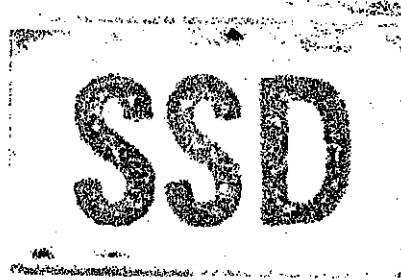


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July 23, 2018

By Certified Mail USPS

New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

RECEIVED

JUL 26 2018

N.Y.S. COURT OF APPEALS

Re: Matter of Krug v City of Buffalo

To Whom It May Concern:

My firm represents Appellee Corey Krug in the above-referenced matter. I have received your letter date July 6, 2018, asking for comment on the question of whether the Court of Appeals has proper subject matter jurisdiction over the case, particularly with regard to finality. I offer this brief response to respectfully inform the Court that Appellee does not oppose the appeal on these narrow grounds.

Under Article VI of the New York State Constitution, a civil action must be "final" in order to be properly heard by this Court. N.Y. Const. Art. VI § 3. Likewise, it is well settled that the state's CPLR has the same requirement. *See* CPLR 5601; CPLR 5602. This requirement generally means that an action must be completely disposed of, and that there is no need for further judicial action, before being heard by this Court.

In this case, Buffalo Police Officer Corey Krug filed a Verified Petition under Article 78 of the CPLR, challenging the City of Buffalo's refusal to defend or indemnify him in a civil lawsuit. The lawsuit was filed by a civilian for alleged wrongdoing that occurred when Officer Krug was on duty and carrying out his assignment as a police officer. Officer Krug premised the Article 78 Petition on General Municipal Law § 50-j, which requires a municipality to defend and indemnify a police officer under such circumstances.

The Supreme Court decision granted the petition with respect to defense. It denied it with respect to indemnification on the grounds that such a claim was premature, the civil lawsuit having

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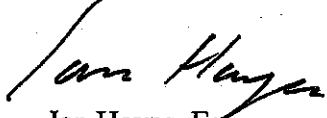
not yet been resolved and thus no judgment against Officer Krug having been made. The Appellate Division affirmed this outcome.

This procedural sequence satisfies the requirement of finality under the state's Constitution and the CPLR. The Supreme Court's Order and Judgment, affirmed by the Appellate Division, establishes finally that the City must defend Officer Krug in the civil lawsuit going forward. There is no further step that must be taken in court in order for that to go into effect. Regarding the Article 78 Petition's request for indemnification, the decision that such request was premature at that time does not prevent Officer Krug from bringing an action for such relief when the issue is ripe. At this point, then, the issue of indemnification has likewise been resolved with the finality required in New York State.

For these reasons, Appellee does not oppose this Court's exercise of jurisdiction on the question of finality. Of course, Appellee will oppose the City's position and arguments on other aspects of this matter if the Court chooses to hear the case. Thank you for the opportunity to comment on this issue.

Very truly yours,

CREIGHTON, JOHNSEN & GIROUX


By: Ian Hayes, Esq.
Attorneys for Corey Krug

cc: David Lee, Esq.