

DOCKET NO. CR07-4015984-S : SUPERIOR COURT  
 :  
EDWARD A. PERUTA : JUDICIAL DISTRICT OF NEW  
 : BRITAIN  
 :  
v. : AT NEW BRITAIN  
 :  
CONNECTICUT STATE DEPARTMENT :  
OF PUBLIC SAFETY, CONNECTICUT STATE :  
BOARD OF FIREARMS PERMIT :  
EXAMINERS, CONNECTICUT STATE POLICE :  
OFFICER STANDARDS AND TRAINING :  
COUNCIL : FEBRUARY 13, 2008

**PLAINTIFF’S MEMORANDUM OF LAW IN OBJECTION  
TO MOTION TO STRIKE**

Plaintiff Edward A. Peruta, by and through his undersigned counsel and pursuant to Connecticut Practice Book (P.B.), § 10-42, hereby objects to the Defendants’ Motion to Strike filed on February 6, 2008. (doc. # 1.)

**BACKGROUND**

Plaintiff filed a Complaint in Action for Declaratory Judgment (“Complaint”) on December 3, 2007. The Defendants now move jointly, pursuant to “Practice Book Section 10-39(3),”<sup>1</sup> to strike the Plaintiff’s Complaint “on the basis that the plaintiff has failed to provide

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<sup>1</sup> For purposes of responding to the Defendants’ Motion to Strike, Plaintiff assumes that Defendants rely on P.B. § 10-39(a)(3), not “Practice Book Section 10-39(3)” as cited on Defendants’ motion and memorandum.

**ORAL ARGUMENT REQUESTED  
TESTIMONY NOT REQUIRED**

notice of his declaratory judgment action to all interested parties. (Defs.' Mem. of Law, doc. # 1 at 1.)

### **ARGUMENTS OF LAW**

Practice Book § 10-39(a)(3) provides a defendant two bases for filing a motion to strike: (1) A defendant may contest the legal sufficiency of a claim “because of the absence of any necessary party” or (2) a defendant may contest the legal sufficiency of a claim because of “the failure to join or give notice to any interested person.” See P.B. § 10-39(a)(3).<sup>2</sup>

Practice Book § 10-39(b) mandates that a defendant filing a motion to strike pursuant to P.B. § 10-39(a)(3) “must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action.”

The Defendants in the instant action correctly state that the Plaintiff appended a Certificate of Joinder to his Complaint alleging that “all interested persons or entities have been joined as parties to the action through service upon the Office of the Attorney General.” (Pl.’s

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<sup>2</sup> P.B. § 10-39(a)(3) provides: “Whenever any party wishes to contest (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56(b), the failure to join or give notice to any interested person, that party may do so by filing a motion to strike the contested pleading or part thereof.”

Compl. at 11.) See P.B. § 17-56(b).<sup>3</sup> Furthermore, the Complaint alleges in paragraph fifteen (15) that Defendant Connecticut State Police Officer Standards and Training Council (“POST Council”) “has twenty-two (22) statutory powers enumerated under General Statutes § 7-294d(a), including the powers to periodically update and revise a comprehensive municipal police training plan and approve, or revoke the approval of, any police training school and to issue certification to such schools and to revoke such certification.” (Pl.’s Compl. at 3.) In addition, General Statutes § 7-294d(a) authorizes the POST Council “[t]o set the minimum qualifications for law enforcement instructors and to issue appropriate certification to such instructors” and “[t]o require that all probationary candidates receive the hours of basic training deemed necessary before being eligible for certification ... “ Conn. Gen. Stat. § 7-294d(a)(4) and (5). The Attorney General represents the POST Council.

For this reason, Plaintiff requested in his Certificate of Joinder that “[t]o afford notice to the municipalities referenced in the Complaint with an interest in the issues and too numerous to serve” an “Order of Notice from the Court compelling the POST Council to notify each and

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<sup>3</sup> P.B. § 17-56(b) provides: “All persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interest of one or more of the plaintiffs or defendants in the action shall be made parties to the action or shall be given reasonable notice thereof. If the proceeding involves the validity of a municipal ordinance, persons interested in the subject matter of the declaratory judgment shall include such municipality, and if the proceeding involves the validity of a state statute, such persons shall include the attorney general.”

every municipality in the state of Connecticut employing one police officer or more of the instant action.” (Pl.’s Compl. at 11.)

In their Memorandum, the Defendants deny Plaintiff’s request for an Order of Notice addressed to the Court. (Defs.’ Mem. at 2.) Despite the Defendants’ denial, the Plaintiff preserves his request. In preserving this request, Plaintiff acknowledges that there are additional interested parties who have not been noticed. However, Defendants’ Motion to Strike fails procedurally because it does not comply with P.B. § 10-39(b) which mandates that the Defendants give Plaintiff (1) the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and (2) the missing party's or interested person's interest in the cause of action. As one of the Defendants to the Plaintiff’s Complaint is the POST Council, Defendants are without justification in their failure to comply with P.B. § 10-39(b) when the required information is more readily available to the POST Council and its counsel than to the Plaintiff and his counsel.

**CONCLUSION**

For the foregoing reasons, including the Defendants' failure to comply with the procedural requirements of P.B. § 10-39(b), the Plaintiff respectfully requests that the Court deny the Defendants' joint Motion to Strike.

PLAINTIFF  
EDWARD A. PERUTA

BY: \_\_\_\_\_  
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**ORDER**

The Court, after oral argument and due consideration hereby Orders the Defendant's Objection to Defendants' Motion to Strike

SUSTAINED / OVERRULED.

\_\_\_\_\_  
Judge of the Superior Court

**CERTIFICATION OF SERVICE**

I HEREBY CERTIFY THAT a copy of the foregoing Plaintiff's Memorandum of Law in Objection to Motion to Strike was mailed, postage paid, first-class on February 13, 2008, to all counsel of record as stated next:

Matthew B. Beizer, A.A.G.  
Office of the Attorney General  
110 Sherman St  
Hartford CT 06105-2267

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Rachel M. Baird  
Commissioner of the Superior Court