

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: COMPLAINT IN MANDAMUS
TO COMPEL OPEN MEETINGS
OF CARNEGIE LIBRARY OF THE
CITY OF PITTSBURGH, BOARD
OF TRUSTEES

CIVIL DIVISION

GD 09 -

Issue Number:

CERTIFICATE OF SERVICE OF
PETITION TO SET ASIDE
NOMINATION PETITION

Code

Filed pro se by:

David Tessitor and
833 Western Ave.
Pittsburgh, PA 15233
(412) 343-6178

and

Glenn A. Walsh
633 Royce Ave.
Pittsburgh, PA 15243
(412) 561-7876

Petitioners.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: COMPLAINT IN MANDAMUS) CIVIL DIVISION
TO COMPEL OPEN MEETINGS)
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CITY OF PITTSBURGH, BOARD)
OF TRUSTEES)
)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within
Petition For An Order Of The Court That The Carnegie Library of
Pittsburgh Board of Trustees Regular Meetings Be Opened To The
Public was served upon the Carnegie Library of Pittsburgh
President and Director, BARBARA MISTICK, Respondent, by personal
service at _____, by

I affirm that I so state subject to the penalties of 18
Pa.C.S. Section 4904 (relating to unsworn falsifications to
authorities).

Date: _____

David Tessitor

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NOTICE TO DEFEND

YOU HAVE BEEN SUED in court. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned the IF YOU FAIL to do so, the case may proceed without you and A JUDGMENT may be entered against you by the court without further notice for any money claimed in the complaint of for any claim or relief requested by the plaintiff. YOU MAY LOSE MONEY OR PROPERTY or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Lawyer Referral Service of
The Allegheny County Bar Association
920 City-County Building
Pittsburgh, Pa. 15219
(412) 261-0518

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COMPLAINT IN MANDAMUS TO REQUIRE OPEN MEETINGS

AND NOW COMES, PETITIONERS DAVID TESSITOR AND GLENN A. WALSH requesting that this Honorable Court order that the Carnegie Library of the City of Pittsburgh Board of Trustees conduct its meetings openly with access provided for the public and news media, and in support avers as follows:

1. Plaintiff David Tessitor is an adult individual residing at 833 Western Avenue, in the City of Pittsburgh, Allegheny County, Pennsylvania and is a library user of the Carnegie Library of the City of Pittsburgh and has an active interest in libraries.

2. Plaintiff Glenn Walsh is an adult individual residing at 633 Royce Avenue, in the Borough of Mount Lebanon, Allegheny County, Pennsylvania, is a library user of the Carnegie Library of the City of Pittsburgh, is a former life trustee of the Andrew Carnegie Free Library, Carnegie, PA, and has an active interest in libraries.

3. Plaintiffs have repeatedly requested and been denied access to attend the meetings of the Carnegie Library of the City of Pittsburgh as members of the general public.

4. On December 11, 2009, Suzanne M. Thinnes, Communications Manager, Carnegie Library of Pittsburgh sent an email to David Tessitor at 11:14:21 am stating: "Meetings of the Library's Board of Trustees, including the one scheduled for December 14, are closed meetings.

5. The Carnegie Library of Pittsburgh is a public library and Trust, the sole purpose of which is acting as an agent of the City of Pittsburgh in the provision of public library services to city residents.

6. The Carnegie Library of Pittsburgh, Board of Trustees consists of 36 members, 10 of which are public officials serving ex officio or are appointed from among their body as the ex officio representatives, and serving in their official capacities as elected officials as members of the board of trustees are making decisions on the administration of the public library services provided to the City of Pittsburgh and Allegheny County.

7. Pittsburgh Ordinance Number 240, passed by the Select and Common Councils of the City of Pittsburgh on February 24, 1890, signed into law by Pittsburgh Mayor William McCallin on February 25, 1890, and entered into Ordinance Book 7 page 265 of 1889-1890, accepted an offer by Andrew Carnegie to build libraries for Pittsburgh and officially designated these libraries as the "Carnegie Free Libraries of the City of

Pittsburgh.”

8. The Carnegie Library of Pittsburgh continues to provide the public library services acting as the agent for the City of Pittsburgh in buildings owned by the City and leased to the Library through an agreement and leases authorized by Ordinance number 2002-1141 and approved by Pittsburgh City Council on December 4, 2002.

9. The Carnegie Library of Pittsburgh is designated by the Pennsylvania Department of Education district library for the Pittsburgh District.

10. The Carnegie Library of Pittsburgh accepts state funding as the public library serving the City of Pittsburgh.

11. Title 22 of the Pennsylvania Code, Section 141.21, Subsection (2), Part (i), Subpart (C) states: “(C) The library shall be an integral part of general local government.”

12. “Agencies” of municipal government are required to abide by all aspects of the Pennsylvania Right-to-Know Law [Act of June 21, 1957, P.L. 390, No. 212, 60 P.S. 66.1 et seq., as amended] and the Pennsylvania Sunshine Act [Act of July 3, 1986, P.L. 388, No. 84, 65 P.S. 271 et seq., as amended], as are all other parts of municipal government.

13. The Pennsylvania Deputy Secretary of Education for Libraries advises all public libraries in the Commonwealth that they should conduct the meetings of their board open to the public unless qualifying as an executive session.

WHEREFORE, Petitioners request that this Honorable Court order the Carnegie Library of Pittsburgh Board of Trustees to

conduct their board meetings open to the public and to comply in full with the Pennsylvania Sunshine Act and Open Records Law.

Respectfully submitted,

David Tessitor and
Glenn A Walsh
Petitioners.

VERIFICATION AFFIDAVIT

I, David Tessitor, affirm that the facts set forth in the foregoing Petition are true and correct to the best of my information, knowledge and belief, and that I so state subject to the penalties of 18 Pa.C.S. Section 4904 (relating to unsworn falsifications to authorities).

Date: December ____, 2009 _____

I, Glenn A. Walsh, affirm that the facts set forth in the foregoing Petition are true and correct to the best of my information, knowledge and belief, and that I so state subject to the penalties of 18 Pa.C.S. Section 4904 (relating to unsworn falsifications to authorities).

Date: December ____, 2009 _____

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)

ORDER OF COURT

SETTING HEARING ON COMPLAINT IN MANDAMUS

AND NOW, this _____ day of December, 2009, it is hereby
ORDERED:

A hearing on the above-captioned Complaint in Mandamus will
be heard at 1:30 P.M., the _____ day of December, 2009, or as
soon thereafter as suits the convenience of the Court, before
the Hon. Judge Michael E. McCarthy, 706 City-County Bldg., in
Pittsburgh, PA.

Michael E. McCarthy, J.

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ORDER OF COURT

TO COMPEL THE CARNEGIE LIBRARY OF PITTSBURGH TO OPEN THE
MEETINGS OF ITS BOARD OF TRUSTEES TO THE PUBLIC AND OTHERWISE
COMPLY WITH THE PA SUNSHINE AND RIGHT TO KNOW LAWS

AND NOW, this _____ day of March, 2005, it is hereby
ORDERED:

The Carnegie Library of the City of Pittsburgh is the agency responsible for providing library services for the City and its Board of Trustees, which serves as the agent of the City government, is subject to the requirements of the Pennsylvania Library Code, Sunshine Act, Right To Know Law, and Open Records Law. The Board is hereby directed to open all of its meetings which are not subject to executive session to the public and news media, and to otherwise comply with the Library Code, Sunshine Act, Right To Know Law, and Open Records Law.

BY THE COURT:

_____,
Micheal E. McCarthy, J.