protection of the jurors to have
7 their rights and not be worried that any information that
8 they provide to counsel with regards to questioning would
9 be out there in the media and then in the public domain,
10 whether they are picked to be on the jury or not. I just
11 think that that's the proper way to go.

12 So with that being said, I will ask Jill to get
13 a copy of -- to make the transcript of this matter and
14 attach it to an order, and when I receive that I will
15 forward it, Ms. Persico, to your offices for somebody to
16 convert that to an order so I can attach a transcript and
17 have it uploaded and given to the media or anybody else
18 that wants to get into Part 27. All right?

19 MS. PERSICO: Thank you, Your Honor.

20 MR. DeMARCO: Thank you, Judge.

21 MR. SCINTA: Thank you.

22 THE COURT: Any objections? Anything further?

23 MR. SCINTA: Nothing further.

24 MR. CHIARI: Nothing.

25 THE COURT: Thank you very much, and have a

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1 good day.


2 MR. CHIARI: Thanks, Judge.

3 (Whereupon the proceedings concluded.)

4 * * *

5 C E R T I F I C A T I O N

6 I certify that the foregoing pages are a correct
7 transcription of the proceedings recorded by me in this matter.

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10 JILL R. DRASKIEWICZ
11 Official Court Reporter
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